



## Two Primary Statutes Address Wheelchair Access in Condos

Fort Myers The News-Press, January 18, 2009

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** I live in a high-rise condominium building. Recently, one of my neighbors who is a good friend of mine has been confined to a wheelchair. One problem is that the doorways in the lobby area and out to the pool area are not equipped with automatic handicap accessible doors. In addition, it is nearly impossible to get back into the building from the pool area in a wheelchair due to the lip at the door threshold. Part of the problem is that the building is more than twenty years old and does not appear to have been built with wheelchairs in mind. My question is whether the association must modify the doorways and thresholds to allow wheelchairs to go easily through the common areas of the building? **C.N. (via e-mail)**

**A:** There are two, primary statutes that address the situation you describe in your question. First, the Americans with Disabilities Act, often referred to as the “ADA”, mandates that buildings constructed after January, 1992 must be designed and constructed to be accessible and usable by individuals with disabilities. In addition, buildings which constitute places of “public accommodation” must meet accessibility and use requirements. A building can be a place of “public accommodation” if it contains public facilities, such as a restaurant or hotel, and in the case of private condominium buildings, the definition can be met if the association permits short term leases. The definition and establishment of a place of

“public accommodation” can be fairly complex and is beyond the scope of my response to your question. If your building is somehow a place of “public accommodation”, then modification of the entryways, public restrooms and other facilities may be required. If your building is not a place of “public accommodation”, then the ADA does not require the association to modify the common elements to accommodate a wheelchair or other disabled persons.

However, the Fair Housing Amendments Act of 1988, also referred to as the “FHAA”, also applies to this situation. The FHAA prohibits a condominium association from discriminating against people on the basis of a disability, and requires condominium associations to permit disabled persons to retrofit the common areas of the condominium so as to enable their enjoyment of the premises. The key difference between the ADA and the FHAA is that the ADA requires retrofitting and modifications by the association and at the association’s expense, whereas the FHAA provides that if retrofitting and modification is to take place, it is at the expense of the requesting owner, and the association can establish reasonable conditions regarding the modification. The FHAA analysis hinges upon whether the requested alteration by a member is a “reasonable accommodation”. If so, the association must allow the owner to make such an

accommodation. It is not unusual, in my experience, for disabled owners to spend their own funds to include a swimming pool chairlift or to construct a ramp which will allow a wheelchair or a walker to access the beach area of a beachfront high rise.

Finally, you should know that a reasonable accommodation under the FHAA will be required only if the owner is disabled. The definition of disability is fairly broad and continues to be further expanded by recent amendments to relevant laws. Basically, any impairment of a major life activity will be considered a disability. Because walking is clearly a major life activity, there is little doubt that a person confined to a wheelchair is disabled.

**Q:** In a recent article regarding two-year staggered terms for condominium board members, you said that you typically recommend that a special meeting be called and be held before the annual meeting, even if the special meeting is held only a few minutes before the annual meeting. I recently received an e-mail from a representative of the DBPR, which said that the vote would need to be taken before the first notice of election to insure staggered terms are approved. Can you clarify this point? **T.R. (via e-mail)**

**A:** First, I recommend that the vote to reaffirm/ratify two-year staggered terms take place as far in advance of the association's annual meeting as is reasonably possible and practical. However, for some associations, this cannot be done.

In my opinion, there is no legal reason why the "ratification" vote could not take place at a special meeting, held right before the annual meeting.

Because those members of the current board with time left on their term are "grandfathered" under the new law (until their terms expire), it is not necessary in connection with preparation of the first notice materials to know whether continuing with two-year terms will be approved/ratified.

Say, for example that you have a five-member board. Further assume that three seats are expiring at a February, 2009 annual meeting and two seats will expire at the February, 2010 annual meeting.

The two seats that are up in 2010 do not need to be held open for election this year. The three seats that expire in 2009 do need to be held open for election. Under this scenario, if the owners approve ratifying continuing with two-year staggered terms, the three persons elected in 2009 will be elected to a two-year term. Conversely, if the ratification does not receive the required vote (majority of all voting interests), then those three persons elected in 2009 would be elected for a one-year term.

It is not legally necessary to record notice of the association's ratification of two-year staggered terms, but I recommend doing so, as this will create a permanent record of the association's actions in this regard. However, the recording need not take place before the annual meeting to be valid. A different answer applies if your condominium documents have three-year terms. You will need to adopt an amendment before the upcoming annual meeting in order to convert to two-year staggered terms. This would require that a special meeting be held before the annual meeting (not the day of), so that the amendments can be properly recorded and implemented in connection with the election set to occur at the next annual meeting.

## **Additional Facts**

### **Community Association Leadership Conference**

The Law Firm of Becker & Poliakoff, P.A. will be holding its annual Community Association Leadership Conference on Saturday, January 24, 2009. The program is open to the public, and is free of charge. The event will take place at the Barbara B. Mann Performing Arts Hall, at Edison College. The facility is located at 8099 College Parkway, S.W., Fort Myers, Florida.

Registration begins at 8:30 a.m. The program starts at 9:00 a.m. and runs to 12:30 p.m. This workshop has been approved by the Florida Regulatory Council for three manager continuing education credit hours (Two Legal Update Credit Hours and One Financial Credit Hour).

This year's program focuses on collection of delinquent assessments and the 2008 changes to the Florida Condominium Act involving staggered terms for directors, insurance, and the numerous changes in the law affecting association operations.

Register in advance at [www.callbp.com/events.php](http://www.callbp.com/events.php) or by calling Franklin Scott at 239-433-7707.

*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).*