

apm NEWS

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EFFECTIVE COMMITTEES FOR COMMUNITY ASSOCIATIONS

By John R. Math, LCAM

After a Board of Directors has been elected and is in place, the Board of Directors then establishes the committee structure for the association. The documents may dictate which committees should be in place and the Board may want to establish other committees for other problems and situations which may be anticipated throughout the coming year. The formation of, and the appointment to, the various committees is very important in that some committees will be doing work on behalf of the Board of Directors and they may have the authority to act on the association's behalf.

Since, the Hurricane Season of 2004, Board Members, Staff and Property Managers are in need of more help to cope with the resultant problems. As their positions are becoming more and more demanding, it is increasingly more difficult to keep up with the demands that are thrust upon them. Without hiring more staff, the easiest way

for an association to keep up with the current demands is to form and conduct some of the association's business through the use of committees. Whether a committee is a standing committee or an advisory group, committees have the ability to provide additional help, assistance and recommendations for the association's benefit. Committees can help shoulder some of the demands placed upon the Board of Directors and staff of the association.

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may have authority to act on the association's behalf.

Association committees can be advisory or vested with authority to carry out their findings or recommendations. The first type of committee is advisory and has no authority to carry out any specific functions. Committees are formed to analyze problems, gather information, review facts and submit their recommendations to the Board of Directors of the association. Sometimes, these are referred to as Ad Hoc Committees. Examples of this type of committee would be for special projects and one-time special problem committees. They would be formed to possibly look after the feasibility of a Capital Improvement project or some other one-time project that the Board and the membership may want to consider. The second type of committee is more common and is formed for the express purpose of carrying out a portion of the Board's responsibility. This type of committee is usually created by and has its authority outlined in the Articles of Incorporation and

Continued From Page 1.

or Bylaws of the association. Other committees may be created by a Board of Directors Resolution. If created by the documents, they usually have specific duties and functions outlined in the documents and will provide the amount of authority that the committee may exercise on behalf of the association. If the committee was created by a Board of Directors Resolution, then the resolution should specify the duties and just what the committee's authority really is. Sometimes, these are referred to as an Ad Hoc or Standing Committee. A Standing Committee is a permanent committee. Different kinds of Standing Committees may be Finance Committee, Architectural Control Committee, Covenants/Violation Committee, Security Committee, Fines Committee and Landscape Committee.

In very large associations there may be an Executive Committee which reports to the Board of Directors. The Executive Committee is made up of the Chairpersons of the Committees. The Executive Committee then brings any concerns from their individual committees to the Board of Directors for further consideration, discussion and possible disposition.

Each Committee is important in helping to advise the Board in each specific area that the committee is involved in. Committee Chairpersons should provide a written monthly report to the Board on their activities and recommendations.

Ask The Attorney

By Edward Dicker, Esq.

Q. *Our association had a 5% Windstorm Deductible and most of the damages that were a result of the two hurricanes in 2004 were under that amount. We are now being assessed for these damages with a special assessment. Can they do this? Should we have a storm damage account? Should we have a lower Windstorm deductible? Please help us before next hurricane season.*

A. Many communities in our area sustained damages as a result of the two hurricanes in 2004. However, the amount of damages in some communities did not exceed the deductible and, consequently, there were no insurance proceeds. When there are no insurance proceeds, the question becomes whether the Association or the individual owner has the obligation to perform the necessary repair or replacement. If the Association has such responsibility, and if insurance proceeds are not available, the Association may have a number of options to raise the necessary funds. One option, assuming the governing documents provide authority, is to levy a special assessment against the membership. Another option is to borrow the funds and avoid a substantial special assessment. Other communities have utilized funds in a reserve account. However, if the reserve account is designated for another purpose, a vote of the condominium owners is necessary.

If the deductible is lowered, it is more likely that an association will receive insurance proceeds. Of course, the association would pay a higher insurance premium over the period of time that there is a lower deductible. Whether or not to choose a lower deductible is a business decision for the Board of Directors, weighing the cost of the additional premiums against the possibility of receiving insurance proceeds.

Q. *Our Homeowners Association suffered hurricane damages and they just had a special assessment meeting that only had 48-hour no-*

tice. Can the Board have a meeting this quickly? They said it was an emergency. Don't they have to provide more notice of a special assessment than this?

A. Assuming an association has special assessment authority contained in the governing documents, both condominium and homeowners associations' Boards are required to provide the membership with 14 days notice of the Board meeting at which the special assessment will be adopted. The Condominium Act provides that in an emergency, the 14-day notice does not have to be provided. However, there is no similar authority provided in the Homeowners Association Act.

Edward Dicker is a partner in the law firm of Dicker, Krivok & Stoloff. The firm represents several hundred community associations (including Country Clubs) in South Florida. They are located in West Palm Beach and can be reached at 561-615-0123. Their email address is ed@dkslaw.net

REMINDERS!

1. Be sure to update your files to include a new buyer disclosure statements as of January 1, 2005.
2. Fees to the Division are due and are late if not paid by March 1, 2005. The amount is \$4.00 per unit, for all condominiums and cooperatives.
3. Corporate Annual Reports will soon be mailed and must be filled out and received by the Secretary of State by May 1, 2005. The Fee is \$61.25 for Not-For-Profit Corporations.

CONSISTENT COLLECTIONS ARE A MUST FOR COMMUNITY ASSOCIATIONS

BY JOHN R. MATH, LCAM

At some point in time, every association will have a problem with an owner(s) who may be past due with their maintenance assessments. This problem may be caused due to an owner's sickness, loss of income or even death. But in most cases, collections can be handled consistently and on a regular 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. The failure to collect the assessments to fund the budget can have a serious impact on the operations of the association. The Board of Directors needs to deal with the problem and collect these past due funds as quickly as possible.

Prior to the association collecting owners 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 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 procedure.

If the association's documents are silent on this and amending the documents is out of the question, then the Board of Directors can make reasonable rules regarding the collection process for the association. This would be spelled out in a Board Resolution adopted at a duly called meeting of the Board of Directors. In either case before anything is done, the Board of Directors should seek the advice of the association's attorney to help guide you in this process.

If you are fortunate to have these 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!

AFTER YOU HAVE INFORMED THE ENTIRE COMMUNITY ON WHAT IS TO BE EXPECTED... THEN IT IS TIME TO FOLLOW THROUGH ON THE PROCEDURES!

Be consistent. If late fees are to be assessed. Then do it. If by a certain date delinquent owners are to be sent to the attorney for demand letters or liens, then do it. But be consistent.

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

Mailing Label

LAKE WORTH, FLORIDA 33461
1928 LAKE WORTH ROAD
C/O ASSOCIATED PROPERTY MANAGEMENT
apm NEWS

PAGE 4.

APM NEWS

Spring 2005

Continued from Page 3.

- Consult your documents and review the procedures. If they seem reasonable, then make sure you begin to follow 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 procedures 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 Process Resolution.

Associated Property Management of the Palm Beaches, Inc., is a seventeen-year-old full-service association management firm. APM serves more than 125 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 at any time.

USEFUL WEBSITES FOR YOUR ASSOCIATION

Associated Property Management
561-588-7210 or www.assocpropmgt.com

Florida Department of State
904-487-6000 or www.sunbiz.org

South Florida Water Management District
561-686-8800 or www.sfwmd.gov/index

Palm Beach County Property Appraiser
561-355-3230 or www.pbcgov.com/papa/

Florida Division of Emergency Management
850-413-9900 or www.floridadisaster.org

Palm Beach County Div. of Emergency Mgt.
561-712-6400 or www.co.palm-beach.fl.us/eoc