

# apm NEWS

**A Publication of Associated Property Management - Winter 2008**

## **SUCCESSFUL BOARD OF DIRECTORS FOR COMMUNITY ASSOCIATIONS**

**By John R. Math, LCAM**

Successful Board of Directors work together as a unit in carrying out the duties and responsibilities of the Association. Each Officer should have a place on the Agenda for Reports of the Officers and they will detail the activities of their position at each Board Meeting. The following is a description of the duties of each officer. The By-Laws of the Association set forth each officer's duties in more detail, please check your documents for further clarification.

**President/Chairman** - The presiding officer helps the Board to make effective decisions by fulfilling the following duties: open the meetings, determine whether there is a quorum, establishes the schedule of the meeting, subject to the agenda, keeps discussions on track and generally keeps the meetings from becoming too long. This can be accomplished by having most of the business that is brought to the floor in the form of a motion, as this will then focus the discussion. If there is no second to the motion, then there will be no discussion and the Board can then go on to the next agenda item. If the motion is seconded and the ensuing discussions become con-

fused or too long, the President will refocus the discussion, or have the motion tabled if there is no chance of a decision on this matter. Think of the President as an expeditor of meeting, the agenda and the discussions at hand.

**Vice President** - The Vice President will perform the duties of the President in the President's absence and may perform other duties that may be requested by the Board of Directors from time to time.

**Secretary** - The Secretary shall be in charge of formulating and posting of all notices of meetings, taking all minutes of meetings and be entrusted with maintaining the records of the Association. Many of these duties would normally be handled by a management company but the Secretary would still have to oversee that they were being handled properly and in accordance with the governing documents.

**Treasurer** - The Treasurer is in charge of all association funds. This includes overseeing the billing to the unit owners, collections and the disbursement of funds. The Treasurer also presents to the Board a proposed operating

budget and will monitor the budget throughout the year. Additional duties may include putting various contracted items out to bid and monitoring of those contracts. Many of these duties would normally be handled by a management company but the Treasurer would still have to oversee that they were being handled properly and in accordance with the governing documents and good business practices.

In addition to the Officer's duties, most associations have Committees to help the Board of Directors to operate the association. These committees are also made up of individuals from the Board of Directors and resident volunteers. Some proposed committees are:

**Maintenance Committee** - assists the Board in preserving and maintaining the physical condition of the common elements of the association. They would not only identify future problem areas but monitor the ongoing maintenance as well and report to the Board.

**Communications Committee** - assists the Board in keeping the residents informed about the pur-

**Continued on Page 2.**

**Continued From Page 1.**

pose and function of the association, its programs and activities. This would be in the form of newsletters, new resident packages, directory, etc.

**Architectural Control Committee** - assists the Board in ensuring that the aesthetics of the community are followed.

**Finance Committee** - assists the Board of Directors and Treasurer in creating and maintaining financial controls and reporting of same.

Other Committees may be Documents, Nominating, Safety & Welfare, Social, Violations and Welcoming.

Each Officer and each committee will be provided a time on the agenda for the meeting and be able to report to the Board on their activities and if any action is required on the Board's behalf.

As you can see, a Board of Directors is made up of many individuals who have specific duties and responsibilities, as required by the Documents of the Association. Each Officer and each committee has a specific role to play in the functioning of the Board. The Board as a whole will hear each report and contained in that report may be or may not be specific action that will have to be taken by the Board.

The Board is being informed of the activities of the association and if the agenda is properly compiled and the officers and committees communicate consistently, then the Board should be able to take action on the items that are important to the management of the association. Now the Board is fully aware of their duties and what they are responsible for in terms of conducting a well run informative meeting.

## Ask The Attorney

By David St. John, Esq.

**Q.** *Our documents say that we should have the Annual Members meeting in November but every year they have the meeting in February. The Board says that they do this in order to get more participation. Is this legal? Shouldn't we change the documents to allow this?*

**A.** Whether this is illegal depends on whether it is a homeowners association or a condominium association. A homeowners association is required, by statute, to conduct its annual meeting on the date fixed in the bylaws. There is no such corresponding requirement in the Florida Condominium Act. Nearly all condominiums are administered by an association which is incorporated under Chapter 617, which governs corporations not-for-profit. That Chapter states that the place and time of all meetings may be determined by the Board of Directors. However, confusion may result because your documents state that the meeting is to be held in November but it is instead held in February. Therefore, the association should change its documents to provide for the meeting to be held in February.

**Q.** *Our community has several committees, including Finance and ARC. We never know when they meet and as far as I can see there are never any minutes taken. We should know what is going on. Is this right?*

**A.** No, it is not right. Committees are not allowed to act in secret. Under Florida law, any committee which acts in place of the Board is required to keep a record of all its actions. Those records form part of the official records of the association and are available for inspection by all mem-

bers of the association. In addition, in many instances, committee meetings are open to all members of the association and the members are entitled to be notified of the meetings in the same manner that they are notified of Board meetings. In the case of a homeowners association, this notice requirement applies to any committee which makes a final decision regarding the expenditure of association funds or any committee vested with the power to approve or disapprove architectural decisions regarding individual lots. In the case of a condominium association, this notice requirement applies to all committees. The meetings of a committee which does not take final action on behalf of the Board or make recommendations regarding the association are not open to all members, but only if the association bylaws so state.

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

## REMINDERS!

1. Be sure to update your files to include a new Question & Answer Sheet as of January 1, 2008.
2. Fees to the Division are coming due and are late if not paid by January 1, 2008. 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, 2008. The Fee is \$61.25 for Not-For-Profit Corporations.

## **CASUALTY INSURANCE COMPANIES LEARN HOW TO AVOID PAYING ASSOCIATION CLAIMS**

**By David St. John, Esq.**

Over the last several years, Florida condominium and other homeowners associations have learned some very expensive lessons in terms of how financially damaging hurricanes can be and the importance of having casualty insurance. Although most insurance carriers made a concerted effort to fairly and timely adjust association claims, it is very important for all associations to note that a few carriers seemingly made it as difficult as possible for any of their claims to be adjusted and went to extreme and expensive lengths to intimidate associations and to prolong the adjusting process with obstacles, in order to avoid paying as much of the claim as possible. They were very successful in these efforts. They were able to avoid paying many millions of dollars in claims by the tactics they used in dealing with their insureds. It is likely that other insurance carriers will learn from this experience and that, after the next hurricane casualty, community associations can expect to see further and more elaborate efforts to avoid the payment of claims by insurance carriers.

The most intimidating aspect of these companies' tactics was that, before working with their insureds in any way, they would send in a team of attorneys who would request (as allowed under the policy) all association records from the time the community was developed to date. Specifically, they requested all Board minutes and all correspondence relating to anything concerning maintenance or lack of maintenance of the building, including complaints by owners. After pouring over these records for weeks and spending tens of thousands of dollars in attorneys' fees, the company attorneys would then demand examinations under oath of association representatives in an attempt to show either that the claim was not covered under the policy because the damage was caused by a prior casualty or that the association's claims were fraudulent. It is important to look at these two bases for denial of coverage.

The claim that the damage was from a pre-existing casualty relates to the association's ability to show that the association maintained the buildings and improvements. The problem arises where the buildings and improvements are not newly constructed and may be 10, 20, or more years old. Those companies that were looking for a way to avoid paying the claims searched diligently for any indication that the buildings had prior water damage that was not repaired. The companies try to support this position after a massive document review has been made by their attorneys to determine exactly what was budgeted for maintenance and repair in the past and what sort of maintenance and repair programs were carried out. Of course, many associations do not have such records going back to the time the building was originally constructed.

An additional source of proof that the buildings were not

properly repaired came from letters from owners and residents over many years complaining at different times about various leaks and water intrusion problems. In reality, no association can keep its buildings leak-free forever.

So what can an association do now to minimize an insurance company's ability to claim that damage caused by a prior casualty rather than the hurricane itself?

A written and well-documented building maintenance program should be instituted by every association with regard to the envelope of all of the buildings. This includes the roof, exterior wall painting and waterproofing, as well as window caulking. This program should be reflected every year in the budget and the funds expended in the program carefully monitored and identified. Historically, associations have spent money over the years on maintenance and repair without having their old records clearly reflect these expenditures.

An example of the kind of regular, periodic maintenance program an association should institute includes periodic roof inspection and maintenance. Have the roofs inspected at least at the beginning of each hurricane season and after the end of each hurricane season. Periodic exterior wall and painting maintenance is also required with appropriate documentation of at least annual inspections. Similarly, window caulking and waterproofing are extremely important to maintain, since considerable damage was caused by windblown water intrusion around windows and doors.

The issue of whether or not an insurance company can find some evidence to support an allegation that the association submitted a fraudulent claim is of utmost significance. Keep in mind that, if an association made a claim for something that it should have known was not covered by the policy, the insurance company can raise the issue of fraud, even if the fraudulent claim was \$100 of a \$2 million claim. Any fraud whatsoever can be the basis to avoid any payment on the claim at all.

The insurance company requires the Association President to sign a sworn proof of claim. The insurance company will have reviewed all of the Association's records and correspondence with regard to every aspect of the claim made by the association. Insurance company attorneys will then take examinations under oath and get directors' sworn testimony as to whether there were any prior water intrusion problems. If one of the directors were to have said "we never had any serious water intrusion problems" and the company attorneys find five letters from owners over the last 20 years discussing water intrusion problems, there arises a basis to try to show that the association submitted a fraudulent claim. Even though such

**Continued on Page 4.**

## Mailing Label

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

# APM NEWS

**PAGE 4.**

**APM NEWS**

**Winter 2008**

### Continued from Page 3.

generalized statements are understandable in any association, insurance companies may be able to use the letters to meet the minimum legal standard of misrepresentation or fraud. The purpose of this tactic is to put the association in the position of accepting a very small settlement rather than risk going to a jury trial where a jury may find that, even though there was a misstatement regarding a small amount of money on a million dollar claim, it was significant enough to prevent recovery on the entire claim.

An association can minimize the possibility of a casualty insurance carrier making an unreasonable claim of fraud by being careful to do the following:

Have in place documented proof of periodic maintenance and all budgets and actual expenditures made for building envelope (walls, windows and roofs) and periodic maintenance, repairs and improvements.

Never, in any way, exaggerate a claim. Make sure that the association has an expert (contractor, engineer or architect) advise the Board in writing that every damage item of its claim was caused by the casualty (hurricane) and not by a lack of maintenance or other reason.

**Associated Property Management of the Palm Beaches, Inc., is a twenty-year-old full-service association management firm. APM serves more than 130 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](mailto:assocpropmgt@bellsouth.net) at any time.**

### **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.pbcgov.com/papa/](http://www.pbcgov.com/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)