

A Publication of:

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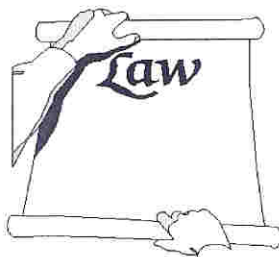
WINTER - 2005

WELCOME ABOARD



While our firm practices in several areas of the law, such as commercial litigation, real estate, 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 addition of the following Associations to our growing list of clientele: Northgate Condominium in North Miami, The Gardens of Palm Air Condominium and Ethon House Condominium in Fort Lauderdale, Royal Bahamian Condominium in North Miami Beach and The Point Master Association in Aventura. If we don't say it enough, we can assure you that we appreciate the business and the confidence placed in our firm.

ESTOPPEL



Often times unit owners who are accused of breaking the association's rules try to rely on the estoppel defense, or in other words, "the Board said it was OK for me to do this" defense. However, arbitration decisions have held that such reliance on the permission of the Board is not reasonable when the action is expressly prohibited by the condominium documents. For example, where the Declaration states that unit owners cannot have a pet, a unit owner can't take the position that the Board gave her permission to have a pet, because the Board never had authority to grant permission in the first place.

THE CONDOMINIUM OMBUDSMAN



On January 4th, 2005 this office was counsel at the annual meeting for the first condominium association in the State of Florida to have their election overseen by Virgil Rizzo, the recently appointed Condominium Ombudsman by Governor Jeb Bush. Mr. Rizzo volunteered to assist with the counting of ballots and agreed to hold previously cast ballots in his office pending the receipt of additional votes apparently lost in the mails. Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors.

CONDO CONVERSIONS



A recent growing trend in South Florida is the conversion of residential apartment complexes into condominiums. Renters are often times left feeling that they are under the gun to immediately find alternative housing or else face eviction. However, Florida law provides that a tenant cannot be removed prior to expiration of their lease and in some cases has the right to extend the lease for up to an additional 270 days. Furthermore, every existing tenant is automatically given the right of first refusal to purchase the unit, even if the tenant rejected the original offer to purchase but the unit is later offered at a lower price. The right to purchase the unit ends when the rental agreement and any extension ends.

FINANCIAL DISCLOSURE



Pursuant to Florida Statute 718.111, within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare or contract for the preparation of a financial report for the preceding fiscal year. The association must mail or hand deliver to each unit owner a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. An association with total annual revenues between \$100,000 and \$200,000, shall prepare compiled financial statements. An association with total annual revenues between \$200,000 and \$400,000, shall prepare reviewed financial statements and an association with total annual revenues of \$400,000 or more shall prepare audited financial statements. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures. An association which operates less than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the required financial statements.

PASSING THE BUDGET



There is often confusion about how a budget is passed in the condominium. The job of preparing and passing the budget is the Board of Director's, and not the unit owner's. Only the Board

of Directors approves the budget and it is not voted upon by the general membership of the association. However, if the Board passes a budget that exceeds 115% of the prior budget, the Board shall consider a substitute budget if within 21 days, the Board receives a written request for a special meeting from at least 10 percent of all voting interests. At this meeting a substitute budget may be adopted if approved by a majority of all voting interests, unless the bylaws require a greater number. If no quorum is attained or a substitute budget is not adopted, the budget as originally passed shall take effect as scheduled.

NUISANCES



In almost every Declaration of Condominium or Declaration of Covenants is a clause that prohibits unit owners or occupants from acting or using their unit in a manner that creates a nuisance or disturbance to the other occupants. There are remedies that can be pursued. For example, in a recent arbitration case, an arbitrator entered an injunction against a unit owner who frequently had late night parties with loud music and excessive noise. In another case, a unit owner's son harassed and threatened other residents and drove his car at high speeds in the parking area causing the arbitrator to enter an order requiring parental supervision of the child. In yet another case a unit owner was ordered to use a bark collar on her dog at all times. In extreme cases, arbitrators have ordered the removal of dogs whose barking was uncontrollable.

CONDO QUIZ COLUMN

Question: For what period of time must an association retain accounting records? Election records?

Answer: Accounting records must be maintained for 7 years. Election records must only be retained for a year.

A Publication for clients, family and friends of:

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