



Upcoming Programs may be of Interest

Fort Myers The News-Press, January 4, 2007

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

January 11, 2007 - Condominium-Cooperative Operations Class

Next week, I am teaching a free four-hour course called "Regulation of Residential Condominium and Cooperative Associations." The course is being held on January 11, 2007. The program runs from 9:00 a.m. to 1:00 p.m. at the Seven Lakes Condominium Association, 1965 Seven Lakes Blvd. The Seven Lakes Condominium Community is located directly across from the Bell Tower Shops in South Fort Myers.

This course is being presented through Community Associations Institute, which provides educational programs through contract with the State of Florida (my services are provided pro bono).

The course focuses on how state and federal laws impact the operation of condominium and cooperative associations, and will not be of interest to homeowners' association members. The course reviews the Florida Condominium Act, the Florida Cooperative Act, and various other laws. The course also touches on fair housing laws, with a focus on avoiding discrimination claims, and how to operate a "housing for older persons" community. Other legal topics, such as assessment collection are also covered. This course is primarily geared toward board members and unit owners in condominiums

and cooperatives, and does not count for manager education credits.

Registration is required because space is limited. You can reserve a space by calling Laura Hagan at 727-525-0962 or e-mail FLeducation@caionline.org.

February 6, 2007 - Financial Management Class

As reported previously, Edison College has launched a program aimed at educating association board members. The program has been in place for several years in Naples, and is now in its second year in Fort Myers. On February 6, 2007, Edison College will present the fourth of six programs in its Community Association Officers Forum. The February 6 program focuses on financial management. Banking, legal, and accounting professionals will provide "must know" information about reserves, pooling of reserves, collecting of assessments, FDIC insurance innovations, and money management.

The course is intended to be of assistance for condominiums, cooperatives and HOA's as well.

This program runs from 9:00 a.m. to 11:00 a.m., and is free of charge. Participants may register by calling Guardian Property Management (a co-sponsor of the program) toll free at 1-888-514-7430, or registering on line at www.GuardianPropertyManagement.net. ■

Board Member May Also be Salaried Employee

Question: I am a board member of a Florida homeowners' association. Can a board member who serves without compensation wear another hat, and also be a salaried employee responsible for making minor repairs around the Park, such as securing the common facilities at night and opening them in the morning? Our bylaws provide no guidance on this issue with the exception of language prohibiting board and committee members for being compensated for their time. R.E. (via e-mail)

Answer: Unless specifically prohibited in the governing documents of your association, which would be unusual in my experience, any officer or director may be party to a contract with the association for the provision of other services. The key to such a contract is to be certain that the director who is contracting with the association fully discloses his or her relationship with the contracting company, that the contract is a fair agreement that is reasonably consistent with the market price and terms for such an agreement, and that the agreement be approved by a majority of the directors not including the interested director. In summary, assuming that the contract is fully disclosed and is generally fair and reasonable, there is typically no reason that an officer or director cannot legally be a party to a contract with the association for the provision of other services. Whether or not this is a good idea, setting aside the legalities, is a fairly debatable question.

Related to your question is the issue of officers or directors receiving compensation for their service as an officer or director. The Florida Homeowners' Associations Act does not address the issue of director compensation. As you may know, most homeowners' associations are formed as Florida not-for-profit corporations, and as such are governed by Chapter 617, Florida Statutes, known as the Florida Not-for-Profit Corporation Act. The Florida Not-For-

Profit Corporation Act states that unless the articles of incorporation or the bylaws provide otherwise, the board of directors may fix the compensation of directors. In your case, you indicate the bylaws prohibit board members from receiving compensation.

You may find it interesting to note that the Florida Condominium Act takes the opposite approach, and states that unless otherwise provided in the bylaws, the officers and the members of the board shall serve without compensation. Therefore, in a homeowners association, the board members can be compensated unless the bylaws provide otherwise, and in a condominium association, the officers and directors may not be compensated unless the bylaws provide otherwise. However, if board members are compensated for their services as such, it is possible that they would be required to obtain a community association manager CAM/license from the State of Florida.

Question: My condominium association is forcing my wife and I to get insurance to cover our unit. I believe the board is overstepping its bounds, as I cannot find language in our condominium documents that requires us to carry insurance. We have already survived two major hurricanes without any damage to our unit, and I feel that paying for this insurance premium is a waste of money. Is it permissible for my board to force us to get insurance on our unit? J.S. (via e-mail)

Answer: The Florida Condominium Act provides that all real or personal property located within the boundaries of the owner's unit which is excluded from the coverage the association is required to provide "shall be insured by the individual unit owner." The insurance provisions in the Condominium Act exclude from the association's responsibility a number of items, including all floor, wall, and ceiling coverings, electrical fixtures, appliances, air

conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit, and all air-conditioning compressors that service only an individual unit whether or not located within the unit boundaries.

Most association attorneys believe that insurance provisions in the Condominium Act, as amended in 2003, obligate unit owners to obtain insurance coverage. The Condominium Act does not address whether this coverage could be “self insurance”, the amount of coverage required, or what remedies or penalties are available should non-compliance occur. The Legislature’s intent appears to have been, however, for unit owners to insure their units.

The fact that you escaped the recent hurricanes without sustaining any damage does not mean you are safe from damage caused by any future hurricanes or other casualties. As evidenced in the past, unit owners that did not obtain insurance on their units (and subsequently suffered substantial damage from the hurricanes) are much more likely to “walk away” from their property, causing their units to often be sold at distress-sale prices which impacts the overall property value of the community. Accordingly, just as you would not appreciate suffering a loss due to an act or omission by your neighbors, I am sure they would not want to suffer such a loss themselves.

I believe that the Legislature should address the numerous problems with the current insurance provisions of the Condominium Act, this issue included. ■

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.