



Community Life Q&A: Fidelity Bonding Advisable

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Q: I am new to the board of my condominium association and am trying to understand all of our insurance requirements. One policy that is confusing to me is the policy that the other board members call “crime” insurance. I understand this policy covers embezzlement. What can you tell me about the “crime” insurance policy? **L.M. (via e-mail)**

A: The Florida Condominium Act requires that the association obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. In this regard, it is critically important for the board to take note of fluctuations in the association accounts. For a variety of reasons, including the receipt of insurance proceeds or the receipt of a large special assessment for a special project, or just due to the accumulation of reserve accounts over time, the association’s funds may grow to a large amount that far exceeds the amount of the insurance coverage. Therefore, the board should always review and adjust fidelity bond insurance coverage on at least an annual basis.

Moreover, it is my understanding that the basic fidelity bond covers the very limited persons and situations that are mandated by the statute. In

order to get additional coverage, for example coverage to include a manager or employee, it is often necessary to purchase a rider or have such person specifically listed as being covered by the policy. I understand there are a variety of other additional coverages available at a relatively small cost, and I encourage you to consult with your insurance agent on this point.

You should also know that the fidelity bond application form has specific questions which the association must answer in order to obtain coverage. In summary, the association must represent that it has some internal financial controls, likely to include dual signature requirements for checks in excess of \$500.00, and other prudent controls. Obviously, an insurance company is not inclined to insure an association that has not implemented and maintained prudent funds handling and management practices.

Finally, it is notable that the Florida Homeowners’ Association Act does not contain a requirement for fidelity bonding. However, a homeowners’ association board would be well advised to obtain a fidelity bonding and other crime coverage on behalf of its association.

Q: I submitted a written inquiry to my association approximately 45 days ago. I have yet to receive a reply to my inquiry. Our documents

do not provide a timeline in which the association is required to respond to written inquiries. Is the association obligated to respond to my inquiry, and if so, how long do they have to respond? **J.F. (via e-mail)**

A: It is not clear from your question whether you live in a condominium association or a homeowners' association. The answer to your question will be different based upon what type of community you live in.

If you live in a condominium association, the Florida Condominium Act provides that when a unit owner sends a "written inquiry" to the board, by certified mail, the board must respond to the unit owner within 30 days of receipt of the inquiry. The board's response must either answer the unit owner's question, indicate that a legal opinion has been requested, or indicate that the association has requested the advice of the Division of Florida Land Sales, Condominiums and Mobile Homes.

If the board requests advice from the Division, the board must respond to the unit owner's inquiry within ten days of its receipt of the Division's advice. If, on the other hand, the board has requested a legal opinion from the association's attorney, the board must provide a substantive response to the unit owner within 60 days after the receipt of the owner's inquiry. You should note that even if the association requests a legal opinion

from the association's attorney or advice from the Division, this does not relieve the board of the responsibility to notify the unit owner within 30 days of receipt of the unit owner's inquiry that it has requested such legal opinion or advice.

The board is only legally obligated to respond to "inquiries" that are sent by certified mail. If the board receives an inquiry that is not sent by certified mail, there is no statutory obligation to respond. If the inquiry is sent via certified mail and the board fails to respond within the required timeframe, then the association is precluded from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry.

You should also be aware that the board is permitted to adopt reasonable rules regarding the frequency and manner of responding to certified inquiries sent by unit owners. One of which may be that the Association is only obligated to respond to one written inquiry per unit in any given 30 day period.

If you live in a homeowner's association, the board is not required by Florida law to respond to written inquiries, regardless of whether or not they are sent via certified mail.

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.

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