

COMMUNITY UPDATE™

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Serving Florida's Communities Since 1980

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The foreclosure crisis took a nasty turn into a credit crisis, not only here in Florida, not only here in the United States, but globally, as well. The CALL survey conducted from March 26 through April 8 revealed that there was over a seventy (70%) percent increase in foreclosures in HOA communities and more than fifty (50%) percent increase in foreclosures in condominiums. Close to ninety (90%) percent of all survey participants believed that the increased foreclosure rate and the failure of banks to honor financial responsibilities after foreclosure negatively impacted the financial health of their associations.

Unfortunately, some buyers and owners overextended themselves. Renters became homeowners, homeowners bought bigger homes, second homes & investment properties, took out lines of credit and second mortgages to finance home improvements or other projects and while casual investors turned into speculative investors, it seemed like everyone did whatever they could to buy property. Mortgages were so profitable they became the commodity and were packaged into investments. When the assumptions used to calculate expected returns from these types of investments failed ... everything changed.

In March, the Federal Reserve bailed out a private equity firm by guaranteeing \$30 Million in debt. In September, the Government seized control of Fannie Mae and Freddie Mac, which are basically government guaranteed "pooled" mortgage owners. After a first failed attempt, in October, Congress approved spending up to \$700 Billion to avoid a possible collapse of banking and financial institutions.

Florida legislators targeted issues that seem contrary to each other, but received equal support. Personal freedoms were secured by the enactment of Section 718.113(7), Florida Statutes, allowing residents of condominiums to observe religious practices and Section 720.304(2)(a)-(c), Florida Statutes, allowing homeowners to display their patriotism. Consumers received substantial protections by the imposition of building inspection requirements, audits at least every three (3) years, specific financial disclosures on reports and voting forms, written notice before filing liens and other conditions for associations.

Becker & Poliakoff, spearheaded by efforts of CALL, responded to the changing needs of community associations. The survey clearly revealed that Associations were struggling and it seemed inevitable that revenue would only decline if the real estate market continued to falter. CALL members from across the state described how maintenance fees weren't paid during a pending foreclosure and the lack of maintenance and care of the properties after foreclosure. In a lot of cases it took a year or more for the bank to foreclose. The Co-Executive Directors of CALL approached Ken Direktor, Esq., Leader of the Firm's Community Association practice, with an urgent request to support a legislative solution. Brainstorming took place immediately. Why shouldn't the banks have more of an obligation when they foreclose? CALL drafted a proposed resolution for consideration by community leaders and presented it at the Town Hall Meeting sponsored by Jerry Libbin, a Miami Beach Commissioner who has led his constituents' call for legislative reform. After reading hundreds of emails from CALL members and listening to the concerned citizens at the Town Hall meeting, CALL's Directors, Ms. Goin and Mr. Muller, revised the draft resolution to clarify the goals of the community association

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leaders and owners throughout the state. Well over 200 community associations have adopted resolutions supporting changes to lessen the burden left on homeowners “holding the bag” when there are empty homes from foreclosures and the resulting credit/financial crisis.

As the year comes to a close, light is visible from the “end of the tunnel.” President Bush signed the Emergency Economic Stabilization Act of 2008 (EESA) into law to assist delinquent homeowners and encourage lenders to take advantage of the fast-track loan modification program designed to minimize foreclosures by restructuring payments. The Daily Business Review¹ reported that REO sales² accounted for over thirty (30%) percent of the home sales in Miami-Dade County in the third quarter and lenders have been increasingly willing to negotiate prices or consider short sales.³ Meanwhile, County officials have stepped-up enforcement measures when REO properties are in violation of local codes and ordinances as a result of a lack of maintenance and care.

Additional Town Hall style meetings are being held throughout the State of Florida⁴ with regard to this issue. Bills impacting community association operations have already been filed and legislators are working on modifications to the insurance provisions and requirements of Florida law. CALL will continue to provide the Firm’s clientele with up-to-date information about legislative activities. We encourage all community leaders, board members, professional managers and owners of properties governed by community associations to remain involved in the process and voice your concerns.

The Firm is committed to providing our clientele with information and resources necessary for successful community operations. We covered a wide variety of issues in 2008 ranging from enforcement of use restrictions to discrimination to corporate governance and beyond. Volume VII contains a comprehensive explanation of the legislation adopted in 2008 and future issues will address court or division rulings interpreting the new laws. Best wishes are extended to all for the holiday season and the New Year.

¹ *Foreclosure Crisis: Banks have a new attitude toward home sales.* December 4, 2008.

² Real Estate Owned – property belonging to a lender as a result of foreclosure.

³ A “short sale” generally refers to a sale of the property for less than the amount of the outstanding mortgage.

⁴ This issue will be presented and discussed at the CAI-Southeast Florida Annual Day of Education and Exposition being held on January 24, 2009. Please refer to www.cai-sefflorida.org for more information.

YEAR IN REVIEW – THE ARTICLES:

Vol I Features:

Removal or Eviction of Tenants by Community Associations.
The Authors explain the procedures involved and statutory framework governing removal of tenants by Community Associations.

Also:

Homeowners’ Association Presuit Mediation Requirements are explained by David Muller.

Kevin Edwards discusses the Use of Electronic Mail.

Vol II Features:

Liliana Farinas-Sabogal does a thorough job of exploring how Amendments to Governing Documents Will Improve Association Operations.

Also:

Did You Know: Life Estates

Timesharing vs. Fractional Ownership



Vol III SPECIAL FAIR HOUSING ISSUE:

From the Editor:

In Vol. III, 2008 we noted it had been forty (40) years since the death of Reverend Martin Luther King, Jr., and the enactment of the 1968 Civil Rights Act. We now have a Civil Rights Act that has been amended to include Fair Housing Laws such as the Housing for Older Persons Act, affording protection against discrimination on the basis of several protected classifications, including requirements to make reasonable accommodations or modifications under certain circumstances. A new law, the Americans with Disabilities Amendments Act of 2008 expands the definition of the term “disability” and provides examples of “major life activities” which, if impaired, would lead to a finding of disabled status. These expanded definitions are likely to apply in the Fair Housing context.

Discrimination Complaints – the A’s to Z’s, by JoAnn Burnett.

Making Reasonable Accommodations in an Unreasonable World, by John Cottle

Also:

Doesn’t Insurance Cover Fair Housing Claims?

What are ‘Protected Classifications?’

Vol IV Features:

Payroll Taxes: Director Liability, by Ryan Pinder.

Architectural Control – Guideline Requirements, by Marlene Kirtland

Also:

Quorum Requirements Explained

Life Safety Reminder: Fire Sprinkler & Safety Upgrades

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Vol V Features:

Mandatory Memberships Rejected: Florida Courts Invalidate Amendments Requiring Purchasers to Join Country Club

Also:

HOA Reserve Disclosures

Revitalizing Expired Covenants – Voluntary Community Associations

Vol VI Features:

Association Legal Counsel: The Role Explained, by Gregory Marler.

Common questions regarding On-Site Work Related Injuries, answered by Brian Miles.



Vol VII SPECIAL LEGISLATIVE ISSUE:

Summary of the 2008 Legislative Session, by Yeline Goin and David Muller.

Vol VIII ANNUAL MEETINGS AND ELECTIONS:

Important Considerations for Condominium Associations. Joe Adams explains changes regarding terms for directors and eligibility issues.

Also:

A report on the new Building Inspection Requirements found in the Condominium Act, by Aaron Pruss.

Sure, you may want to say Pay Up Deadbeat, but consider all regulations first – important warnings for Community Associations.



Vol IX Features:

VCR and DVD Rentals: Are there Copyright Issues?

Locker Envy – Who assigns spaces? By: John Christensen

Also:

Can your insurance company avoid paying a claim? If you Fail to Comply with Policy Conditions, it's possible. By: Lisa Magill

Vol X Features:

Florida Friendly Landscape – Creating a Florida Friendly Yard in a Homeowners Association. Anne Hathorn explains how properties can remain beautiful in light of water restrictions and other impediments.

Also:

Keith Poliakoff answers the question about your rights in "What if a 20 Story Office Tower was Going up Right Next Door?"

Pool & Spa Retrofits Required by December 19 – Are You Ready?



Vol XI Features:

Angela Chao Clark explains the Proper Use of Proxies step-by-step.

Also:

Comparison of HOA & Condominium Collection and Foreclosure Procedures.

Tom Code reports on Two Decisions by the Florida Supreme Court that expand the scope of insurance coverage for construction defects.

Tracy Mitchell provides details about the Importance of Accurate Accounting Ledgers.



To access past issues of Community Update, please visit www.becker-poliakoff.com/pubs/newsletters/cu/publications_cu.html

HIGHLIGHTS:

Vol I *2008 Annual Community Leadership Conferences.* Over 1,000 attended educational programming offered by the Firm.

Vol II Reminder about the *Free Wind* Inspections offered by the My Safe Florida Home Program

Vol III Attorney JoAnn Burnett gave a presentation that included valuable information about the law with regard to Emotional Assistance Animals on Friday, April 4, at *Broward County's Fair Housing Symposium.*

Ms. Burnett likewise lectured about Fair Housing issues on Friday, April 25, at the *Palm Beach County & F. Malcolm Cunningham Bar Assn.'s Fair Housing Symposium.*

Vol V *The Educator of the Year Award* granted to Shareholder Ellen de Haan by Community Associations Institute.

Vol VI Info on Annual Meeting Questionnaires: *Legislative Changes Impact Elections*

Mandatory Golf Membership Case Update – Objecting Owners Not Bound

Vol VII *Becker & Poliakoff* announces the first in a series of Webinars. Over 150 participated in 2 Webinars

conducted by Attorneys Ken Direktor, Lisa Magill and David Muller.

Vol VIII *Additional Construction Law Board Certifications Announced:* Becker & Poliakoff has more board certified construction lawyers than any other Firm in Florida.

Vol X Rosa del la Camara appointed to the *Florida Community Association Living Study Council* by the Speaker of the Florida House of Representatives.

Vol XI Steve Lesser and Michelle Ammendola are recognized for their work describing *How Owners Can Avoid Litigation on Construction Projects.*

We Are Also Pleased To Announce:

Nova Southeastern University's Sheppard Broad Law Center named Gary A. Poliakoff at Adjunct Professor of the Year for developing and teaching the Condominium Law and Practice course since 1984.

Attorney Alan Krinzman received LEED (Leadership in Energy & Environmental Design) Professional Accreditation from the U.S. Green Building Council.

Florida Communities of Excellence Awards were announced.

Our **2009 Community Association Leadership Conference** is coming to a location near you! Get the latest information on important topics including

- Strategies to help your community navigate through liens and foreclosures in an uncertain economy;
- New law from the 2008 legislative session impacting common ownership housing communities;
- Court decisions that have shaped the law in recent months and how those decisions affect your daily operations.

For more information, including dates and locations, or to register for this **FREE** conference, go to www.callbp.com/events.php today!



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