

A Publication of:

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WELCOME ABOARD



While our firm practices in several areas of the law, such as commercial litigation in both the state and federal courts, real estate, bankruptcy, personal injury, construction and toxic mold litigation, the majority of the practice is devoted to the representation of Condominium and Homeowner Associations. In this issue, our firm is proud to announce the following Associations to our growing list of clientele: Bella Vista Mid-Rise North Condominium in Aventura, Byron Gardens, The Lincoln Condominium and Sundial Towers Condominium in Miami Beach, and Fountainhead Condominium in Lauderdale By The Sea. If we don't say it enough, we can assure you that we appreciate the business and the confidence placed in our firm.

WE'RE ON THE WEB



Check out our website at: www.condo-laws.com where you can view a personal biography about each of the firm's attorneys,

review our practice areas, read articles the firm's attorneys have written and obtain copies of any of our previous Legal Beat issues. If you would like to receive future issues of The Legal Beat via e-mail please let us know. Additionally, The Division of Land Sales, Condominiums and Mobile Homes, Arbitration Section, has a very informative website at: www.state.fl.us/dbpr/lsc/arbitration where you can obtain information on arbitration cases, obtain forms and learn about the recall process.

CONDO QUIZ COLUMN



Question: Can two owners of the same unit and/or home serve on the Board of Directors simultaneously; for example, husband and wife?

Answer: The answer to this rather common question is that there is presently no Florida law which would prohibit two owners of a unit from serving on the Board simultaneously. The only way that this could be prevented would be for the Association's members to amend the Association's By-laws and/or Declaration.

DIRECTOR RESIGNATIONS



Pursuant to Florida Statute §617.0807 a Director may resign at any time by delivering written notice to the Board of Directors or its Chair or to the Corporation. A

resignation is effective when the notice is delivered, unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor does not take office until the effective date.

TERMINATING VOTING RIGHTS

In a Homeowner Association, if the governing documents so provide, an Association may suspend the voting rights of a member for the nonpayment of regular annual assessments that are delinquent in excess of 90 days. However, in a Condominium, an Association cannot suspend the voting rights of any member, even if the Declaration or Bylaws would allow for such a suspension.

PRESCRIPTION PETS



In Condominium or Homeowner Associations where regulations exist prohibiting pets, many unit owners, especially elderly unit owners, have attempted a way around this prohibition by claiming that the pet is a "necessary or reasonable accommodation" for their

disability and therefore is allowed to permanently remain on the property pursuant to the Federal Fair Housing Act and the Americans With Disabilities Act. Recent arbitration decisions in Florida however have ruled in favor of the Association and required removal of the pet where the unit owner fails to produce proper medical documentation which proves the owner's current medical condition or how the pet is a necessary or reasonable accommodation or is otherwise related to the disability. In one such recent decision, a unit owner furnished a letter from his doctor stating that the owner suffered a heart attack, became disabled due to the associated congestive heart failure, and would experience psychological trauma detrimental to his well being and health if he were forced to remove his dog that he had for the past fifteen (15) years. However, the arbitrator held that the unit owner failed to establish how the dog is a reasonable accommodation for the owner's disability or is otherwise related to the disability and rejected the unit owner's defense.

REMOVING DIRECTORS



Many Bylaws and/or Declarations of Condominium include provisions which would allow or automatically require a member of the Board of Directors to

vacate their office if the Director missed several meetings and/or if the Director was delinquent in payment of his/her assessments. In a recent arbitration decision, the Arbitrator held that even where the Bylaws allow removal of a Director for being late in maintenance payments, this provision is invalid because the Florida Legislature clearly intended that the only way a Director can be removed is through the recall process. To hold otherwise would allow the Board the "ability to change the outcome of any given election in a fundamental way." Schultz v. LaCosta Beach Club Resort Condominium Association, Inc. Case No. 2003-08-3347.

HOMEOWNER ASSOC. TURNOVER



For Homeowner Associations that came into existence subsequent to July 2000, at the time the members are entitled to elect at least a majority of the Board of Directors of the Homeowner Association, the Developer shall, at the Developer's expense, within 90 days, deliver the

following documents to the Board:

(a) All deeds to common property owned by the Association. (b) The original of the Association's Declaration of Covenants and Restrictions. (c) A certified copy of the Articles of Incorporation of the Association. (d) A copy of the Bylaws. (e) The minute books, including all minutes. (f) The books and records of the Association. (g) Policies, rules, and regulations, if any, which have been adopted. (h) Resignations of Directors who are required to resign because the Developer is required to relinquish control of the Association. (i) The financial records of the Association from the date of incorporation through the date of turnover. (j) All Association funds and control thereof. (k) All tangible property of the Association. (l) A copy of all contracts which may be in force with the Association as one of the parties. (m) A list of the names, addresses and telephone numbers of all contractors, subcontractors, or others in the current employ of the Association. (n) Any and all insurance policies in effect. (o) Any permits issued to the Association by governmental entities. (p) Any and all warranties in effect. (q) A roster of current homeowners and their addresses and telephone numbers and section and lot numbers. (r) Employment and service contracts in effect. (s) All other contracts in effect to which the Association is a party.

A Publication for clients, family and friends of:
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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.