



Local CAI Chapter Hands Out Its Annual Awards

Also, does law allow the towing of boats?

Fort Myers The News-Press, December 27, 2009

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Each year, the South Gulf Coast Chapter of Community Associations Institute honors those who have stood out in the local community association scene. On December 5, 2009, the local CAI Chapter held its 28th Annual Meeting and Awards Night, and recognized the following people for their contributions:

- **Board Member of the Year:** This year's award was presented to Mr. Frederick ("Fritz") Heiss of the Avalon Bay Condominium Association of Fort Myers in recognition of outstanding service to his board and community.
- **Volunteer of the Year:** This year's award was presented to Mr. Joe Gennaro of Southwest Property Management of Naples for his work on CAI's Education Committee.
- **Partner of the Year:** This year's award was presented to Sherwin Williams/Flex Bon Paint Companies.
- **On-Site Manager of the Year:** This year's award was presented to Ms. Joyce Gillespie of Herons Glen Homeowner Association of North Fort Myers for displaying a

consistently high level of professionalism, diplomacy and work ethic.

- **Portfolio Manager of the Year:** This year's award was presented to Mr. Jay Vandall of Associa-Benson's Management Company of Fort Myers.
- **Richard D. DeBoest, Senior Community Association of the Year (1,000 Units or More):** This year's award was presented to Seven Lakes Association of Fort Myers.
- **Richard D. DeBoest, Senior Community Association of the Year (500 - 999 Units):** This year's award was presented to the Longshore Lake Foundation of Naples.
- **Robert A. White Humanitarian of the Year:** This year's award was presented to Riverwoods Plantation Condominium Association located in Estero.

Congratulations to all.

Q: I sit on the board of a condominium association. We have a few owners that park their boats in the community longer than permitted, which is 12 hours under the condominium

documents. Does the law permit towing of boats?

A.P. (via e-mail)

A: The short answer to your question is yes, although you must proceed with caution when it comes to towing any type of vehicle. As I have previously referenced in this column, towing is a “self-help” remedy and such remedies are generally disfavored under the law. At a minimum, in order to tow, an association’s condominium documents should contain towing authority and the association must strictly comply with the requirements of Section 715.07 of the Florida Statutes, Florida’s “Towing Statute.” While the Towing Statute specifically permits a condominium association to tow “unauthorized” vehicles, there is no appellate case law in Florida indicating whether this law only applies to trespassers, or permits towing as a remedy to enforce the provisions of the condominium documents. I believe most community association attorneys take the position that if towing is authorized as a remedy in the condominium documents, it is an appropriate remedy, as long as the Towing Statute is followed.

The Towing Statute applies to vehicles and vessels alike, and defines “vessel” as any watercraft, barge, and airboat used or capable of being used as a means of transportation on water. However, “vessel” does not include a seaplane or a “documented vessel.”

The Towing Statute permits an owner or lessee of real property (or, in your case, the association), or their authorized representative, to remove any “unauthorized” vehicle or vessel from the property, by a person regularly engaged in the business of towing vehicles or vessels without liability, provided certain conditions are met. Such conditions generally include, among other things, posting notice of the association’s intent to tow away unauthorized vehicles, at the vehicle owner’s expense. The notice must contain reflective lettering of a specific size, and such notice must be placed in certain areas throughout the community.

You should also check your condominium documents to see if there are additional notice requirements.

Sometimes, condominium documents will require the association to provide written notice of the association’s intent to enforce the condominium documents before any type of remedy can be pursued. Even where that is not the case, your association would possibly want to give additional written notice anyway, to give the offending owners a chance to comply before their vehicle or vessel is towed.

Q: There are several unit owners in our condominium who have laid claim to portions of the common property. They assert that the areas are limited common elements for their exclusive use. How do I determine if these areas are, in fact, limited common elements for their exclusive use?

K.D. (via e-mail)

A: The Florida Condominium Act defines “limited common elements” as those portions of the common elements which are reserved for the exclusive use of a certain unit or units “as specified in the condominium declaration.” Therefore, in order to determine if a particular area of condominium property is a limited common element, you must review your condominium declaration or perhaps its incorporated exhibits, such as the survey or site plans for the property.

If the area your neighbors have laid claim to is specifically described in the declaration as a limited common element, then it is a limited common element. The designation of a particular portion of the condominium property as a limited common element is important for a number of reasons. First and foremost, limited common element use rights (which are generally exclusive to a particular unit) are described as an “appurtenance”, meaning that they pass with title to the unit. Also, if a portion of the common elements is designated as a “limited common element”, the declaration of condominium may require the association to maintain the element at the expense of all owners, may require the unit owner to maintain the element, or may require the

association to maintain the element, but only at the expense of the benefiting owner.

The appurtenant assigned use rights of certain limited common elements, such as boat docks, can add substantial value to a condominium parcel. As

such, it is important for your declaration to clearly define limited common elements and for the association to maintain accurate records regarding their assignment.

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.