Reader Wants To Find Laws On Condo Associations

Members Not Mailed Minutes of Meetings

Fort Myers The News-Press, November 22, 2009

By Joe Adams
jadams@becker-poliakoff.com
TEL (239) 433-7707
FAX (239) 433-5933

Q: Can you point me to the sections of Florida Statutes that state how to run an association? I live in a small ten-unit condominium and our members never receive minutes of Board meetings. Also, we have one director who is not a unit owner. Is this permissible? **A.D. (via e-mail)**

A: Chapter 718 of the Florida Statutes, also known as the Condominium Act, is where you will find most of the legal requirements to run a condominium association. All of the Florida Statutes are available on-line, and can be found through the use of most search engines. The Condominium Act is separated into six separate parts. Assuming your association has already transitioned from developer control, you will want to focus your attention on Part I of the Act, which sets forth the fundamental authority of condominium associations and provides some detailed rules on day-to-day operations.

You will also want to review Chapter 61-B of the Florida Administrative Code and your condominium documents, as both of those sources will provide additional requirements. The provisions of the Florida Administrative Code applicable to condominiums can be also be found on-line. One of the sites where these rules are posted is the website of Florida's Department of Business and Professional Regulation, through its Division of Florida Condominiums, Timeshares, and Mobile Homes.

There are also a number of organizations which provide printed materials and seminars regarding condominium operations. These include industry groups, law firms, accounting firms, and management companies. The Division's website also has a number of resources and links that are helpful in understanding condominium operations.

With respect to receiving minutes of board meetings, I assume your board is keeping minutes of its meetings and just not sending them to the owners. As you may be aware, minutes of all meetings of an association (whether board meetings or unit owner meetings) are required to be kept in written form. Minutes must be kept as part of the official records of an association for at least 7 years, although I typically recommend that minutes be maintained perpetually. Minutes must be made available for inspection by unit owners upon written request.

There is no requirement under the Condominium Act for the board to send minutes to the unit owners. Some associations routinely mail out minutes, some do not. The reasons most often cited for not mailing out minutes are cost and lack of volunteers to do the work. Although probably

not likely to occur in a ten-unit condominium, many associations also have constructed their own websites, where minutes are posted.

With respect to non-unit owners serving on the Board, there is no requirement in Florida law that a condominium association director be a unit owner. However, the association's articles of incorporation or bylaws may provide otherwise. Accordingly, unless your articles of incorporation or bylaws expressly require a director to be a unit owner, a non-unit owner may sit on your board so long as he or she is properly elected or appointed to serve.

Q: I understand that the Florida Condominium Act now requires owners to provide the condominium association with proof of insurance on their units. Can you please let me know where it states that the association must be named as an additional insured on the unit owners' policies? **C.S. (via e-mail)**

A: The insurance section of the Act was amended effective July 1, 2008 in an attempt to clarify insurance obligations and to provide a clear and consistent approach to condominium insurance. Unfortunately, several provisions in the new statute create substantial ambiguity.

First, Section 718.111(11)(g)2 of the law provides that the association "shall require each owner to provide evidence of a currently effective policy of hazard and liability insurance upon request, but not more than once per year." In my opinion, this sentence establishes the requirement that condominium unit owners must have insurance covering their units. But the statute is confusing because it does not require that the association do anything other than request for proof of insurance. I have also heard it argued that the "upon request" qualifier means that an association can choose not to ask for proof of insurance by simply not "requesting" the information. I do not believe that was the intent of the Legislature, but the language used in the law certainly leaves something to be desired.

The statute also allows the association to "force place" insurance on any unit that does not provide proof of insurance, but the association is not required to do so. The consequences for the owner who does not have insurance, or for the association that does not obtain proof of insurance, are not set forth in the statute.

The requirement that unit owners have insurance is also confirmed in Section 718.111(11)(g)4 of the 2008 law, which requires unit owners to be responsible for the cost of reconstruction of any portions of the condominium property for which "the unit owner is required to carry casualty insurance." It is in this same subsection 4 where the provision which you inquired about appears, and provides that the association must be an "additional named insured" and "loss payee" on all casualty insurance policies issued to unit owners.

These issues, as well as several other ambiguities in the 2008 changes to the insurance statute, were clarified by Senate Bill 714 in 2009. However, that Bill was vetoed by Governor Crist due to his concern with other, unrelated language that would have extended a fire sprinkler retrofitting requirement deadline applicable to certain condominiums from 2014 to 2025. Hopefully these issues will be addressed in the upcoming legislative session, as they continue to cause uncertainty for condominium associations in Florida.

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.