



Self-Insure Option Has Challenges

Fort Myers The News-Press, July 27, 2006

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History has a way of repeating itself. At one time, hazard insurance in Florida was cheaply priced, with insurance companies focusing on profits from other lines of insurance products, such as auto and liability policies.

The August 24, 1992 strike of Hurricane Andrew changed all of that. Andrew inflicted twenty-five billion dollars worth of damage in the State of Florida and forced several insurers out of business.

Predictably, those companies which survived sharpened the pencil when it came time to set insurance rates for hurricane losses. The mid-1990's saw a market where insurance was difficult to find, and steep price increases were common when insurance could be obtained.

In response to the insurance crisis following Andrew, the Florida Legislature amended the law to permit condominium associations to self-insure. To my knowledge, no condominium association in the State of Florida took steps to self-insure.

It seems that memories are short in the insurance business, and in the late 1990's rates stabilized, and coverage was generally easy to find. These conditions continued through the first several years of the 21st century.

In 2004, four named hurricanes devastated Florida, including Hurricane Charley which meted out billions

of dollars worth of damage to Southwest Florida on August 13, 2004. Mother Nature provided a repeat performance in 2005, setting a record with twenty-eight named storms, including Katrina and Wilma.

Predictably, the 2004-2005 storm seasons had a drastic impact on insurance rates in Florida. Private insurers have scrambled to rid themselves of exposure to catastrophic loss, and many associations find themselves with only one choice, insurance through Citizen's, the state-run insurer of last resort.

Over the past several months, associations have routinely reported tripled insurance premiums, and I have heard of quotes resulting in increased premiums of up to 900 percent. As a result, many associations are now focusing on whether the self-insurance option, enacted by the Legislature over a decade ago, provides a viable alternative to insurance to Citizen's, or private carriers. Unfortunately, while the concept of self-insurance seems appealing, the ability to implement a program under existing law is difficult at best.

Section 718.111(11)(a) of the Florida Condominium Act states that an association, or group of associations, which wish to self-insure must comply with the strictures of Sections 624.460-488 of the Florida Statutes, known as the "Commercial Self-Insurance Fund Act." In order to comply with this law, a not-for-profit group comprised of no less than ten condominium associations, which restricts its

membership to condominium associations only, may establish a self-insurance fund. The law provides that such groups must be organized for a continuous period of one year “for purposes other than that of obtaining or providing insurance.” It does not seem to me that there are many “groups”, as defined by the law, which would qualify under the law.

The condominium law also states that a single association may also self-insure, presumably without forming a “group of associations”, but must comply with the state insurance laws. In order to establish a self-insurance fund, an association would need to obtain a certificate of authority from the Florida Office of Insurance Regulation. After issuance of an initial certificate of authority, a self-insurance fund must maintain a statutorily required risk management program, maintain cash deposits or sureties in the amount of at least one hundred thousand dollars, maintain excess insurance in accordance with sound

actuarial principles, maintain funded loss reserves, and file various reports with the state.

Since no condominium association, at least to my knowledge, has embarked upon a self-insurance program under the law, it is difficult to predict all of the challenges that would be encountered. It seems clear, at least to me, that volunteer board members would have a decidedly difficult time in establishing a self-insurance fund and complying with the rigors of the law. Surprisingly, there are no consultants or others who have taken the opportunity to assist associations in establishing self-insurance programs.

As Florida’s insurance crisis continues, it is perhaps time for the Legislature to again look at whether self-insurance is a viable option for condominium associations. If so, a clear and manageable procedure must be spelled out to make such a program attainable. ■

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 This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.

Definition of Quorum Determines Legality of Meeting

Question: Each week I look forward to reading your column. I have a question that I hope you can answer. Can members of a homeowner's association board meet together with the management company without noticing the meeting. We have seven members on our board, but three of them seem to think they can meet together in private with our management company. All of this without any notice to the owners. Is this a violation of the law? C.S. (via e-mail)

Answer: Thank you. The answer to your question depends upon how your association's governing documents define "quorum." The statute governing homeowners' associations states that all board meetings must be properly noticed, and that a meeting of the board occurs whenever a quorum of the board gathers to conduct association business. If your governing documents define "quorum" as a majority of the board members, which is very common, no board meeting is taking place when only three of seven board members meet.

When a quorum of board members do meet to discuss association business, notice must be posted in a conspicuous place in the community at least forty-eight hours in advance of the meeting, except in an emergency. Alternatively, if notice is not posted, notice of each board meeting must be mailed or delivered to each member at least seven days before the meeting, again except in an emergency. Another provision in the law allows communities that have more than one hundred members to provide for a reasonable alternative to posting or mailing notice for each board meeting, including publication of notice, or the provision of a schedule of board meetings. The association's bylaws would have to provide for these alternate types of notice.

For board meetings where special assessments will be considered or where amendments to rules regarding

parcel use will be considered, written notice must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property not less than fourteen days before the meeting.

Question: I am a director on a five member condominium board of directors. Three of the directors have "hijacked" the board. They have removed one elected director who didn't agree with them. This was supposed to be due to "paperwork." Is this permissible? E.P. (via e-mail)

Answer: Generally, the only persons who can remove a director from the board are the unit owners, through the recall process. Directors can be recalled by the unit owners with or without cause. There are detailed procedural steps that must be taken by the unit owners and the recall process must conform to the Condominium Act and the "recall rules" adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes.

The board does not have the authority to remove another board member. However, it is possible for a director to be removed by the board if the director is not eligible to be on the board. By "eligible" I mean that the board member does not meet qualifications imposed by the law or by the governing documents. For example, some association documents require the board member to be a unit owner. In some cases, a spouse may not be on the deed to the unit, and therefore the spouse would not be considered a unit owner and would not be eligible to serve on the board. If that is the case, then the board could remove the board member.

Also, the Condominium Act provides that any person who has been convicted of any felony by any court of record in the United States and who has not had his or

her right to vote restored pursuant to the law in the jurisdiction of his or her residence is not eligible for board membership. If it was discovered that a board member had been convicted of a felony and had not had his or her right to vote restored as required by the law, then the board could remove that board member.

Question: I live in a high rise condominium building, and I am concerned about a hurricane hitting my building and blowing out my windows. I went to my Board to get approval to put up hurricane shutters, but I was told that I can only put up a certain type of shutter. I thought that I read somewhere that the Association can't keep me from putting in hurricane shutters. Is this true? P.L. (via e-mail)

Answer: The Condominium Act provides that a board must adopt hurricane shutter specifications including color, style, and other factors deemed relevant by the board. These specifications must comply with the applicable building code. So long as the shutters you are requesting to install meet the shutter specifications adopted by the board, the board cannot disapprove of their installation. The

board may refuse a request to install non-conforming hurricane shutters.

Question: I believe that the property manager of our condominium is not responsive to the unit owners in our community. As a unit owner, I plan to raise my concerns to our board of directors, but first would like to obtain a copy of the manager's contract. I requested a copy of it, but the manager said she will not produce it because she says it is confidential. Am I entitled to a copy of the management agreement? A.B. (via-e-mail)

Answer: The Condominium Act defines what documents are official records of the association, and specifically states that a current copy of any management agreement is an official record. The association's official records are required to be open to inspection and copying by any association member or authorized representative of such member at all reasonable times, and must be made available within five working days after receipt of a written request to inspect the records. If you want to make a copy of the management agreement, the association can charge you the reasonable expense to make the copy. ■

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