



Should Your Condo Association Directors Be Paid?

Bylaws spell out any compensation

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Q: Our condominium association has a difficult time finding volunteers who are willing to serve on our board. It has been suggested that we should pay our directors. After all, doing the job properly does take up a substantial amount of time, especially for the president. What is your opinion on this? Is this legal? **J.D. (via e-mail)**

A: From the non-legal perspective, I have conflicting feelings. Directors of for-profit companies routinely receive some stipend. On the other hand, board members of civic and charitable organizations are usually not compensated. The condominium association, while typically a not-for-profit corporation, does have many attributes of a for-profit company.

Using another analogy, town council members, county commissioners, and similar decision-makers in the governmental setting are also paid. Again, service on an association board is very similar to membership on a local government board.

Having said all of that, I believe that if the prospect of compensation becomes a motivating factor in seeking election to association boards, there will be more negative than positive effects. For one thing, association members often expect a lot from their board members, even when they are volunteers. Paid board members might be seen as live-in employees,

there to serve their employer's every need, no matter the time of day or night.

Also, I would think that the standards of conduct, and the attendant personal liability, would be viewed more strictly when compensation is involved. Further, having a paid board would place the board itself in the position of both employer and employee. Who would monitor whether the board is doing a good job and earning their pay?

From a purely legal standpoint, you may be aware that the Florida Condominium Act provides that, unless otherwise provided in the bylaws, the officers shall serve without compensation. Most bylaws specifically prohibit directors from being compensated, although I have seen some documents that permit directors to be compensated if a certain percentage of the association members approve the payment of compensation.

It is important to distinguish between compensation and expense reimbursement. It is absolutely appropriate for officers and directors to be reimbursed for out-of-pocket expenses incurred in service to the association. Most well-written governing documents of an association will specifically list administrative expenses as a proper, common expense. A good example would be if a non-resident director is required to travel to Florida to attend a court hearing for the association, then

reasonable travel costs would certainly be reimbursable. Similarly, reasonable phone bills, postage, and the cost of office supplies that are purchased by directors for the sole benefit of the association are appropriate for reimbursement.

The difficult question with expense reimbursement is often whether the amount of the particular expense is reasonable. To address this issue of reasonableness, it is advisable that the association board pass a resolution which sets out parameters for what expenses are reasonable and will be reimbursed and how, precisely, directors should go about incurring expenses and seeking reimbursement from the association. It should be noted that the Florida Administrative Code governing condominium association financial affairs requires that all expense documentation be retained in the official records of the association. Therefore, at a minimum, any reimbursed expense should be clearly and completely documented.

Q: I am the secretary of my condominium association and we are having an issue with a unit owner. We have a management company that takes care of most all of the operations of our condominium. All of the board members are either seasonal residents or regularly travel, so we rely on the manager extensively. The management company keeps all of our books and records at their office. The unit owner made a request to review the records, and the manager made the records available for inspection at his office. However, the owner believes that some records were not produced and now insists that I produce the records personally by mailing him copies. As I stated, I don't have the records and I am not in a position to second guess the manager about what records exist and what records were produced. My question is whether I can safely ignore the continued demands of this unit owner since the manager has already provided the records for his review? **D.I. (via e-mail)**

A: Your question involves several issues under the Florida Condominium Act. First, the Act contains provisions that give unit owners broad authority to inspect records. Other provisions of the Act give owners the right to ask substantive questions in a certified mail letter and to receive substantive responses from the association. The statute establishes some significant consequences if the association does not respond to either of these requests in a timely manner. So it is never advisable to ignore written correspondence from a unit owner. Even if you suspect that a letter repeats prior inspection requests that have already been granted, or prior questions that have already been answered, you need to carefully review and consider every communication as it may contain something new.

Secondly, your reasons for having a manager are valid and typical. But it is extremely important that the board remembers that the board is ultimately, solely responsible to meet all of the requirements of the statute and the governing documents of the association. The association manager is the agent of the board. The manager's actions or omissions are attributed to the board just as if the board members had taken action personally. Therefore, you and other members of the board should investigate the specific claim of this owner concerning the records and make sure that the association, through the manager, has met all of its obligations.

Finally, the Act requires that the records be available for inspection by members within the county where the condominium is located, or if outside the county, within 45 miles of the condominium. An owner is not entitled to have records copied and sent to him. When an association receives a written request to have records copied and sent, the better practice is not to ignore the request, but to write back to the unit owner and advise that he is allowed to inspect the records, and to direct him how to make arrangements to do so.

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

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