

# apm NEWS

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## **YEAR-END REPORTING REQUIREMENTS FOR HOA'S**

**By John R. Math, LCAM**

For the year beginning 2005, all homeowner associations came under new year-end reporting requirements. These reporting requirements are based on the amount of parcels contained in the community and the annual revenues. With this change, Chapter 720 now parallels Chapters 718 and 719, the statutes for condominiums and cooperatives.

The current statute has caused a disruption in the year-end reporting process, as the CPAs do not have the auditors and staffs to perform the audits and reviews within the 60 day reporting requirement. The volume of year-end reporting work has doubled for the CPAs and this is further complicated with their regular tax work at this time. Many associations did not comply with the statutory time limits as this was out of their control.

The statute also allows associations to require a higher level of reporting than is necessary. This must be done by a petition of 20% of the parcels owners and approval of a majority of the total voting interests of the community would be required. In addition to the above, if this higher level of reporting is not provided for in the association's budget, the association may either amend its budget to reflect the higher cost of such reporting or they may have a special assessment to pay for this. The statute then allows for the association to provide this higher level

report to be completed within 90 days.

Conversely, in many instances, the membership of the association is able to have these requirements waived or lessened by a majority of the total voting interests.

A community association of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements unless the governing documents provide otherwise.

This report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications. The following should be included, if applicable: costs for security, professional and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association. Below is the statute for your information and review.

**720.303(7) FINANCIAL REPORTING.**--The association shall prepare an annual financial report within 60 days after the close of the fiscal year. The association shall, within the time limits set forth in subsection (5), pro-

vide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$100,000 or more, but less than \$200,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$200,000, but less than \$400,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$400,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.

3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of ex-

penses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;
2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or
3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

With this information plan for these new year-end reporting requirements for your 2007 budgets.

## Ask The Attorney

By David St. John, Esq.

**Q. Every year we are unable to get a quorum at our annual meeting. The Board then states that the Board will "rollover" from one year to the next without an election. Is this allowed as our documents state that we must have an election?**

**A.** In the case of a condominium, The Condominium Act, which controls over your bylaws, provides that there shall be no quorum requirement. Elections are decided by a plurality of the votes cast; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of members of the board. No election is necessary where the number of candidates does not exceed the number of vacancies to be filled; the candidates would simply take office. For a homeowners' association, the governing documents are given more weight; however, the statute governing those associations provides that, in general, a quorum for a meeting of members shall be 30 percent unless the bylaws provide for a lower number. In other words, the quorum can never be higher than 30 percent. *Robert's Rules of Order* provides that directors stay in office until their successors are duly elected. Consequently, if the association cannot hold an election because of a lack of a quorum, the same directors stay in office. The association can call more than one election meeting in an attempt to obtain a quorum; however, it is not required to call more than one.

**Q. Our documents allow for a fines committee. The procedures for fining in the documents are different than the state statutes. Our association insists that they do not have to follow the statutes, because the procedure is spelled out in the documents. Can they do that?**

**A.** No. In the case of both condominiums and homeowners' associations, the Florida statutes set forth standards of fairness which must be met and these control over your documents. The statutes provide that a fine cannot exceed \$100 per violation or \$1,000 in the aggregate for a continuing violation and that a fine cannot become a lien against the unit or lot. In a condominium, the fine must be imposed by a fining committee (not the board), and the violator is entitled to a hearing upon reasonable notice. In a homeowners' association, the person to be fined must be given 14 days' notice and a hearing must be held before a fining committee composed of other association members who are not officers, directors or employees or relatives of officers, directors or employees.

**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, email [dsj@stjohn-core.com](mailto:dsj@stjohn-core.com)

## REMINDERS!

**In anticipation of the hurricane season which began on 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. Back-up any data on computers.**

**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.**

## LIVING & CONTRIBUTING IN A COMMUNITY ASSOCIATION

By John R. Math, LCAM

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 major 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

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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 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](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)