

# apm NEWS

**A Publication of Associated Property Management - Spring 2008**

## **COLLECTIONS FOR ASSOCIATIONS DURING THE MORTGAGE CRISIS**

**By John R. Math, LCAM**

Increasingly, Board of Directors are having to deal with the Mortgage Crisis in terms of how this is adversely affecting the association's operations. When an owner does not pay their assessments, the non payment of assessments and the costs of collecting are impacting all owners and the services of the association. Boards are finding themselves caught in the middle of having to be compassionate towards their neighbors but also, in need of funds to operate and manage the association. Boards have to take action quickly in order to assert their rights in a delinquent action against an owner.

Today, many of these delinquent owners also owe their mortgage holders past due amounts and the Board needs to handle collections consistently and on a basis that is fair to all concerned. Maintenance assessments are required to operate and maintain the association's assets. The need for these assessments is established every year in the association's budget. The assessments

then fund the expense accounts established in the budget. We believe that all planned assessments and special assessments should have a provision for non-collectable assessments. This means that instead of having an assessment and only 95% of the owners pay and causing a cash shortfall, the Board is calculating into the assessment that there is a probability that 5% of the owners will not be paying and that there will be a shortfall. Yes, this means that 95% of the owners are paying for the rest! Unfair? Yes, but it is reality and that is why the Board of Directors needs to deal with the problem and collect these past due funds as quickly as possible. Unfortunately, in a majority of the cases there will also be a mortgage foreclosure that will ultimately be superior to any action that the association takes.

If the mortgage holder has more rights than the association, why bother? The association should assert their rights in this action in that this is a fiduciary responsibility of a Board to try and collect these past due amounts. If in the future there was foreclosure and

there were excess funds (any amount over and above the mortgage balance + costs) the association should be in line to collect these funds, rather than other creditors.

Recently, Chapter 720 was amended to allow associations to collect any past due amounts at time of transfer of deed. No doubt, the banking lobby will try to have this changed as they are now liable for these costs after they foreclose and there is a transfer. Chapter 718 allows for the Association to collect the equivalent of 6 months maintenance or 5% of the mortgage amount, whichever is less.

Prior to the association collecting owner's assessments, the Board of Directors needs to establish the rules governing the payments of assessments and the procedures for collecting same. In most cases, the association's bylaws will provide the Board of Directors with the collection process procedure. It will spell out when the assessments should be billed (monthly, quarterly or annually), when the assessments are due and when

**Continued From Page 1.**

the assessments are late. In some instances, the documents will even indicate when the owner should be sent to the attorney for collections and when they should begin foreclosure proceedings on the owner. If these procedures are not spelled out in the association's documents, then the Board of Directors, through the unit owners should consider amending the documents to reflect a reasonable collection. If your association is fortunate to have collection procedures spelled out, then at every instance the owners should be told about these procedures at the time of billing and also with reminder notices and in newsletters. This is necessary due to new owners coming into the association. Never assume that everyone reads their documents or every piece of mail that comes to their home!

If your association is experiencing collection problems or would like to avoid those potential problems before they arise, then do the following:

Consult your documents and review the procedures. If they seem reasonable, then make sure you begin following them. If they seem inadequate or are out of date, consult with your association attorney for further review. Whatever the procedure is or if the Board has passed a Resolution concerning collections, then supply the unit owners with a copy of the procedure prior to implementation. Continue to let the owners know what the procedure is at every instance. Let your management company or attorney do their job, as stated in the documents or in your Collection Resolution.

## Ask The Attorney

**David St. John, Esq.**

**Q.** Our community has several committees, including Finance and ARC. We never know when they meet and as far as I can see there are never any minutes taken. We should know what is going on. Is this right?

**A. No, it is not right. Committees are not allowed to act in secret. Under Florida law, any committee which acts in place of the Board is required to keep a record of all its actions. Those records form part of the official records of the association and are available for inspection by all members of the association. In addition, in many instances, committee meetings are open to all members of the association and the members are entitled to be notified of the meetings in the same manner that they are notified of Board meetings. In the case of a homeowners' association, this notice requirement applies to any committee which makes a final decision regarding the expenditure of association funds or any committee vested with the power to approve or disapprove architectural decisions regarding individual lots. In the case of a condominium association, this notice requirement applies to all committees. The meetings of a committee which does not take final action on behalf of the Board or make recommendations regarding the association are not open to all members, but only if the association bylaws so state.**

**Q.** Our documents say that we should have the Annual Members meeting in November but every year they have the meeting in February. The Board says that they do this in order to get more participation. Is this legal? Shouldn't we change the documents to allow this?

**A. Whether this is illegal depends on whether it is a homeowners'**

**association or a condominium association. A homeowners' association is required, by statute, to conduct its annual meeting on the date fixed in the bylaws. There is no such corresponding requirement in the Florida Condominium Act. Nearly all condominiums are administered by an association which is incorporated under Chapter 617, which governs corporations not-for-profit. That Chapter states that the place and time of all meetings may be determined by the Board of Directors. However, confusion may result because your documents state that the meeting is to be held in November but it is instead held in February. Therefore, the association should change their documents to provide for the Meeting to be held in February.**

David St. John is the founder and President of the law firm of St. John, Core & Lemme, P.A. in West Palm Beach. The firm represents more than 600 Associations. He can be reached at 561-655-8994 or by email DSJ@stjohn-core.com

## **REMINDERS!**

1. Be sure to update your files to include a new Question & Answer Sheet as of January 1, 2008.
2. Fees to the Division are due, and are late if not paid by March 1, 2008. The amount is \$4.00 per unit, for all condominiums and cooperatives.
3. Corporate Annual Reports must be filled out and received by the Secretary of State by May 1, 2008. The Fee is \$61.25 for Not-For-Profit Corporations.

## HOW TO PREPARE FOR A BOARD OF DIRECTORS MEETING

(Reprinted from Fall 2000 APM News)

By John R. Math, LCAM

The preparation for and the actual participation in a Board of Directors Meeting can cause a lot of worry and anxiety for the Directors and people involved. There is a tremendous amount of preparation needed to run a productive and informative meeting. Unfortunately, most Board Members have limited time in which to prepare for the task of preparing for a Board of Directors Meeting. This article will provide an outline and checklist for Boards, Committees and Managers to follow in order to prepare and hold informative and productive Board Meetings.

In most cases, there are at least three (3) key people involved with the preparation of the Board Meeting: the President, the Secretary and the Property Manager, if any. A week prior to the meeting, the participants should confirm the Agenda items with all Directors and Committee persons. The designated person should confirm the location and time of the meeting. The Meeting Notice and Agenda should be printed and distributed to all of the participants.

Three to four days before the meeting, the designated person should post the Meeting Notice and Agenda at the designated area on site for the Association's Notices. The person in charge should then collect and distribute the Board Member's Meeting packets which will include, but not be limited to, the following:

1. Meeting Agenda
2. Notice of Meeting
3. Minutes of Previous Meeting
4. President's Report
5. Treasurer's Report
6. Manager's Report
7. Committee Reports

8. Information Related to Old Business
9. Information Related to New Business

On the day of the meeting, the person in charge should print additional Meeting Agendas and Manager's Reports for any Members who may attend. In addition, have extra Board Member packets available in case there are Directors who do not bring theirs to the Meeting. Check to see if the tape recorder is working. Have extra batteries, pens, paper and miscellaneous supplies on hand. Bring the Official Minutes Book, recorded Governing Documents and copies of all of the prior month's correspondence to the meeting.

Someone should be designated (usually the Chairperson of the Meeting) to give reports for absent Officers and Committees. In addition, it would be wise to have a current financial statement, delinquent owner list and a copy of the current State Statutes governing your type of association on hand, in case there are any questions of this nature.

The day after the meeting, the person in charge should remove the Meeting Notices and Agendas from the bulletin boards. Make all changes, additions and deletions to the previous month's approved Minutes. Make a draft of the current meeting Minutes while they are fresh in your mind. Distribute this to key people on the Board for their changes and additions. Then these changes should be incorporated and ready for the next meeting. At this time, arrange for the next month's meeting location and time.

With this outline and schedule, each Board of Directors Meeting should be easy to prepare and schedule for, and the end result should be productive meetings for the Board Members

Continued on Page 4.

Mailing Label

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**APM NEWS**

**PAGE 4.**

**APM NEWS**

**Spring 2008**

Continued from Page 3.

and be an informative meeting for the Owner Members who attend. Depending on the association, this outline can be reduced or expanded for size and complexity of the actual meetings. Always allow for or make a part of the Agenda that which encourages owner participation. Limit the time for any questions or comments. The Board does not have to make any decisions at that time (as that particular question or comment was not specifically on the Agenda) and it can then be made a part of the next scheduled meeting, if important or not.

In all cases, use an outline and schedule from month to month in order to ensure well run meetings. After awhile you should begin to see more owners attending and participating. In addition, the Meetings will be well run and more productive for the Board and the unit owners.

Associated Property Management of the Palm Beaches, Inc., is a twenty-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 [assocpropmgt@bellsouth.net](mailto:assocpropmgt@bellsouth.net) at any time.

**USEFUL WEBSITES FOR YOUR ASSOCIATION**

Associated Property Management  
561-588-7210 or [www.assocpropmgt.com](http://www.assocpropmgt.com)

Florida Department of State  
904-487-6000 or [www.sunbiz.org](http://www.sunbiz.org)

South Florida Water Management District  
561-686-8800 or [www.sfwmd.gov/index](http://www.sfwmd.gov/index)

Palm Beach County Property Appraiser  
561-355-3230 or [www.pbcgov.com/papa/](http://www.pbcgov.com/papa/)

Florida Division of Emergency Management  
850-413-9900 or [www.floridadisaster.org](http://www.floridadisaster.org)

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)