

# apm NEWS

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## **15 Common Mistakes Made By New Board Members**

**By John R. Math, LCAM**

The winter months is the traditional period of time reserved for annual meetings and the election of new officers and directors. This has evolved over the years as the best time to hold elections, as most of the owners are in residence at this time of year and their involvement is usually much greater. The operation of an association is one of our purest forms of democratic government. Simply put, owners nominate and elect fellow residents to represent their interests on the Board of Directors/Administration in order to govern their association according to the Declaration of Condominiums and its Bylaws.

The individuals who serve their association in an elected capacity are an absolute cross section of our society. Some people have had extensive business experience which can be very helpful. Others have no experience at all, which in some cases can be just as helpful. I know of no real practical experience or training that will prepare anyone for being on the Board of Directors/Administration of an association. It is a totally unique business, in that you are dealing with friends, neighbors and

a group of different personalities. For the inexperienced, there are common mistakes in administering an association. Some mistakes can be rectified through education and practical experience. Most can be solved with a lot of common sense. The most common mistakes for new officers and directors are the following:

1. Not being familiar with the association documents. Many owners may be aware of the rules and regulations but not with the Declaration and its Bylaws. These documents set forth how your association will be governed and act as a guide.
2. Not being knowledgeable of State Statutes, as well as other state and federal laws. In many instances, if the documents do not address a certain problem or circumstance, then these other laws will prevail.
3. Many Board members are unaware of their personal liability while serving on the Board of Directors/Administration. Certain decisions and actions by the Board can result in litigation and the Board may be held accountable on a personal basis. Being aware of this may help some to act more judiciously. As a director, you have a fiduciary responsibility to all

of the unit owners. Rely on an attorney who specializes in association law to guide you.

4. Some new Board members will selectively enforce rules while ignoring others who may be violating the same or different rules. This is not only unfair but it can also bring action against Board members.

5. Many new Board members are unaware of the Property Manager's true function. If there is a property management company, just what is its contractual responsibilities? Being unaware not only creates friction but also hinders everyone from performing their jobs efficiently. I suggest having the Board meet with their respective managers, review their job responsibilities with them and talk about the way the Board would like to interface with them or their firm.

6. Some unit owners want to be Board members for their own personal gain, or to right some wrong they feel they received in the past. This type of thinking can lead to trouble for all concerned.

7. Some officers and directors are unaware of their responsibilities. Actual job descriptions can clarify these duties. Obviously, the best time to be fully aware of these duties is prior to being nominated. The Bylaws will provide these duties.

8. Some directors are unwilling to put sufficient time and effort into their positions. This is not fair to the other unit owners, or to the other directors who will have to make up the slack.

9. In some instances, there will be directors who overstep their bounds of responsibility and may be in conflict with the documents. This will disrupt the workings of the association.

10. Never conduct business and meetings in private. This is in conflict with documents and state laws.

11. Directors may be unfamiliar with existing specifications, contracts, leases and the bidding process.

12. Directors may be unfamiliar with standard insurance coverages. This one single area will produce most of the litigation against a Board, especially if it is not properly covered.

13. Some Board members may be unfamiliar with requirements for reserves for repair and the calculations of same. Also, directors who are unwilling to make tough decisions with regards to preventative maintenance expenditures, for fear of criticism.

14. Some members may be unfamiliar with standard accounting practices and procedures. Allow someone with knowledge in this area to take the responsibility for this all important area.

15. Boards may not be prepared for emergencies and the unexpected. Such things will happen and they should be thought out well beforehand.

This list is comprised of only the most common mistakes that seem to be repeated by new officers and directors. They are all correctable and, through a period of adjustment and experience, can all be conquered.

Welcome, new officers and directors. You are in for a year of exhilaration and disappointment, as well as satisfaction for a job well done.

## Ask The Attorney

By Edward C. Dicker, Esq.

**Q.** *Our association has homes that are under foreclosure but the bank is not aggressively pursuing the matter. We want them to foreclose quickly in order to begin paying the association. Is there anything that the association can do to force them to foreclose more quickly?*

**A.** Many communities are experiencing this frustrating situation. Recently, associations had some limited success by filing a Motion to Compel, in an attempt to force the bank to timely pursue the foreclosure. However, at this time, Judges are generally not granting this Motion. More recently, after a mortgage foreclosure has been dominant for ten (10) months, some associations have filed a Motion to Dismiss for Lack of Prosecution. The lender will have 60 days from the date of this Motion to pursue its case. If the lender still does not pursue the case, a hearing may be scheduled, at which time the Judge may dismiss the case.

**Q.** *We have owners who are renting their units, but not paying the association. Can we force the tenant and all future tenants to pay the association their rent and apply these funds to the past due amount when the owner is delinquent in their assessments?*

**A.** The association may seek to collect rent from the tenant, providing the governing documents for the association provides the authority for the association to do so. Alternatively, if the governing documents do not provide such authority, and if the association has the right to approve leases, the association could require at the time the lease is approved, that both the owner and the tenant agree that in the event the owner becomes delinquent, the association may demand that the tenant begin paying the rent to the association. Also, in the event the Association files a lien foreclosure lawsuit, the Association may request that the Court appoint a receiver to collect the rent.

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## REMINDERS!

In anticipation of the hurricane season which began on June 1, review all insurance policies to make sure they are in order. Make copies of all contracts, warranties and unit owner roster sheets for storage in a safe deposit box or other safe place. Back-up any data on computers.

Make sure all of your Board of Directors and Members Meeting agenda, minutes and notices are up-to-date and in order, stored properly with separate copies.

Review your association's emergency evacuation procedures with all committee persons, residents and selected professionals.

## Update on Pet Restrictions & Service Animals

By John R. Sheppard, Jr., Esq.

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Recent cases have addressed the issue of pet restrictions and some new cases dealing with the "service animal" issue.

The Fair Housing Amendments Act of 1988 ("FHA"), 42 U.S.C. §3601 et seq., extended its protection to "handicapped individuals." Among the requirements of the FHA is its mandate that condominium and homeowners associations make reasonable accommodations in rules, policies, practices, or services when accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas. 42 USC §3604(f)(3)(B). Citing these provisions of the FHA for authority, an increasing number of association owners are seeking exemptions from pet restriction policies, based on a need for a pet as a means of alleviating a variety of illnesses, physical, mental, or emotional. While earlier cases required the owner to demonstrate that a pet has acquired some special training or skill to set the pet aside from an ordinary pet, see, e.g., *Prindable v. Association of Apartment Owners of 2987 Kalakaua*, 304 F.Supp. 2d 1245 (D. Haw. 2003), administrative agencies such as the Florida Commission on Human Relations more and more are requiring any pet that an owner can get a licensed physician to certify as "necessary" be allowed as a reasonable accommodation.

Recent Court decisions, however, have, appeared at least to swing the analysis back more in favor of the association, in at least challenging the need by a unit owner for a service animal. First, the *Prindable* decision was cited with approval by the United States Court of Appeal for the 11th Circuit, the Federal Court of Appeals that governs Florida. *Schwartz v. City of Treasurer Island*, 544 F. 3d 1201, 1219 (11th Cir. 2008). In *Prindable*, the Court held that in order to qualify as a service pet, the unit owner had to put forth evidence to show that the dog had been individually trained to provide assistance to the resident, and possessed skills and abilities besides those assignable to the breed or to dogs in general.

This decision, therefore weighs against the common demand for a "comfort" pet that simply makes the unit owner feel better. Then, in March of this year, a Florida United States District Court issued its ruling in the case of *Hawn v. Shoreline Towers Phase I Condominium Association*,

*Inc.*, 2009 WL 691378 (N.D. Fla. 2009). In *Hawn*, the Association had an across-the-Board policy against pets, and a unit owner petitioned for a waiver of that policy to bring in a Labrador Retriever puppy named "Booster". The Association did not act on that request, and a year later, that same unit owner brought a request for Booster to be allowed as an accommodation for an alleged disability. The unit owner, in support of the claim, provided two one-page letters from a physician and a chiropractor, both of which, the evidence turned out, had been written by the unit owner and signed by the medical providers after having only one visit with the unit owner. In response, the Association requested additional information, including documentation to support the nature of unit owner's alleged disabilities, the qualifications of the two doctors, how the requested animal was necessary to afford the owner an equal opportunity to use and enjoyment of his dwelling, and whether there were any other corrective measures that would serve the same function or equivalent purpose as the service animal. The owner, in response, filed a Complaint with the Florida Commission on Human Relations, but did not provide the requested information.

In affirming the Association's denial of the accommodation, the *Hawn* court first set forth the standard for violation of the FHA, that a unit owner needed to establish, that he or she is disabled or handicapped within the meaning of the FHA, that the Defendant knew or should have known that fact, that the Defendant knew that an accommodation was necessary to afford him/her equal opportunity to use and enjoyment of the dwelling, that such an accommodation was reasonable, and that the Defendant refused to make such a requested for accommodation. Next, and of significance, the Court concluded that the relevant time period for determining all of these factors was when the request pre-suit for the accommodation had been made, and that all of the medical evidence and testimony that had come forth during the course of the litigation was not relevant to the consideration whether the Association, faced with the information it had at the time, reached the right decision in excluding the arrival. The Court also noted that the standard under the FHA was not whether the pet would be helpful or useful to the unit owner, but whether it was, "necessary to afford the Plaintiff equal opportunity to use and enjoy a dwelling." (Emphasis in original). The Court stated that the two one-page forms letters signed by the medical providers after one initial meeting with the unit owner were, on their face, insufficient to provide the information necessary for the Association to decide whether to provide an accommodation.

## Mailing Label

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The Hawn Court, quoting Prindable, stated that the medical providers for the unit owner had to show confirmation that unit owner was their patient, information regarding their qualifications, practice, and medical licensing, an explanation of the nature of the unit owner's disability and why he needed the service animal, and a statement that allowing the unit owner to keep the animal was a reasonable accommodation for his disability.

The Hawn Court, like the Prindable Court, concluded that requesting this information and investigating the issues surrounding the request by the unit owner for reasonable accommodation was not in and of itself a violation of the FHA, and was a permissible action by the Association.

Requests for a reasonable accommodation or modifications cannot be ignored and must be dealt with in a methodical way by the Association each time a request is made. However, Associations are not prohibited from, and will not be found to have violated the Fair Housing Act standards, simply by investigating and requesting relevant medical information to verify the need for the animal. The Association should consult with legal counsel at the earliest opportunity when a request is made, as the legal issues involved in these matters can be a mine field, and Associations must tread carefully and lightly in dealing with a request for such an accommodation.

**Associated Property Management of the Palm Beaches, Inc., is a twenty one-year-old full-service association management firm. APM serves more than 130 associations in Palm Beach County. If you have any questions or comments, you may contact us at 1928 Lake Worth Road, Lake Worth, Florida 33461. Please call us at 561-588-7210, or you may email us at [apm@assocpropmgt.com](mailto:apm@assocpropmgt.com) at any time.**

### **USEFUL WEBSITES FOR YOUR ASSOCIATION**

Associated Property Management  
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Florida Division of Emergency Management  
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Palm Beach County Div. of Emergency Mgt.  
561-712-6400 or [www.co.palm-beach.fl.us/eoc](http://www.co.palm-beach.fl.us/eoc)