

apm NEWS

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RECORD MAINTENANCE FOR COMMUNITY ASSOCIATIONS

By John R. Math, LCAM

One of the more important aspects of an Association's responsibility is the administration and maintenance of the Association records on behalf of the owners. The Association's records can be classified as corporate, financial and property (both common and individual unit or lot).

The person usually in charge of records will be the Secretary of the Association. However, in reality, the record-keeping is the responsibility of all of the Board of Directors. If the Association has hired someone other than a Board member to file and keep the records, then there should be at least one person from the Board of Directors to oversee and monitor that the files are being properly maintained.

The reason for the Association to maintain good records is that it is usually required to, as stated in the Association's By-laws, the state statutes require proper and complete record-keeping and good business practice always require this as well. The records of the Association will show the Association's history and will be able to identify the significant persons and events in the Association's past.

The Association's records can be categorized as corporate, financial and property. Records that would

be considered corporate would be the following: agendas, ballots, committee reports, contracts, corporate annual reports, documents, election materials, incoming correspondence, legal correspondence, legal opinions, management reports, minutes, notices, outgoing correspondence, owner violations, resolutions, roster of owners/tenants and voting certificates. These types of records should be kept in a separate area and not commingled with the financial and property records. These records are very important to maintain properly, as in the case of a legal dispute, these records will be needed to provide to attorneys for their review and in many cases will be able to prove that the Association was being run in a business-like manner and that the Board members were not negligent in their duties.

Financial files would include: assessment calculations, audit reports, budgets, cancelled checks, delinquency reports, deposit slips, financial statements, general ledgers, income statements, paid bills, and posting reports. These records will need to be maintained properly, for the following reasons: budget information, federal tax reporting, historical data, mortgage lending information, owner disputes, regular audits, state tax reporting and workmen's compensation audits.

Property records should be divided into common area and individual unit/lot files. Common area files would include records of the following: contractor files, contracts, engineering studies, facilities management reports, inventory, management reports, maintenance programs, personnel files, property inspection, reserve reports, special projects, supplies, utility, vendor files and warranties. These records will provide not only a history of the building and grounds operations but will also be used as a basis for future common area budgeting in both the operating and reserve areas.

Unit/Lot records will show a history of that particular unit/lot. Included in the file would be deeds, applications, closing statement, owner correspondence, owner violations, property inspections and any other pertinent information concerning that unit/lot.

The Association may have in its possession additional records which would also be included. Generally, the records must be made available to the party who requests the records within 10 days after receiving the written request. All Associations will have per diem damages for noncompliance. The Board of Directors is allowed to make reasonable rules and regulations concerning the frequency, time, location, notice and manner for inspection of records. Overall, the Association records are

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the owners' records and should be maintained in a business-like manner for the common good and perpetuation of the community.

In addition to the above, Associations must maintain and keep the following records from inception. **There are minor variations to the following. Please refer to Chapters 718, 719, 720 for exact record-keeping requirements.**

1. A copy of the plans, permits, warranties by the developer.
2. A copy of the recorded declaration and any amendments.
3. A copy of the recorded Bylaws and any amendments.
4. A certified copy of the Articles of Incorporation of the Association and any amendments.
5. A copy of the current rules of the Association.
6. A minute book containing the minutes of all meetings of the Association. Maintained for 7 years.
7. A current roster of all unit/lot owners and their mailing addresses, voting certifications.
8. All current insurance policies of the Association operated by the Association.
9. A current copy of any agreements, leases, or other contracts to which the Association is a party to.
10. Any Bill of Sale or transfer of property owned by the Association.
11. Accounting records for the Association. All accounting records shall be maintained for a period of not less than 7 years.
12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of 1 year from the date of the election, vote, or meeting to which the document relates.
13. All rental records, when the Association is acting as agent for the rental of condominium units.
14. A copy of the current question and answer sheet. (Chapter 718)
15. All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

Ask The Attorney

By David St. John, Esq.

Q. *We had an owner who claims that he never received any notice from the management company stating that they were late with their assessments. Instead they received a demand letter from the association's attorney for the amount in arrears and now the attorney's fees. Can the association collect assessments in that manner?*

A. In most cases, an association can legally collect assessments through its attorney without first sending owners a late notice; however, it is not advisable to do so. There is no law that requires an association to first send a late notice. Only a few associations have governing documents that require a late notice to be sent. Although it generally is not legally required, it is preferable for the association to send one late notice before turning the matter over to its attorneys for collection. If a delinquent assessment goes to foreclosure, some judges will look for a basis to rule against the association because they think that an association is unreasonable if it does not give an owner a late notice before turning the matter over to an attorney and causes the owner to pay the attorney's fees.

Q. *Our association just had a special assessment for emergency funding of hurricane repairs. The owners were not noticed concerning this meeting. The Board stated that they did not have to do this, as the documents state that they can have emergency meetings without notice. Can they do this?*

A. Advance notice of a board meeting is not needed in the event of a true emergency. However, the emergency action must be noticed and ratified at the next regular meeting of the board. Since the issue involves a special assessment, 14 days' notice should be given. With regard to con-

dominiums, the standard for what constitutes an "emergency" is very high. The immediate health and safety of residents must be at risk, or an impending financial loss will result if the board has to wait in order to give the required notice.

Q. *With the new law change concerning year end financial reporting for HOA's we have not been able to provide our owners with the required review report within the 90 day time frame. How should the Board handle this issue?*

A. If possible, the association should issue a report based on the Figures currently available and note that the report is "preliminary". A revised, final report should be completed and issued as soon as possible. If a preliminary report cannot be prepared, then a final report should be completed as soon as possible.

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

REMINDERS!

1. Be sure to update your files to include a new Question & Answer Sheet as of January 1, 2006.
2. Fees to the Division are due, and are late if not paid by March 1, 2006. 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, 2006. The Fee is \$61.25 for Not-For-Profit Corporations.

Bidding on Association Services

By John R. Math, LCAM

Bidding on products and services for Community Associations is an extremely important aspect of a Board's duties. There are state statutes (Chapters 718, 719 and 720) with respect to bidding on services that must also be adhered to.

Homeowners' Associations must solicit competitive bids for any product or service that exceeds 10% of the total annual budget, including reserves. Condominium and Cooperative associations must adhere to the same restriction, but in the amount of 5% of the total budget, including reserves. All statutes concerning this matter do not require the Associations to take the lowest bid. There are certain services that are exempt from these provisions. Refer to your statutes.

In most instances there are sound business practices and common sense to follow while bidding on services. These practices will be reviewed in this article.

First, the Board needs to define and determine the work that needs to be done. This should be in the form of a written document, which would act as a set of specifications for future bidders. If a Board does not have the technical background to write a set of specifications, then the Board may want to consider hiring a consultant or a contractor to define the project and to help write the specifications. This would make sense for reconstruction projects, roofing and jobs that would require an engineer or technical expert.

A contractor trained in the performance of various materials will have the knowledge to help the Board of Directors select materials best suited for the job. Make sure you receive written specifications on materials to be used on your job. If a technical expert is to be used, they should help you with this.

Consider having a pre-bid conference with your contractors in order to lessen any misunderstandings on the scope of work. At that time, the contractors will meet with the Board or the person in charge to review the job and answer any

questions. This helps to make the bidding process more accurate.

Always inquire as to the type and kind of equipment that the contractor is going to use. A contractor with the right type of equipment and a trained and efficient crew can provide you with a superior job. Does he own or rent the equipment? Always make sure that the contractor is using his own employees and not subcontracting the job out.

Get a minimum of three competitive written bids from similar sized companies. Prior to asking a company to bid, we suggest pre-qualifying all companies prior to bidding. This will help to determine whether a company has the expertise and resources to properly complete your job.

Always ask to see their local and state contractor's licenses, make sure that they are still valid and that all local and regional building codes will be followed. Permits should be drawn, as building inspectors will be following the job and ensuring that building codes are being met. Insist that a Notice of Commencement be filed to protect the Association from liens being filed during or after the job.

The same holds true for their insurance. Make sure that they have current certificates of both liability and workmen's compensation insurance in effect, with the Association being designated as an additional named insured.

Always ask for current and past references and check them. Go see the work as well, to see if the quality is up to the Association's standards.

Always have a written contract. If there is something that you do not understand have an expert help you. If it is of a legal nature, have an attorney review it. Always spell out for the contractor what the schedule of payments will be and at what stage of completion they will follow.

Be wary of contractors who need money in ad

Mailing Label

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

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vance and are from out-of-state. They may be using another contractor's state and county licenses. Their prices are usually good, but watch out as their warranties will not be upheld. If there are problems of a legal nature, it will be difficult and expensive to recover from another state. The state was flooded with contractors from out-of-state after our hurricanes and we know of many Associations that have suffered since.

Find out when the job should be started and when it should be completed. Make those items a part of the contract in order to ensure timely completion. Never advance any payments to a contractor prior to work being done for the Association.

Use these steps in order to ensure competitive bids and professional results in all of your future service and product contracts.

Associated Property Management of the Palm Beaches, Inc., is an eighteen-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