

apm NEWS

News, Issues & Information for Community Associations - Winter 2002

LIVING AND CONTRIBUTING IN A COMMUNITY ASSOCIATION

Living in a community association can be the most rewarding or the most frustrating experience of your life! In any form of community association, you, the owner, must stay involved in the workings of the association. The association always needs owner volunteers for the Board of Directors and Committees. In addition, the Board of Directors needs unit owner participation at meetings for input and guidance. The association does not operate on its own without the owner's involvement. Even, if there is a management company or management staff handling the day-to-day operations and problems, it is the Board of Directors (the owners) who has the ultimate responsibility to manage and operate the association.

To fully protect your investment and your lifestyle, an owner needs to be involved in the association and its operations. If this is not possible, you must at least attend Board of Directors, Committee, Workshop and/or Membership Meetings in order to stay informed and be able to benefit from the community association experience and lifestyle. A person's home is usually the single most important and costly investment that they will ever make. To leave major operations and maintenance decisions to others, without your input and participation, just does not make very good business sense.

The major cause of unhappiness and misunderstanding for an owner in a community association is usually the result of a belief that the association takes care of all maintenance, repair and replacement problems. This is a misnomer that occurs daily in most communities. This misunderstanding is usually a result of a lack of a working knowledge of the documents and the state statutes, which govern your association. In many cases, the owner believes that because they are paying maintenance fees, everything that ever needs maintenance, repairs or replacements should automatically be handled by the association. In most cases, the documents will provide the guidelines for any repairs and replacements and will define who is responsible. If the documents are silent or are in conflict with state statutes, the state statutes would prevail.

It is the responsibility of the buyer of the unit to read and understand the details of the documents and their ultimate ramifications upon the unit owner's lifestyle and budget. In addition to being knowledgeable about the documents and the association's maintenance responsibilities, an owner should be able to read and interpret the association's budgets, balance sheets and income statements for the last few years. This information will be able to show a

buyer of a unit if the association's budget has risen over the last few years; is within budget; whether or not the reserves have been funded; or if there is a collection problem with delinquent unit owners. If there is a problem with any of these categories, there may be possible future increases in maintenance assessments in order to make up for past deficits.

Another result of past deficits and poor budget controls could be the possibility of future special assessments. If asked, the seller should divulge how many special assessments have been levied in the last few years and if there are anticipated special assessments in the future. There are some associations who annually under fund their operating budget and then make up the difference with special assessments throughout the remainder of the year. The powers that be at this type of association feel they can offer resale units with a low maintenance fee that will make their community more attractive. Actually, that type of association will begin to develop a negative reputation for having an abundance of special assessments! Eventually it will have the opposite effect and the association would become a community where you do not want to buy. If a community has a strong balance sheet, has plenty of money set aside in reserves for ma

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for repairs and replacements and is considered to be well maintained, isn't that the type of community where you want to purchase or invest in?

In a well-managed association you can expect to live in a community where you are respected as an individual, are well informed about the workings and operations of the community and are encouraged to be involved with your association, either actively or as a member participant. A well-run association will have an adequate budget to operate the association. It will have adequate funds for emergencies, long-term projects and funds set aside for reserves for major repairs and replacements. There will be adequate insurance to protect the association from casualty and liability losses. Professionals are used throughout the year by the association to help in the operations and management of the association. The management of the association will be responsive to the members of the community. Telephone calls are returned to the owners quickly and official correspondence is acknowledged. The records of the association are well maintained and readily available for unit owner inspections. A well run community association, is not only a place where you want to live but is also a place where you will be able to maximize your initial purchase, in the form of a higher resale value.

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 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

Ask The Attorney

By Natalie C. Chin-Lenn, Esq.

Q. We have a Treasurer who wants to use our roof reserve for replacing common area doors. Can restricted funds be used for other purposes? Can the Board make this decision on its own?

A. No, Pursuant to Section 718.112 (2)(f) of the Florida Statutes, Condominium reserve funds and any interest accrued shall be used only for authorized reserve expenses unless their use for other purposes is approved in advance by a majority vote of the membership at a duly called meeting. The roof reserves in your community must be used for roofs and not for replacing common area doors unless you receive the approval of the majority of the membership. The Board of Directors can not make this decision on their own.

Q. Our association began charging \$100.00 for screening of new owners and prospective tenants. There are no provisions in our documents to charge a fee. Can they do this?

A. No, Association's are not authorized to charge a screening / transfer fee unless the association documents provide for the same. Section 718.112 (2) (i) of the Florida Statutes permits condominium associations to charge screening/transfer fees only when the Association is required to approve of the transfer and the fee is specifically provided for in the Declaration, Articles or Bylaws. The statute limits the fee to \$100 per applicant other

than husband/wife or parent/dependent child which are considered one applicant. Lease renewals with the same parties shall not require a transfer fee.

Homeowners Associations should only charge transfer/screening fees when the Association documents provides for the same. These fees should be addressed in your Declaration of Covenants and Restrictions which usually require a vote of the membership rather than in the Associations rules and regulation which are generally only voted upon by the Board of Directors.

Natalie C. Chin-Lenn, Esquire practices exclusively in the area of Community Association Law. She has been practicing in this area over 11 years and currently represents over 90 Associations in Palm Beach County. She is a member of the local chapter of the Community Associations Institute and a past Board Member. For Further information please call 561-640-3377 or email LawNCL@Aol.com.

REMINDERS!

1. Be sure to update your files to include a new Question & Answer Sheet as of January 1, 2002.
2. Fees to the Division are coming due and are late if not paid by January 1, 2002. 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, 2002. The Fee is \$61.25 for Not-For-Profit Corporations.

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OUR WEBSITE**

AMENDING ASSOCIATION DOCUMENTS

BY NATALIE C. CHIN-LENN, ESQUIRE

Every Association has at least one item in their association documents that they would like to change. Associations amend documents for the following reasons:

1. Provisions in the current documents conflict with current Florida Law and Federal Law;
2. Board of Directors and owners can be misled as to their rights and responsibilities by relying on outdated provisions;
3. To clarify ambiguous provisions, eliminate obsolete provisions and provide for changes in technology and the law;
4. To permit the Association to run more efficiently and effectively by delineating specific procedures;
5. To improve the overall function of the Community;
6. Problems which are occurring in the community can not be addressed as the Association documents do not authorize the Association to take certain actions.

Prior to amending the documents, the documents should be reviewed and analyzed. Amending the documents can be a challenging task for the Association as it must be accomplished through proper procedure and format. In order to make changes, you must consult the amendment section of each document and Florida Statutes for specific procedures. Amendments to the Articles of Incorporation, Bylaws and Declaration of Covenants and Restrictions generally require:

1. Written notice to the owners of the proposed amendment;
2. Vote or consent to the proposed amendment by the owners and the board of directors;
3. Specified percentage vote for approval; and
4. Recording of the amendment in the public records of that county;

It should be noted that many documents prohibit amendments to certain provisions and can require consent of lenders and developers.

If the documents do not provide for an amendment procedure, the Statutes provide that associations may amend their documents with the affirmative vote of two-thirds of the membership with some exceptions. The condominium statute requires the format for amendment to be the full text of the provision being amended, with the new words being inserted and underlined and words being eliminated should be

lined through with hyphens. If a section is being sub

stantially changed where the use of these procedures would be confusing, an alternative format which includes a statement to the effect of "Substantial Rewording of Section X and see current section for present text." Homeowners Associations must comply with the format provided for in the association documents and if none exists, it is recommended that the condominium format be utilized to avoid confusion. Associations who failed to use this format have faced difficulty determining which provisions were amended and whether the amendment was an addition or a total revision of the previous section.

Associations must avoid conflicts within the document you are amending and among the other association documents. If conflicts arise, the Association will be faced with priority issues and may lose the right to enforce that provision. Due to the complexity of amendments, it is highly recommended that the Association consult their attorney to avoid amendments, which contravene the Association documents, state law and federal law.

Rules and regulations can be amended by following the amendment procedures. The amendment procedure can require the vote of the owners or provide the Board of Directors with the authority. This authority is usually limited and examples of such limitations are use of common areas, recreational areas, home or exteriors. Many communities amend their rules and regulations because it usually is the easiest document to amend. They include all types of provisions in their rules and regulations, only to learn later that the rule conflicts with another document and the provision is unenforceable. The rule and regulation must be within the scope of authority to be enforceable and must be reasonable and not arbitrary or capricious. Once these rules are promulgated or amended, owners must be notified of the new rules prior to enforcement.

Many Associations who are dissatisfied with their Association documents may consider a total document revision. This entails revising the Articles of Incorporation, Bylaws and Declaration of Covenants and Restrictions. Association's choose this alternative in or

Mailing Label

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der to improve the overall function of the community and they find that it is cost effective. Whether an amendment or an entire document revision is chosen, the Associations must obtain the required vote of the owners. Some tips for passage of amendments are: obtain input from the members, stress the advantages, appoint block captains to obtain the vote and keep members informed through the process via newsletter, association web page and meetings.

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USEFUL WEBSITES FOR YOUR ASSOCIATION

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

LANDSCAPING & WEATHER NOTES

Keep an eye on how wet or dry your plants get throughout the next few months. Depending on the how cool the weather remains, watering needs may be reduced or increased, as cold weather slows the metabolism of plants. Do not fertilize or prune any shrubs or trees at this time! Wait until April to do any pruning or transplanting. Young and newly planted trees are susceptible to stress during cold weather. Same applies to the root pruning of trees and shrubs, as it takes at least six weeks for new roots to develop outside the root ball to ease the stress of transplanting or root pruning. Otherwise, it is a good time to enjoy our beautiful, mild winter weather and the time of the year when we do not have to work as hard to keep our gardens and landscapes looking good.