

# apm NEWS

News, Issues & Information for Community Associations - SUMMER 2001

## EFFECTIVE COMMUNICATIONS FOR COMMUNITY ASSOCIATIONS

A common problem associated with community association living is poor or inconsistent communications with their members and residents. This often leads to misunderstandings, as any official business is filtered, it is left for interpretation and is usually wrong as it is spread throughout the community. The following are some ideas for effective communications from the Board of Directors and management, to the owners and residents.

All correspondence should be acknowledged within a reasonable period of time. A reply to the letter should be provided to the sender, even if the problem, inquiry or situation cannot be resolved. The fact that the letter is being acknowledged and that someone is concerned enough about this situation to respond, is the proper thing to do. To do otherwise, sends a subliminal message to an owner that no one cares about them and their problem.

If the association has an email address, this should be advertised in all official correspondence and used as another tool for the residents to be able to communicate with the association. The email should be checked every business day and due to the immediacy of the tool, requires a quicker response time to be performed.

The association should have an official area, or areas on the site, for all notices and announcements to be posted. This should be an area that most people go to on a daily basis, such as the pool area or the mailboxes. In addition to posting notices in areas on the site where most of the residents will see them, it is suggested that the association have their Board of Directors meetings consistently on the same day of the month in a location somewhere on, or near the site. If at all possible, the association should also mail the notice of meetings or piggyback them onto a newsletter mailing. This will help to reinforce the importance of the meeting and that the association wants its members to attend. Whenever, the association is posting or mailing a meeting notice, it is suggested that the agenda be posted with it, as this will show all important matters to be addressed at the meeting.

Minutes of meetings are vitally important to the membership, as it is an official record of the proceedings that have taken place, which will ultimately affect the membership. Minutes should be posted as soon as possible, and if at all possible placed in the association's newsletter and mailed to the membership. This will help to foster a sense of openness within the community from the Board

of Directors to the membership.

Newsletters are a tremendous way for the association to communicate with their owners and tenant residents. A newsletter helps to inform the readers of events, problems, and accomplishments of the association. In addition, newsletters help to reinforce and keep the membership acquainted with the documents, rules and regulations. The newsletters should be sent out consistently at the same time, and helps to clarify the short term and long term objectives of the Board of Directors.

The association should always announce any new resolutions and any new rules that are promulgated by the Board of Directors. The announcement should be posted at the appropriate area on site, mailed to the membership and again, printed in the newsletter as back-up to the event. If the resolution or the rules will affect any resident tenants, they should also be mailed this as well. It should never be assumed that a landlord will pass this information on to their tenants.

The association's telephone should have a messaging feature, whereby the message can be easily changed to provide callers with vital information concerning the association. This

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could be of the nature of pool closings, meeting times and dates or major repairs/improvements that will affect the membership. In many instances, the message may be just the information that the caller is inquiring about. There should someone in charge of changing the message as the events warrant it.

An association website is the ultimate community association communication tool. A website can provide owners, residents and prospective buyers in a community association, with an active (and interactive) way to communicate 24 hours a day. The website can have the documents and rules on it, forms for architectural approvals, work orders, meeting notices, minutes, announcements and reminders. The site should be easy to read and navigate. Prospective buyers can gain a great deal of knowledge about that community by reading the community association's website.

Though, it is limited in size and scope, compared to a website, associations should also consider having a separate community channel, through their cable TV that will help to provide association news, announcements and meeting information 24 hours a day for the residents only.

Overall, consistent and effective communications can help community associations to operate more cohesively.

**Associated Property Management of the Palm Beaches, Inc. is a thirteen year old full service association management firm. APM serves more than 100 associations in Palm Beach County. If you have any questions or comments you may contact us at 400 South Dixie Highway, Suite 10, Lake Worth, Florida 33460 or you may call us at 561-588-7210 or you may email us at [assocpropmgt@bellsouth.net](mailto:assocpropmgt@bellsouth.net)**

## Ask The Attorney

By Edward C. Dicker, Esq.

**Q. We have a Director who is away for the summer. He has given his proxy to the secretary to vote for him at Board meetings. Is this legal?**

A. Proxies may be utilized at membership meetings; however, proxies are not permitted at Board of Directors meetings. If a director is absent from a Board meeting, he may participate in the meeting and vote by use of a speaker phone, however, he is not permitted to vote by proxy.

**Q. Under what circumstances can an association deny an application of a renter or buyer of a unit?**

A. The association must first determine whether it has approval authority in the governing documents, as the law does not provide such authority. If the association has such authority, case law states that a proposed renter or buyer may be rejected if the unit owner is delinquent in the payment of his assessments. In addition, Boards of Directors often have background checks conducted of the applicant to ascertain information with respect to criminal convictions, references from prior landlords, associations, employers and other individuals. Also, an applicant generally completes an application which provides additional information. Whether or not an association may reject a proposed renter or buyer due to information obtained from these sources is a case-by-case evaluation, as there is no statutory authority to provide guidance and very little in the way of reported case decisions. The vast majority of applicants are gener-

ally accepted by associations. However, if information is obtained which creates a legitimate concern on the part of an association, it is generally accepted that such an applicant may be rejected.

**Q. This fall, we received a copy of the proposed operating budget for our condominium. The budget shows a contingency reserve. Is this right?**

A. A condominium Board of Directors is required to include the statutory reserve accounts in the annual budget. The unit owners may decide to fully or partially waive these reserve accounts. However, there is no prohibition against including a contingency reserve account in the annual budget, in

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## REMINDERS!

**In anticipation of the hurricane season which begins 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.**

**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.**

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OUR WEBSITE**

## SUCCESSFUL COVENANT AND RESTRICTION ENFORCEMENT

By Edward C. Dicker, Esq.

Generally speaking, covenants and restrictions contained in an association's governing documents are enforceable against the owners. However, there are certain situations, which may prevent the Association from successfully enforcing a restriction.

Restrictions must be clearly written. If the wording is ambiguous, courts will generally interpret the wording in favor of the owner and against the Association. Also, the Board should ensure that the particular provision does not conflict with any state or federal law, or conflict with provisions contained elsewhere in the governing documents. In the event of a conflict within the governing documents, the following hierarchy of documents becomes important: Declaration, Articles of Incorporation, By-Laws, and Rules and Regulations. Therefore, for example, if the Declaration conflicts with the Rules and Regulations, the Declaration controls.

The Board must be consistent and even-handed in the enforcement of restrictions. If the Board enforces a particular restriction against one owner, but not another, the Board may be guilty of selective enforcement. (It is important to note that for an owner to successfully raise the defense of selective enforcement, the owner must demonstrate that the Board is not pursuing an owner who is violating a similar restriction). This defense may be successfully raised, even though the owner raising the defense is clearly in violation of the subject restriction.

The courts have also addressed the situation where a Developer-controlled association is lax in enforcing restrictions. Courts have held that Boards may enforce the restrictions against other owners after turnover of control and that the defense of selective enforcement does not apply.

The Board of Directors must timely enforce restrictions. If a Board of Directors delays enforce-

ment and "sleeps on its rights" for an unreasonable period of time, it may lose the right to enforce such a restriction against violating owners. As a rule of thumb, the Board is viewed as acting timely if it acts within one year from when it became aware (or should have become aware) of the violation.

A defense which an owner may successfully raise is that he obtained consent from an individual with "apparent authority" to provide consent. For example, if an owner is told by the President that he may construct an improvement to his home, and the owner justifiably relies on this statement and constructs such an improvement, the Board of Directors may be unable to require the owner to remove the alteration.

Sometimes, Boards are in a situation where prior owner-controlled Boards were lax in enforcing a particular restriction, and the present Board desires to be diligent and to enforce the restriction. Case law states that in such a situation, the Board may notify all owners that it intends to enforce the restriction prospectively; however, all existing violations at the time of such notification should be "grandfathered in". After providing this notice, the Board can enforce the restriction against any new violation without an owner successfully raising a selective enforcement defense. It is advisable for the Board to require owners to register the existing violations with the Board so that the Board is aware of the violations which are "grandfathered in".

The Board should also follow all procedural requirements contained in the Association governing documents. These requirements may include providing an owner with a specified period of time to resolve a violation before pursuing legal action. All procedural requirements should be followed by the Board of Directors to avoid an owner raising such failure as a defense.

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Mailing Label

C/O ASSOCIATED PROPERTY MANAGEMENT  
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If the Association takes appropriate steps, the Association should be successful in enforcing the covenants and restrictions in the governing documents.

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***USEFUL WEBSITES FOR YOUR ASSOCIATION***

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)

**LANDSCAPING & WEATHER NOTES**

The summer growth cycle is now in full swing. Weed growth is relentless, as the days are hot, wet and humid. Light, slow-release fertilizers will help your plants make it through the summer. If you have not yet pruned for the hurricane season, do it now as it will help to limit wind damage and strengthen the trees. Also, proper pruning helps to limit the spread of disease and insects.

If you see the spread of dead areas in your lawn, this will indicate chinch bug activity. Treat the areas along the edges in order to limit the bug's activity, as they are searching for healthy grass.

With the wet weather, plants and turf will be prone to fungus. Too much water, especially before sun-up, is usually the culprit. Reduce your watering and treat immediately with fungicides.