

# apm NEWS

**News, Issues & Information for Community Associations - Summer 2002**

## **FINING PROCEDURES FOR COMMUNITY ASSOCIATIONS**

**BY JOHN R. MATH, LCAM**

In today's associations it is more common for the Association to have the ability to fine for violations of the documents. This is an effective tool for associations to be able to get owners and their guests to comply with the restrictions contained in the documents.

Before an association can fine any of its members, it must have the authority to do so contained in its documents.

The following is a recommended procedure for all associations to follow.

### **LEVYING OF FINES**

Fines can only be levied if the governing documents provide such authority.

Fines may not exceed \$100.00 per violation against any member or any tenant, guest or invitee. The Association can probably levy a \$100.00 fine

per day of a continuing violation with each day constituting a separate and distinct violation.

The fine cannot exceed \$1,000.00 for a single violation. The documents will have to provide for this amount of fine. If the ability to fine is already contained in the documents and there is a lower amount stated, the lower amount would prevail.

In order to levy a fine, the Association must provide not less than fourteen (14) days prior notice to the person sought to be fined and an opportunity for a hearing before a Fining Committee. We suggest that Certified Mail be used for the notice.

The Fining Committee would need to be at least three Members appointed by the Board who are not officers, directors, or a direct relative of an officer or director. If the Association is unable to appoint these

members, then the Association will not have the ability to fine.

### **THE FINING COMMITTEE**

The Fining hearing is to be heard by a majority of the Fining Committee.

If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

Both the Association and the person who is proposed to be fined should be provided the opportunity to present evidence as to why the fine should or should not be imposed.

If the Fining Committee recommends a fine, that fine would be levied by the Association through the Board of Directors

### **FINING COMMITTEE HEARING AGENDA**

The following is a suggested Agenda for the Committee to

CONTINUED FROM PAGE 1.

follow:

Introduction of proposed fine and owner to be fined.

Description of reported violation.

Presentation of evidence by owner proposed to be fined and an opportunity for the owner proposed to be fined to state why a fine should not be imposed.

Deliberation and review of evidence.

Determination of imposition of a fine and the amount of said fine.

If by a majority vote of the Fining Committee, it is determined that a fine shall be levied, notification to the Board of Directors should be provided in writing.

The Board will then levy a fine at their next Board of Directors Meeting, which will be collectable as an assessment.

#### **COLLECTION OF FINE:**

Under the documents fines shall be considered an assessment and shall be collected in the same manner as many other assessment.

**NOTE APM HAS MOVED TO:  
1928 LAKE WORTH ROAD  
LAKE WORTH, FL 33461  
561-588-7210**

## **Ask The Attorney**

**By David St. John, Esquire**

**Q.** We have an owner who continually asks for records, many of which are the same records over and over again. How can we stop this?

**A.** The association can promulgate reasonable rules as to the manner and frequency records can be inspected. One records request in any given 30-day period would probably be considered reasonable. In addition, a rule could state that the association will not provide the same records again in any one-year period, unless there has been a change in the records, such as the membership list, or for some other good reason.

**Q.** Our Board wants to paint our building, yet the reserves for painting do not contain enough to complete the job. Can they take funds from the other reserves to do this or do they have to specially assess?

**A.** For condominiums, the Florida Condominium Act provides that funds from other reserve accounts cannot be used to cover the costs of painting unless a majority of the members of the association approves the transfer of the reserve funds in advance. If the members do not approve the use of other reserve funds to help defray the costs of painting, the association would then have the option to enact a special assessment in order to obtain the necessary funds. In fact, since a condominium as-

sociation is required by the Condominium Act to maintain the common elements, the Board would have to enact an assessment or borrow the funds to do the painting and owner approval would not be necessary, even if such approval were required in the governing documents. For homeowner associations, there are no statutory restrictions on using reserve funds; and most homeowner association documents do not limit the Board's use of reserve funds for other purposes.

**David St. John** is the founder and President of the law firm of St. John, Core, Fiore & Lemme, P.A. in West Palm Beach. David is a frequent lecturer and author on community association law, including bulk rate cable TV contracting and the Telecommunications Act of 1996. David can be reached at 561-655-8994 or you may email him at dsj@stjohn-core.com

### ***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.**

## **ADELPHIA DOUBLES BULK RATE CABLE TV RATES WHAT CAN AN ASSOCIATION DO?**

**BY DAVID ST. JOHN, ESQUIRE**

Beginning in January 2001, Adelphia took over all of Comcast's bulk rate cable TV contracts for community associations in Palm Beach County. Adelphia became the only franchised cable TV operator left in Palm Beach County. Adelphia immediately began raising the bulk rates they were offering for new and renewal contracts. They were increased from approximately \$14.95 to as much as \$29.95. In order to negotiate a contract with Adelphia for less than \$20 per unit per month, an association must be willing to change to a private satellite-based, bulk rate TV service operator. There are several companies in Palm Beach County available to install and operate such private systems. In some cases, the association can own the system and contract directly with a satellite company for bulk rate TV programming.

Competition from bulk rate satellite service operators currently is being developed in Palm Beach County using three satellite programming systems: DirecTV, Dish Network/Echostar, and WSNNet. Bulk rate, private satellite service is a very new and developing area of TV programming for community associations. The challenge is to find experienced, reliable companies to install the satellite-based system and to provide programming and maintenance service. If a satellite system operator does not need to cross a public road, a local franchise license is not required. Private satellite system operators usually install, own and maintain the system. In some cases, the association can purchase the system and the operator will maintain it. In other cases, the association can own the system at the end of the contract period.

One condominium association in West Palm

Beach paid to install its own system. There are several local banks that are very interested in making loans to associations for satellite system installation. The condominium receives 74 channels specifically selected by the association, including HBO, for less than \$10 per unit per month. Another large homeowner association of 970 single-family homes installed its own underground cable system and will own the satellite antenna/receiver equipment at the end of its contract.

It is very important that a community association not wait until the last minute to begin investigating alternatives to Adelphia service. It is not too early to begin investigating private satellite service two years before an Adelphia contract is scheduled to terminate. Adelphia can be asked to renegotiate its contract early. If a satisfactory early renewal cannot be concluded with Adelphia, the association will need sufficient time to fully develop a viable alternative to Adelphia service. Of course, Adelphia's recent financial problems make it even more risky and complex to negotiate with Adelphia. The company's representatives are distracted and they have a difficult time focusing on negotiations.

To obtain the most competitive rate, an association should carefully prepare a detailed request for proposal and send the request to a list of private system installers/operators, as well as Adelphia.

The responses are then evaluated and compared by the Association. A couple of bidders are selected for further, more detailed negotiations. Effective competition can save an association as much as \$15 per unit per month on a new or renewal bulk rate cable or satellite TV service agreement.

**Continued On Page 4.**

Mailing Label

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**APM NEWS**

**PAGE 4.**

**APM NEWS**

**Summer 2002**

**Continued From Page 3.**

This is the difference between a competitive bulk rate and one where Adelphia has no competition. For a 500-unit association with a ten-year contract, this would be a savings of \$900,000.

Associated Property Management of the Palm Beaches, Inc. is a fourteen year old full service association management firm. APM serves more than 100 associations in Palm Beach. 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 anytime.

**David St. John** is the founder and President of the law firm of St. John, Core, Fiore & Lemme, P.A. in West Palm Beach. David is a frequent lecturer and author on community association law, including bulk rate cable TV contracting and the Telecommunications Act of 1996. As a past President of the Mental Health Association, he also has written and lectured on "How to Live Within a Condominium and Maintain Your Mental Health." David can be reached at 561-655-8994 or you may email him at [dsj@stjohn-core.com](mailto:dsj@stjohn-core.com)

**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.co.palm-beach.fl.us/papa](http://www.co.palm-beach.fl.us/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)