



LAW OFFICES

BECKER & POLIAKOFF, P.A.

Community Up-Date™

Vol. 101 JANUARY 2001

CURRENT NEWS FOR COMMUNITY ASSOCIATIONS

TRENDS IN COMMUNITY ASSOCIATIONS FOR THE 21ST CENTURY

This article will be a look at trends in community association development and living for the 21st Century. This is the first of a two part article which will discuss where we are currently, where we have been, and, where we are going?

Buildings in community associations come in all shapes, sizes, heights and configurations, and may include: condominiums, condominium hotels, timeshares, cooperatives, homeowner and property owner associations, master associations, dockominiums, manufactured housing parks, and any combination of these. No matter what type of communities they are, generally all have certain characteristics in common: 1) a set of governing documents which create obligations and responsibilities, through the use of covenants and restrictions; 2) owners of lots or units automatically become members of the community association when they take title; 3) every owner is required to pay assessments to cover the costs of maintaining, repairing and replacing the common property areas and to operate the association; and 4) every owner has an interest in the property.

Historically, planned communities

have been developed over the last 150 years, here in the United States. In fact, planned communities were first developed in the 1820's; with cooperatives arriving from Europe around 1900, and condominiums being created in larger numbers following the adoption of modifications to the Federal Housing Administration (FHA) law in 1961. With improved transportation and an abundance of land and resources, the first "street car suburbs" were developed around the major cities on the East Coast of the United States. Following the development and expansion of the railroads over the years, we soon had a mobile population following jobs and family all over the country. Eventually, the inner cities became the homes of the first generation immigrant populations, and those who could not afford to own their own homes or their own cars.

Today, based on best estimates, there are believed to be approximately 205,000 community associations in the United States, with 16.4 million housing units and approximately 40 million residents. Of these, approximately 40,000 associations are in Florida.

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TIDBITS

Did You Know ???

The Florida Condominium Act was amended during the 2000 Legislative Session to "liberalize" statutory requirements for the delivery of Association year-end financial reports to unit owners. Section 718.111, (13), Florida Statutes, now provides the following:

- ✓ Annually, on a date either within 90 days after the end of the association's fiscal year or as otherwise specified in the bylaws, the association is to complete a financial report for that fiscal year.
- ✓ The association is to mail or hand deliver to all unit owners either the completed financial report, or a notice that the financial report is available without charge upon request, within 21 days after the actual completion of the financial report by the association or after association receipt of the financial report from a third party
- ✓ As to the comprehensiveness of the financial report required by statute, associations whose total revenues are less than \$100,000 or which operate less than 50 units must prepare a "report of cash

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TRENDS IN COMMUNITY ASSOCIATIONS FOR THE 21ST CENTURY

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Before we look to the 21st century, let's look at the "current reality" about community associations, to have some foundation and background from which to move forward.

Today, the structural components of our buildings are aging. Some of the buildings were constructed in the late 1960's and early 70's; others more recently but on the water are affected by the salt air and the sun. Concrete restoration of walkways and balconies has taken the place of new construction, as a major industry.

Maintaining and repairing the common elements and common areas is a costly proposition. Boards of directors of community associations are often faced with considering and levying large special assessments, and adopting increases in monthly assessments, in the face of membership opposition and resistance. In the wake of Hurricane Andrew and other storms, floods, fires, and so on, many associations are now paying increased costs of insurance. Boards are looking at and choosing alternative methods of financing repair and reconstruction projects, which bring with them some difficult decisions, and sometimes reluctance from the membership. Boards are struggling with the idea of whether to have fully-funded reserve accounts, and trying to educate and persuade their members to understand the need for the funding of those reserves and for long-range planning regarding maintenance and repair of the common property. This is particularly challenging in the retirement-age community populations, in which the members say they "will not even buy green bananas," let alone be there when the roof needs to be replaced. Boards need to have a comprehensive maintenance schedule and plan, for what repairs will be necessary, as well as all

of the information on which to base a schedule for those repairs.

Not only is the physical plant of the community aging, but the members themselves are aging, which results in what is now becoming known as "naturally occurring retirement communities." There is a significant movement toward remaining in a unit or a home, with or without home care, past the point at which individuals often went to traditional nursing homes and assisted living facilities. Association-administered communities may not be physically equipped to accommodate any special needs of an aging population, and the boards of directors are not trained to be social workers, mental health professionals, or health care givers. Too often,

older persons were housed in a condominium unit by their families, and then forgotten, with the hope that the association would take care of them.

This problem is no longer limited to Florida and other traditional retirement meccas. People are deciding to stay in the towns in which they resided, where they have friends and family near by, but in communities that are not necessarily equipped to deal with the needs of a retirement population

There is a great deal of legislation which governs the operations of a community association, at the federal, state and local levels. This includes the senior housing laws, the Telecommunications Act, and the bankruptcy laws; in addition to the Condominium Act, the Cooperative Act, the Timeshare Act, the Mobile Home Act, the Corporations Acts; the fire safety laws, the zoning ordinances, and so on. To make matters worse, many of the changes in the various laws have turned out to be "lawyers' relief acts," rather than positive assistance for the boards and the association members.

The governing documents may have been written thirty or more years ago, and due to extensive lifestyle and legislative changes since those times, these documents may be neither adequate nor even legal and proper for running today's community

associations. Yet, the boards are continuing to struggle with compliance and enforcement of these documents.

Our current governance models are based on absolutes and generalizations, which arise out of an inability to agree upon a vision for the community, and result in a perception that the members have no input in the governance of their homes. Feelings of disassociation lead to violations of the governing documents, which in turn lead to extreme measures on the part of the association to promote compliance. But, Ambrose Bierce once described litigation as "a machine you go

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receipts and expenditures," while associations with 50 units or more whose annual revenues are at least \$100,000 but less than \$200,000 are to prepare "compiled financial statements," and associations with 50 units or more whose annual revenues are at least \$200,000 but less than \$400,000 are to prepare "reviewed financial statements," and associations with 50 units or more whose annual revenues are \$400,000 or more are to prepare "audited financial statements."

- ✓ The comprehensive financial reports called for by the statute, in regard to associations with 50 or more units whose revenues are \$100,000 or more, can be waived by vote of a majority of the unit owners present and voting at a duly convened membership meeting, provided that, upon such waiver, the association will (at a minimum) still need to prepare a "report of cash receipts and expenditures."
- ✓ Finally, be aware that notwithstanding the statutory provisions as to the comprehensiveness of the association's financial reports, if the association's **documents** call for a more comprehensive review of the association's financial records than the statute, the more comprehensive requirements of the documents will need to be satisfied (this principle applies even if the association has waived the statutory requirements).

into as a pig and come out as a sausage.” Sometimes, it seems as if litigation is part of the problem, rather than the best solution. We have moved away from the model of participatory democracy, to the detriment of the community association concept, and the delight of the public press.

In the construction arena, urban sprawl has been the comprehensive development plan of the past, building on all available land, without regard for environmental impact, aesthetic issues, or the ability of the local governing bodies to provide the necessary infrastructure for water, sewer, electric, roadways, schools, and recreation. There has been a pattern of widespread, low-density residential and commercial settlements; leap frogging development around and beyond already established communities, without regard for design or function; increasing dependence upon personal automobiles, and the decrease in availability of public transportation; little or no centralized planning or control of land use, until after the damage has been done; widespread strip commercial development; segregation of specialized types of land uses in separate zones; and very little planning for providing for low income housing.

Boards are involved in resolving disputes among neighbors, enforcement of the governing documents, creation of new and more rules and regulations, responses to owners who question every decision or action taken by the board of directors. Our boards are viewed with the same affection as the internal revenue service. Too many boards are overseeing all of the details of general day to day operations of the communities. These kinds of activities have taken all of the time and energy of our community association boards of directors, narrowing their focus, and diverting their energies from finding a creative and fulfilling experience in their duties as directors.

If you read the papers or watch the news, you are aware of the marked diminishment of the quality of life for millions of Americans, caused by traffic congestion and long commutes, air pollution, squandering of energy resources, escalating costs of living, lack of affordable housing, and inability to find appropriate workers in today's 100% employment marketplace. There is an increasing feeling of personal isolation and a desire for community isolationism. We wait until we drive into the driveways of our homes, so we can feel like a person and not a car. You are probably familiar with the concept of “nimby” (not in my backyard), but have you heard of “banana” (built absolutely nowhere near anyone) which was reflected in the plot of land around the house and the long driveway? And then there is the creed of the politician: “nimtoo” (which stands for not in my term of office) and is shorthand for a reluctance to endorse change or espouse a potentially unpopular point of view.

How do we summarize where have we been? We have been in a time in which business meant austerity; governance meant compliance; and community meant conformity.

Today, there are patterns developing, which are connecting disciplines and areas which were not previously put together. Municipalities and developers have discovered there is a huge cost to maintain far flung infrastructure. Urban sprawl has taken its toll and negatively impacted our environment.



Deteriorating infrastructure is causing public danger, and health hazards. There has been a terrible impact on the human soul as a result of those long commutes from home to work, and too many hours spent in the car, including the emergence of “road rage” as a commonly recognized psychological disorder.

We have to find a new way to view our community associations, to plan for the brave new world and to take advantage of the myriad opportunities which are opening up.

Right now, boards can look at modernizing and up-grading the landscaping and grounds, and the décor of the common areas. In some cases, this will require approval of the membership, or amendments to the governing documents to accomplish.

Residents in community associations need to get back to knowing and caring about their neighbors, and sharing recreational activities within the community. It is time to focus on the education of the volunteers who are sitting as directors, and encourage committee participation as training grounds for future leaders. We can review the governing documents, and with an eye toward the current culture of the community, make changes in the restrictions if they are warranted.

Those rules that are being overlooked should be reviewed and removed from the books. Rules need to become standards and principles, and emerge from a group participation in the process, rather than being handed down from above. This is Rousseau's concept of the social contract, and it is still a fine idea which works well. The more people involved in the creation process, the more likely it is you will see voluntary compliance.

It is time to move from the rigid covenants, conditions and restrictions paradigm, to a tension, time and trust mentality which places people values over property values. It is time to find a creative synthesis of opposing viewpoints, and create some mutual respect among the owners and the board members. It is time to help each person find his place in the community, not through “police” action, but through community support. When a problem arises, we need to look at the best solution, instead of throwing another rule at it.

Communities must develop a consistent program for orienting, and more importantly welcoming, new residents to their worlds. Knowledge and communication will go a long way toward smoothing the road in the future. Every community association (using input from directors, members, management representatives) should develop a mission statement, like those in corporate settings, to help focus energy and thought on creation of goals, and strategies for achieving them. Alexis de Tocqueville wrote *Democracy in America* in 1835. He said, “In the American townships, power has been distributed with admirable skill, for the purpose of interesting the greatest possible number of persons in the common well.” This is the year 2001. It is about time to acknowledge this power and put it to positive use. In next month's article, we will discuss where we are going in this regard.



CASENOTES

ARCHITECTURAL APPROVAL OF NON-STRUCTURAL MODIFICATIONS

In the case of *Lake Ridge Greens Homeowners Association, Inc. v. Silverman*, 25 FLW D1198 (Fla. 4th DCA 2000), the court considered whether the language of the Declaration of Restrictions and Protective Covenants governing the Lake Ridge Greens community is broad enough to require the homeowners to obtain the approval of the community's Architectural Control Board to hang a terra cotta wall plaque.

The homeowners, Mr. and Mrs. Silverman, purchased a home in Lake Ridge Greens in April 1997. After moving in, the Silvermans hung a 45"x25" terra cotta wall plaque on the exterior of the home, without seeking the approval of the Architectural Control Board. The Association's manager noticed the plaque during a routine property inspection and advised the Silvermans that hanging the plaque required Architectural Control Board approval. The Silvermans applied for approval, which was denied. As a result of the denial, the Homeowners Association sent a letter to the Silvermans asking them to remove the plaque. The Silvermans refused to remove the plaque, claiming it was not an architectural change or modification.

Eventually, the Homeowners' Association filed suit. At trial, the Silvermans argued that architectural control consent was only required for structural or permanent changes or alterations and still maintained that the enforcement, in this case, was arbitrary or discriminatory. The trial court agreed, and the Association appealed.

The Declaration of Restrictions and Protective Covenants for Lake Ridge Greens provides for architectural control approval for any installation, placement or removal of, among other things, any addition, alteration, improvement or change. It allows the Architectural Control Board to reject an application for approval based upon aesthetic considerations.

The appellate court reversed the trial court

decision and directed the trial court to enter judgment in favor of the Association, concluding that the language of the Declaration was broad enough to include the Silvermans' plaque.

POTENTIAL DEPRESSION NOT HANDICAPP

In the Arbitration case of *Half Moon Bay Condominium Association, Inc., v. Osmo Kanerva and Kaarina Kanerva*, Case No. 99-0113, the Association filed an Arbitration to compel Mr. and Mrs. Kanerva to permanently remove their dog from their unit and the Association's property. The Association's Declaration of Condominium prohibited keeping a dog that weighed in excess of 25 pounds. The Kanervas' dog weighed almost 50 pounds.

The Kanervas claimed that the Association was selectively enforcing its documents, in as much as other unit owners had dogs weighing in excess of 25 pounds. The Arbitrator found no evidence to substantiate their claims, and denied their defense of selective enforcement. Additionally, the Kanervas requested an accommodation under the Fair Housing Act, alleging that Mrs. Kanerva was handicapped. They submitted a letter from Mrs. Kanerva's clinical psychologist asserting that she was a very sensitive woman who had experienced a great deal of emotional trauma during her life, and that it was highly likely that she would experience a major depressive episode if she was forced to give up her dog.

The Arbitrator cited the United States Code for the definition of "Handicap," which provided that a "Handicap" means a physical or mental impairment which substantially limits one or more of a person's major life activities, a record of having such an impairment, or being regarded as having such an impairment. Since Mrs. Kanerva did not assert a present physical or mental impairment as defined above, but rather that she might suffer a depressive episode at some future time, the Arbitrator concluded that her condition did not give rise to a claim under the Fair Housing Laws. Therefore, failing in all of their defenses, the Kanervas were ordered to permanently remove their over-weight dog.