



Ten Resolutions For Board Members and Owners

Following these 'tips' may ease disputes later on

Fort Myers The News-Press, January 3, 2010

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

The New Year marks a chance to reflect on past successes and failures. Of course, the customary way to shoot for success in the upcoming year is the New Year's Resolution. Here are ten proposed New Year's Resolutions for community associations, five for owners and residents, five for the board.

For the owners and residents:

- Remember that the association is not a landlord and the board members are not the building superintendent. They are volunteers. They are human beings who will make mistakes.
- Volunteer to do one thing for your community during the upcoming year. Whether it is typing up an edition of the community's newsletter, or serving on a committee, every little bit helps.
- The next time you get upset about something that has happened at the association, wait twenty-four hours to address it. It is amazing how a night's sleep sometimes puts a new perspective on things.
- Follow the rules. There is at least one rule in every community that some resident despises, or thinks is silly or outdated. However, that rule may be very important to your next door neighbor. If you feel a rule is outdated, advocate for change in a respectful manner.

- Sit down and read the association's governing documents. In the flurry of activity involved in buying a new home, very few people have the time or inclination to read through a thick stack of condominium or homeowner's association governing documents. One of the most common complaints I hear from boards when a dispute erupts in a community, is that the problem would have never happened if the owner would have read the documents.

Now, for the board:

- Remember that an owner questioning what is being done, or suggesting another approach, is not necessarily an attack on the board. Great ideas sometimes come from the most unexpected sources.
- Try to create an environment that encourages community participation. Sometimes it is easier and faster to just do things yourself. However, the more your association is perceived as a partnership, the smoother things will go.
- Read your governing documents. Owners are not the only ones guilty of not knowing the community's governing documents. If there are archaic or un-enforced rules, it is time to look at changing them.

- Review all of your relationships. Take a look at each vendor providing goods and services to your association. Are they meeting your expectations? Keeping in mind that you often get what you pay for, the cheapest is not always the best.
- Don't sweat the small stuff. While board members should take their obligations seriously, some things just are not life and death matters. Keeping things in proper perspective and good balance (admittedly easier said than done), makes board service much more rewarding.

If you are like most of us, it probably will not take long to break some of these resolutions, but it is worth a try.

Q: A unit in our condominium has been abandoned by the owner. The unit is subject to foreclosure, but the bank is not moving very quickly. It recently came to the Board's attention that power to the unit was shut off. With no air conditioning, we are concerned about the growth of mold and mildew spreading to the common elements and other units. What can we do? **A.L. (via e-mail)**

A: The association is responsible for maintaining the common elements. In most condominiums, the common elements include the drywall on the unit boundaries, which, for simplicity's sake, generally include the four boundary walls and the ceiling. Without air conditioning to cool the air and reduce moisture, it

is certainly possible, if not likely, that mold and mildew will grow on the common element drywall. If the mold and mildew grows unchecked in an abandoned unit, then the bill for remediation is likely to be significant. Therefore, it would be in the association's best interest to address the issue before mold and mildew grows.

In the case of an abandoned unit, I normally recommend that the board have the association's attorney send a letter to the unit owner demanding that power be restored to the unit. Legal counsel for the foreclosing lender should be copied on the letter. The demand should advise that if the problem is not corrected by a certain date, then the association will hold the unit owner legally responsible for any resulting damage to the condominium property. If this demand fails to achieve its intended effect (which will probably be the case with an abandoned unit) then the board may simply have no choice but to have the power restored to the unit at the association's cost. The cost of providing power and some level of interior environment control for the unit is likely much less than the cost of mold and mildew remediation. Because this course of action will involve the use of common expense funds, will depend upon language in your condominium documents, will require access to the unit, and will affect the lender's rights and liabilities, the board of directors should enlist the aid of the association's legal counsel to ensure that all proper steps are followed.

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.