



Management Company Change Rarely a Problem

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: I serve on the board of directors of my condominium association. The board recently decided to hire a new management company to manage our association and the question was raised about the responsibilities and obligations of our old management company to help us in the transition. Obviously, the old management company has very little incentive to assist us, but we certainly need their assistance in obtaining all of our records, and hopefully having them communicate important matters to the new management company. Can you advise what we should know and what we should do to make sure the transition to the new management company is smooth and successful?

F.O. (via e-mail)

A: As you may know, Community Association Managers (CAMs) in Florida are licensed by the Department of Business and Professional Regulation, also known as the DBPR. The requirements for licensure and conduct are established by Chapter 468, Florida Statutes, and related administrative code provisions at 61-20, Florida Administrative Code. The statute, administrative code, and oversight by the DBPR work together so that transition from one management company to another rarely causes problems for the association.

First, because CAMs are licensed, they must take courses and pass a test to confirm their knowledge and understanding of applicable laws and regulations. They are also subjected to background

checks to establish good moral character. As a result, the vast majority of community association managers are professional, business oriented people who understand that clients sometimes come and go. Therefore, you will most likely have good cooperation from your old management company.

In the unlikely event you experience any difficulty, you should note that Chapter 468, Florida Statute, prohibits a CAM from committing any act of gross misconduct or gross negligence in connection with performing management services. The Administrative Code specifically prohibits a CAM from withholding any original books, records, accounts, funds, or other property of a community association when requested by the community association to deliver those items upon reasonable notice, even if there is a contract dispute between the parties. Reasonable notice is defined to extend no later than 20 business days after receipt of written request. The administrative code specifically states that the failure to provide such records in the stated time is considered gross misconduct under the statute. Therefore, the return and receipt of all association property and information from the CAM is directly addressed by the statute and the administrative code.

While transition from one management company to another is not, in my experience, often a problem, it is also prudent for an association to include helpful provisions in its management

contract in anticipation of termination. It is a good idea to include a provision specifying that all the property and information held by the management company on behalf of the association remains the property of the association. In this day of computers and digital information, it is also important to specify that financial and other records will be turned over to the association in a useable digital or electronic format. On one occasion, a management company told one of our clients that the digital files belong to the management company, but that the management company would print hard copies of the financial information. Obviously, this is an unsatisfactory result for the association and such a dispute can certainly be avoided by clear language in a contract.

Finally, it would not be unreasonable to include a provision in the management contract that the manager will cooperate during the period leading up to the expiration of the contract. Typically, most management contracts provide for 30 days notice of termination with or without cause. I do not recommend signing management contracts that do not contain a liberal termination clause of this nature.

Since the manager will be compensated during that 30 day notice period, it is reasonable to include provisions that the manager will cooperate by communicating with the association and/or the new management company and will do so in good faith. Again, because the vast majority of community association managers are professional business persons, cooperation from them in the transition to a new management company can normally be expected.

Q: Our community consists of single family homes. Our board of directors recommended an amendment to our governing documents which would provide for the association to maintain individual yards, including mowing of grass, as a

common expense. Some owners want to continue to take care of their own lawn and do not want to pay for this to be done on a group basis. A meeting was held and a vote was taken to go with the group program. Is there any way that this decision can be reversed? **L.R. (via e-mail)**

A: Typically, property in a homeowner's association contains two basic components, the parcel and the common areas. In almost every case, the governing documents for the association will require the association to maintain the common areas, as a common expense.

The extent of maintenance of individual property (parcels) varies from community to community. Some homeowners' associations perform virtually no maintenance on privately owned property, while others are more akin to condominium associations and maintain a substantial portion of individually owned property, in some cases including exterior portions of the buildings (homes).

Provisions for maintenance of parcels is typically addressed through the deed restrictions for your community, which is most often called a declaration of covenants, or sometimes referred to as CC&R's (covenants, conditions, and restrictions).

In my opinion, if the declaration of covenants governing a homeowner's association is properly amended, parcel maintenance responsibility can be shifted, including yard maintenance. If your declaration was properly amended, it would appear that the only way to reverse the decision would be to seek another amendment to the declaration, changing back to the previous way of doing things. Most declarations contain a process whereby a set percentage of homeowners can file a petition with the board and require an amendment to be put up to a vote.

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.

