

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: **Sian Ocean Residences Condominium** in Hollywood; **Sayan Condominium** in Sunny Isles Beach; **900 Biscayne Condominium and Quantum on the Bay Condominium** in Miami; **The Reserve at Doral East and West Condominiums** in Doral; **Winward Condominium** in Palm Beach; **Island Way Community Association** in Aventura; **Marine Colony Condominium** in Pompano; **Villa Tuscany HOA** and **La Preserve Condominium** in Fort Lauderdale; and **Pelican Point at Boynton Beach Condominium**. We can assure you that we appreciate the business and confidence placed in our firm.

CHANGES TO HOA ASSESSMENTS

(By: Ralph Ruocco)



Florida Statute 720 has been amended to regulate how an HOA proceeds against delinquent unit owners. Now, an association must mail a forty five day demand letter before a lien may be filed against a unit. In addition, a delinquent unit owner now has the ability to submit a

offer" after being served with an association foreclosure complaint, in order to place the foreclosure on temporary hold while settlement negotiations take place. In addition, a bank who forecloses against a unit and subsequently acquires ownership must pay the HOA the lesser of 1 2 months past due assessments or 1 % of the original mortgage price.

NEW CONDO ELECTION LAWS



It's time for the annual election in most condominiums. This year keep in mind the massive number of changes to the law before beginning the process. The new laws provide that the term of each member of a Board shall expire at the annual meeting. Staggered terms will now only be allowed if the Bylaws state that the term is for two years and not longer, and a majority of the unit owners vote in favor of same. If no person is interested in running for a position of a Board member whose term has expired, such Board member whose term has expired shall be automatically reappointed to the Board and need not stand for reelection. In a condominium of ten units or more, co-owners of a unit may no longer serve on the Board at the same time. A person who is delinquent in the payment of any fee or assessment is not eligible for Board membership. Convicted felons must have their voting rights restored for a period of no less than five years before being eligible for the Board. In addition to submitting a Notice of Intent to Be a Candidate for the Board, a unit owner must sign a certification form attesting that he or she has read and understands, to the best of his or her ability, the governing documents of the association and the provisions of Florida Statute 718.

? CONDO QUICK QUIZ

Question: Can an association commingle operating and reserve funds?

Answer: For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately, and a commingled account shall not, at any time, be less than the amount identified as reserve funds.

NEW INSURANCE REQUIREMENTS



Massive new changes to condominium insurance requirements are now in effect. For example, every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Such policies must include special assessment coverage of no less than \$2,000 per occurrence. In addition, the association shall require each owner to provide evidence of a currently effective policy of hazard and liability insurance upon request, but not more than once per year. Upon the failure of an owner to provide a certificate of insurance, issued by an insurer approved to write such insurance in Florida, within 30 days after the date on which a written request is delivered, the association may purchase a policy of insurance on behalf of an owner. The cost of such a policy, together with reconstruction costs undertaken by the association but which are the responsibility of the unit owner, may be collected in the manner provided for the collection of assessments in Florida Statute 718.116.

INTER-FAMILY TRANSFERS



Many association documents allow the Board to approve or disapprove sales or transfers of units and/or have a right of first refusal. However, in *Webster v. Ocean Reef Community Association, Inc. (2008)*, the Third District Court of Appeal ruled that in the absence of clear unambiguous language in the governing documents, the conveyance of a unit to a trust or family member for no consideration, and for estate planning purposes, is considered a "gift" and does not constitute a sale, transfer or conveyance that requires approval by a Board. The court ruled that "Were we to construe the sale or purchase to a family member as being subject to the association's governing documents, the association would have a right of first refusal to acquire the residence for nothing, nada zero. We will not construe the documents to produce an absurd result." The court also made it a point to reiterate Florida's strong public policy against restraints on alienation of property.

DEVELOPER TURNOVER

With developers deciding to rent unsold units and filing for bankruptcy protection, unit owners in newer condominiums should keep in mind that they are not forever under control of the developer. On the contrary, turnover of control by the developer to the unit owners is required when:

- Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;
- When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;
- When the developer files a petition seeking protection in bankruptcy;
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment.

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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.