



## Storms Have Implications for Condo Associations

Fort Myers The News-Press, May 11, 2006

By Joe Adams

[jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com)

TEL (239) 433-7707

FAX (239) 433-5933

As we head into the 2006 hurricane season, both year-round and seasonal residents wonder if we will spend another nail-biting summer glued to television weather forecasts. Were the unprecedented seasons of 2004 and 2005 simply proof that lightning can strike twice in the same place, or a sign that we should brace for a heavy storm activity cycle?

While prediction of the weather's future is best left to the experts, there is no doubt that the Florida hits of 2004 and 2005, and the sobering effects of Katrina's devastation have made a deep, and perhaps lasting impression on the financial realities of housing ownership in coastal communities.

For community associations, ever-increasing deductibles mean more risk-shifting to the pockets of individual unit owners. Even though stung by higher deductibles, many associations have reported astronomical insurance premium increases, which have become, by far, the single largest budget line-item for many associations.

The angst is increased by the recent governmental intervention into the operation of private insurance carriers, based on insolvency concerns. Many private carriers are also notifying associations that coverage will not be renewed unless the buildings are retrofitted with hurricane protection, such as hurricane shutters or hurricane-resistant glass.

Against this foreboding backdrop, many association boards are also severely hampered by the community's antiquated or unduly restrictive governing documents. For example, many older documents require membership approval for special assessments or budget increases. Since assessments, like taxes, are never popular, there is no guarantee that an association can get required membership approval when a vote becomes necessary.

In today's column, and in the next couple of editions, we will take a look at some things an association can do to manage these challenges in this particular point in history. My first tip is more in the nature of membership relations than the law, and that involves the management of expectations and assumptions about what it costs to own a condominium unit, or HOA parcel which an association insures, in the State of Florida.

While some insurance industry folks will tell you that casualty insurance was under-priced for many years, the hows and whys are really not that important. It is like fifty cent per gallon gasoline, we will simply never see it again. Therefore, boards need to escape a mentality where they are judged by how low they keep monthly maintenance fees. Rather, owners need to understand that while insurance is escalating dramatically, other costs continue to rise as well. Obviously, the association cannot stop cutting the grass to pay its insurance bill.

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Over the next several months, most associations will begin planning for the 2007 budget. That is the time to begin educating owners that the rules of the game are changing, albeit not for the better. An association member, whether on a fixed income or with bottomless pockets, will be better able to manage their personal financial planning if given adequate advance notice that

provision needs to be made to address their required support of the operations of their association.

Next week, we will take a look at some items an association can address in updating its governing documents to assist in pre-disaster and post-disaster matters. ■

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*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*

## Bankrupt Owner Liable for Certain Assessments

**Question:** Our association recently had an owner who stopped paying their maintenance assessments. The owner went into bankruptcy, and the association ended up losing money. It was my understanding that the new federal bankruptcy laws did not permit people to get out of their debts. How does this apply to associations? I.R. (via e-mail)

**Answer:** The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 does make various changes to the bankruptcy laws, but does not eliminate the underlying concept of bankruptcy, relief from certain debts.

The old Bankruptcy Code previously was construed, under certain circumstances, to excuse debtors from paying association assessments that arose after the filing of the bankruptcy action (known as post-petition).

The new law clearly obligates the debtor to pay post-petition assessments to condominium associations, cooperative associations, and homeowners' associations, as long as the debtor holds an interest in the property. Therefore, while "pre-petition" association assessments will likely be wiped out by the bankruptcy action (or the association will receive partial payments under certain types of bankruptcy filings), the owner should remain liable for post-petition assessments.

**Question:** Last year, I bought a condominium unit with the hope of appreciation in a year and then to sell it. There were no restrictions on renting. I rented it. Then the other owners started complaining that these units were for owners and not renters. The owners got together and changed the governing documents to read that you can only rent for a minimum 90 days and a maximum of 180 days in any calendar year. They say I have no grandfathered right to rent. Do I have a right to rent? B.O. (via e-mail)

**Answer:** Based upon the facts you presented, yes, you have a right to rent without regard to the new restrictions. Section 718.110(13) was added to the Florida Condominium Act in 2004. It provides that amendments restricting unit owner's rights relating to the rental of units apply only to those owners who vote in favor of such restrictions and to unit owners who purchase after the new restrictions have been added. Therefore, if you bought before the restrictions were added and you did not vote in favor of the amendments, then you are not bound by those new restrictions. It may be of interest to others that no similar statute exists for homeowners associations, and a homeowners' association can add rental restrictions that apply to current owners.

**Question:** I am the president of a small condominium association. When we hold board meetings, every unit owner is able to attend and participate in all discussions so their views are expressed. If there is an issue that requires a vote, the board votes on that issue and then moves on to the next issue. We have one unit owned by an individual who lives in New York. This owner's nephew lives in the unit and attends the board meetings. The nephew has stated that he has a "Power of Attorney" to act as a unit owner, even though an actual "Power of Attorney" has not been presented to the board. Can the nephew express his views as a "unit owner", and are there any special requirements that must be fulfilled before he can act as a "unit owner"? S.M. (via e-mail)

**Answer:** As you know, unit owners have the right to attend all board meetings (except for board meetings with the association's attorney regarding proposed or pending litigation) and to speak at such meetings. This statutory right is only given to unit owners. However, I believe that a non-unit owner appointed under a duly executed power of attorney is entitled to attend board meetings, and to exercise other rights of

the owner such as the ability to speak and participate at such meetings. In your case, the owner's nephew has not produced any valid power of attorney, and until he does I do not believe he has the right to attend or speak at the board meetings.

Your board might want to advise this individual that he needs to produce the power of attorney that he claims gives him these attendance and participation rights. If a power of attorney is produced, you should have the association's attorney review it to make sure it is properly executed and that the powers given in it allow the unit owner's nephew to attend and participate in the board meetings.

Additionally, your association's bylaws may contain language that limits power of attorney rights. Therefore, you should review your bylaws to see if they address this matter in any more detail.

**Question:** My elderly mother owns a condominium unit and has two cats. My mother has medical problems and a doctor had previously recommended that she have a pet for her mental and physical well being.

Cats are not allowed at the condominium and my mother was sent a letter by the association's attorney

demanding that she remove the cats from the condominium unit. Is there a law that can "override" condominium rules such as to allow for a service dog for the blind? L.B. (via e-mail.)

**Answer:** The Fair Housing Amendments Act of 1988 makes it unlawful for an association to discriminate against any person in connection with the rental or sale of a dwelling because of a handicap. A "handicap" is defined as a physical or mental impairment which substantially limits one or more of a person's major life activities or having a record of having such impairment of being regarded as having such an impairment. This definition is very broad.

It is clear, for example, that the law would require an association to allow a service dog for a blind person even if dogs were otherwise prohibited by the association. However, the law is not as clear as to animals that provide "emotional support" for handicapped persons. In some cases, courts have held that there must be evidence that the animal possesses individual training and skills to set the service of the animal apart from the ordinary pet. In other cases, courts have held that there must be evidence that the keeping of the pet would enhance the disabled person's quality of life by ameliorating the effects of the disability. ■

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