



## Benefits To Having Experienced Manager

Fort Myers The News-Press, February 7, 2010

**By Joe Adams**

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** Our 90 unit condominium has been fortunate to have two, long-term directors who have done a wonderful job for us over the past decade. Unfortunately, the day we knew was coming has arrived, and they have both decided not to run for re-election this year. We already know who the new directors are going to be, because they are running unopposed, and our early discussions have turned to whether or not we need a manager now. We know many of the reasons that a manager could help us to run the association. One of the incoming directors insists that a new manager will insulate the board from liability. One of the long time directors tells us that the board had long considered hiring an administrative assistant, not a licensed manager, in order to save on manager's fees while still getting some assistance in administering the association. Could you comment on our situation and give us some advice? **S.F. (via e-mail)**

**A:** You are correct that there are several, obvious benefits to having an experienced manager. Foremost among them, the manager will do most of the "heavy lifting" and take that burden off the board members. Experienced managers know who to call and how to get things done, and very often can get the best prices on goods and services for the association. Finally, most experienced managers, especially those who work for a management company with good

bookkeeping and accounting back-up, can provide excellent financial services, which are typically the most time consuming and labor intensive functions of an association. If your volunteer board members are not interested in a nearly full-time job, then a manager can be very helpful.

However, one of the statements in your question is misguided. Specifically, a manager will not insulate the board from liability. It is important to note that a board has ultimate responsibility for all of its functions and all of the actions of the association, including those actions taken by a manager. In other words, it is possible to delegate assignments and projects to a manager, but it is never possible to delegate the ultimate, legal responsibility for administering the association. You will find that experienced managers are very careful to understand and seek mutual agreement with the board regarding the limits of their authority. They will insist the board make policy decisions, approve contracts, and make other important decisions. In fact, most management contracts used in this locale include an indemnification provision which actually insulates the management company from liability incurred while taking action on behalf of the association. I recommend that the management company also be required to indemnify the association when their errors or omissions cause harm to the association.

If your association hires a management company, it is strongly recommended that your association's legal counsel review the proposed contract before it is signed. In my opinion, a management contract should always be terminable by either party (the association or the management company) upon reasonable notice (thirty days or sixty days is customary), with or without cause. There should also be a specific listing of the manager's responsibilities, limitations on authority (including expenditure authority), insurance requirements, and the like.

The alternative of hiring an administrative assistant who is not a licensed manager is not uncommon. However, it is important that the association and the administrative assistant understand the legal limits of an administrative assistant's authority.

Chapter 468 of the Florida Statutes regulates and generally requires the licensure of community association managers. "Community association management" is defined to include certain practices that require substantial specialized knowledge, judgment, and managerial skill, including the practices of controlling or disbursing funds of a community association, preparing budgets or other financial documents of a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved in the operation of a community association. The statute does carve out a specific exception for any person who performs clerical or administrative functions under the direct supervision and control of a licensed manager. While not expressly excepted, I believe that an administrative assistant who assists the board under the direct supervision of board members, and who does not engage in any of the above-described practices defined as "community association management", may perform those administrative duties without a license.

In searching for a management company, do not be guided by price alone. Like most things in life, you usually get what you pay for. Your

accountant, your attorney, and other professionals with whom you have existing relationships would likely be willing to provide you with a list of several management companies that they believe would be well suited to bid on your community's particular needs.

### **Trade Show, Seminars of Interest to Associations**

On Friday, February 12, 2010, beginning at 9:00 a.m. and running through 2:00 p.m., the South Gulf Coast Chapter of Community Associations Institute will hold its 16th Annual Conference & Trade Expo. The trade show will take place at the Alico Arena on the grounds of the Florida Gulf Coast University, 10501 Florida Gulf Coast Boulevard South, Fort Myers 33965. FGCU is located off of Ben Hill Griffin Parkway, a mile south of Alico Road.

Over ninety exhibitors will provide service and product information. Vendors who set up booths typically include various contractors (painters, roofing companies, etc.), as well as numerous service providers such as accounting firms, legal firms, insurance agencies, banks, and management companies.

In addition to the trade show, a series of educational seminars will be hosted throughout the day. At 8:00 a.m., I will present a two-hour course entitled "2010 Legal Update." Registration for this course may be obtained by calling Robert Podvin, Executive Director of the South Gulf Coast Chapter of CAI at 239-466-5757.

At 10:00 a.m., there will be a two-hour open forum to discuss "Legal, Insurance, and Accounting Issues Confronting Community Associations Today". Local attorneys, insurance brokers, accountants, and members of CAI's legislative committee will provide information to fuel debate regarding the issues presented.

At 1:00 p.m., CAI's Florida Legislative Alliance will host a program reviewing potential legislation for 2010 affecting community associations

(condominiums, cooperatives, and homeowners' associations) as well as legislative issues affecting community association managers. The Florida Legislative Alliance is a committee which recommends changes to the laws affecting community associations, and also provides comment and analysis regarding other legislative initiatives.

Cash prizes will be awarded to CAM managers throughout the day starting at 9:00 a.m. Exhibitors will be raffling off booth prizes and all community

association residents are welcomed to enter their name at each booth. A "Cruise for Two" will be drawn at the conclusion of the show.

All events provided to managers, condominium and homeowner association board members and residents are free of charge.

Set aside some time on Friday, February 12, 2010 for this event.

*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](mailto: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](http://www.becker-poliakoff.com).*