

A publication of:
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WELCOME ABOARD



As our readers know, this firm's practice is devoted to the representation of condominium and homeowner associations. We are proud to announce the addition of the following associations to our list of clientele: 50 Biscayne Condominium and Ro-Mont F Condominium in Miami, Distrib-U-Mart commercial condominium in Miramar, Coastal Towers Condominium in Sunny Isles Beach and Golden Isles Yacht Club in Hallandale. We can assure you that we appreciate the business and confidence placed in our firm.

ELECTION HANKY PANKY



Recently, at a condominium represented by this office, a unit owner was observed being given the opportunity to cast a ballot that belonged to a different unit owner. Fla. Stat. 718.112 specifically states that no unit owner may permit another unit owner to vote his or her ballot. While the DBPR agreed with the Board's decision to immediately declare the election invalid, it became apparent that it is difficult to prevent such future conduct. Interestingly enough, Florida Statute 718.112 allows voting machines to be used, in place of the often times complicated election by mail process. By law, all voting machines shall: secure to the voter secrecy in the act of voting; permit the voter to vote for as many persons and offices as he is lawfully entitled to vote for; correctly register or record, and accurately count, all votes cast for any and all persons; be furnished with an electric light or proper substitute, which will give sufficient light to enable voters to read the ballots; and be provided with a screen, hood, or curtain which shall be made and adjusted so as to conceal the voter and his actions while voting.

THE BIGGER THEY ARE.....



Unquestionably, the larger and newer condominiums are suffering a far worse fate during the current foreclosure crisis than are the older smaller condominiums. Investment for speculation purposes was far more prevalent in South Florida's new skyscraper communities than in the older lower-rise condominiums or HOA communities. Owners who purchased in these condominiums with the intent to live there are the ones suffering the most, as these unit owners are stuck paying for all of the condominium's expenses without the financial help from those non-paying units in foreclosure. To make matters worse, these same condominiums are now going through or approaching the "turnover" process and need funds to address pending issues with their developer. Unit owners who perhaps have little or no experience on a condominium board are dealing with legal issues that would make even the most seasoned condominium President cringe. Out of simple necessity, the firm is focusing its resources on representation of the larger, newer condominiums. Let our experience, knowledge and determination assist your Board through these trying times.

COMMINGLING MONEY



Pursuant to Florida Statute 718.111, an association can combine its operating account and its reserve account, for investment purposes. The funds must be accounted for separately, and the account balance can never be less than the amount identified as reserve funds.

CANCELING DEVELOPER CONTRACTS



Unit owners are often pleasantly surprised to learn after turnover, that they now have the ability to cancel contracts that provide for operation, maintenance or management of the condominium, that were previously entered into by the developer. Florida Statute 718.302 provides that after turnover, or even prior to turnover, where 75% of the units have been sold, developer contracts can be canceled by a vote of 75% of the non developer voting interests. In addition, each contract for management or operation of the association must specify the services, obligations, and responsibilities of the party contracting to provide maintenance or management services, specify those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the association, provide an indication of how often each service, obligation, or responsibility is to be performed, specify a minimum number of personnel to be employed for the purpose of providing service to the association and disclose any financial or ownership interest which the developer, if the developer is in control of the association, holds with regard to the party contracting to provide maintenance or management services.

TURNING FORECLOSURES UPSIDE DOWN

(By Jeremy Zubkoff, Esquire)



Although Legal-Beat has discussed this in several prior issues, it bears repeating that once a bank forecloses and takes title to a condominium unit, it owes the condominium the lesser of 1% of the mortgage or 6 months of unpaid common expenses and periodic assessments. In addition, the bank is responsible for all future assessments each and every month. With the banks ever increasing inventory of property, many banks are simply neglecting to pay their required payments to the condominium after they have foreclosed. So what can a condominium association do? Believe it or not, the association may lien and foreclose on the bank. In fact, this firm finds itself routinely doing so. Once a bank owns a condominium unit, it is no different then any other unit owner and must pay it bills or face foreclosure.

TURNOVER TIME: NOW WHAT?

In both HOAs and condominiums, the developer is required to turn control of the association over to the unit owners within three months after 90% of the units have been sold. Often times, this firm is told by unit owners that they don't want turnover to occur because of the numerous problems facing the community. It would be incorrect to think that those problems are likely to be solved if the association remains in the hands of the developer. In addition, the statute **requires** turnover and it cannot be refused by the unit owners. The important thing to do however is to have a plan in place to make the transfer of power less difficult. The plan must start with the hiring of an attorney, a CPA and an engineering firm. The attorney can ensure that the developer turns over all documents required to be turned over by statute, resigns from the Board, and that the registered agent of the association is changed with the Secretary of State. The CPA can determine if the developer is financially indebted to the association and the engineer can advise the association as to construction defects. Based upon the conclusions reached by the CPA and engineer, the attorney may then be forced to pursue the association's claims against the developer in a court of law, after compliance with the pre-suit requirements of Florida Statute 558.

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The firm is devoted to representation of condominium and homeowner associations in the South Florida area. The firm has represented hundreds of associations since its inception in 1994, regarding all facets of association law. In addition, the firm routinely litigates, mediates and arbitrates association cases in state and federal courts and before the Division of Florida Land Sales, Condominiums and Mobile Homes, Arbitration Section.

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.