



Community Newsletter

The Voice of Condominium, Civic, & Homeowner Associations of Pasco County

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Council of Neighborhood Associations, Inc. since 1985

December 2005



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Wednesday, December 14

Holiday Appreciation Breakfast

and more!

Featured speaker for the breakfast

is

Dick Spears...

recently appointed by
Governor Jeb Bush
to the Florida Board of Ethics.

Mr. Spears will speak to us on
"Why Homeowners are Organizing."
plus the birth of the Coalition of
Community Associations...COCA

This will be an interesting morning.
Deadline for tickets is December 7.



A Healthy & Happy Holiday To All

from
your Board of Directors of Cona

*Mel, Pat, Reynolds, Florence, Ron,
Hans, Ernie, Dominick, Jim, and Salley*

For our new members:

C.O.N.A. member meetings are held the
third Wednesday of every month, except
June, July & August.

The meetings are held at the New Port
Richey City Hall at 5919 Main Street, in
chambers, at 9:30 a.m.

President's Farewell Message

President

February, 1996 to December, 2005
Approximately three years previous
to 1996 as Vice-President

It has been my pleasure to be allowed
by the membership to have served
as president for the last 10 years.
Together we have accomplished a lot
during these ten years to improve the
life in Pasco County and maintain the
value we have invested in our homes.

CONA was wholly responsible for the
passage of the Short Term Rental
Ordinance. Without this ordinance,
several of our developments would
have been turned into vacation resorts.
We championed and held many
meetings with school board members,
school officials, and county commis-
sioners to get a school impact fee for
our county. This forced new construc-
tion to pay for the impact that occurs
when thousands of new homes are
built in our county.

In addition to the above, we initiated
a mowing ordinance, which has clean-
ed up eyesores throughout our county;
an ordinance to eliminate unlicensed
cars and trucks from remaining visible
on property; convinced the county that
to better enforce codes and ordinances
the county should buy uniforms and
badges for the code enforcement
officers. We have appeared many
times before the county commission
and the DRC, to either help defeat or
enact items that affect your home
values.

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President

I have been a long time advocate of term limits. I think that 8 years is long enough for any official to serve. Yes, we have excellent officials who are way past this deadline and are doing a good job. However, I ask, "why not bring in new faces and new ideas into the arena." It is a blot on our democracy that it is next to impossible to defeat an incumbent congressman or senator. We passed an eight year limit on our state officials, but they have circumvented this by playing musical chairs.

CONA is an excellent organization that needs your support. We get things done through numbers and it weakens our position to have small turn out at the meetings as well as the Holiday Breakfast. Isn't one morning a month worth investing in the value of one of your largest investments... YOUR HOME?

Once again, thanks for your support of CONA for the last 10 years. □

Facts About Community Associations

What is a Community Association?

Community Association (CA) is a generic term used to describe residential developments in which each owner is bound to a real estate organization by a set of governing documents that require adherence to a set of rules and payment of assessments. The money collected in assessments is used for the operation of the association. Membership is automatic when a unit is purchased. CAs are not voluntary organizations.

Though real estate practice (and this terminology) varies among fifty states, it is important to note that the general community association terms and concepts described below are valid in any locality.

Condominium

A person has individual ownership of a unit and a tenant in common ownership of the common elements.

Cooperative

A corporation holds title to the units and common areas and a special lease gives a person exclusive rights of occupancy of a unit.

Planned Community

A person has individual ownership of a unit and a corporation has title to the common areas.

These three types of CAs can exist by themselves, or they can be grouped in clusters termed Master Associations, Umbrella Associations or Master Planned Communities. If multiple uses are included, the term Mixed Use Association is used.

What led to the development of each type of CA?

Planned Communities unfolded at the turn of the century as America struggled to control both urban growth and suburbanization by emphasizing carefully designed development practices, supported by municipal laws and private covenants, that would maximize profit for both the

builder and the homeowner.

Cooperative Development responded to housing shortages, especially after each world war, and the need for quality, low-moderate income housing by de-emphasizing the profit motive for both the builder and the unit owner by viewing housing as an investment.

Condominium Development responded to significant housing demand fueled by an expanding economy in the late 1960s and early 1970s and, like the planned community, emphasized the profit motive for the builder and the unit owner and stressing housing as a social investment that would simultaneously improve people's lives.

Condominium Development responded to significant housing demand fueled by an expanding economy in the late 1960's and early 1970s and, like the planned community, emphasized the profit motive for both the builder/developer/converter and the unit owner by viewing housing as an investment..

How do CAs Operate?

Some people call community associations the most representative and responsive form of democracy found in

America today. Residents of a community freely elect neighbors to serve on the Board of Directors of the community. And, numerous other owners or residents, serve on committees or help with special tasks as they arise.

Board members and committee members are volunteer leaders who meet regularly to discuss pertinent details about running their community. A board meeting at a community association is comparable to a town council meeting of municipality.

Other professionals may assist, such as managers, attorneys and accountants, but the volunteers from the community associations are clearly in charge of the operation and governance of their associations. These people are almost always unpaid volunteers, who devote their personal time to managing the affairs of their community.

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A Different Kind of Neighborhood Watch

Gulf Harbors Civic Association is attempting to establish a neighborhood watch program (where neighbors would check on people with Special Needs - Live Alone - Handicapped, etc.

If your association has such a program that is working, I'd appreciate a call to tell me how you have it set up.

Thanks

Pat Gorecki (727) 846-0143 □

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KNOW YOUR STUFF

board authority is serious business



Association boards enjoy a broad range of authority with substantial power and responsibility. The source and parameters of this power is dictated by statutes and the association's governing documents.

THE ASSOCIATION AS A GOVERNMENT

An association board must perform certain functions that are similar to those of a government. The board is the executive and legislative body for the association, which has certain responsibilities to its constituency, the association membership, and the association itself.

These governmental functions of community associations require decision making by the board, which (if done improperly) can trigger liability.

1. Powers of the purse. The board's power to tax is its authority to levy assessments.

Once the board receives assessment payments, it must earmark the funds for either the general operating account or reserves.

2. Pass laws. The board has the authority to adopt reasonable rules and regulations and to enforce the governing documents.

The board must also hold regular meetings and facilitate the annual meeting elections of the associations

3. Caretaker of Property. Board members must ensure that the association's common property is maintained, repaired, adequately

insured, and kept safe. The selection of contractors is one of the most common and important decisions boards make as caretakers of association property.

4. Administrative duties. The board must perform several administrative functions, including: keeping the books and records; taking minutes of all board and association meetings; keeping up with any applicable city, county, or state registration requirements; filing tax returns, and facilitating the association's annual audit.

FIDUCIARY DUTY

Within the scope of its authority, and while performing its responsibilities, board members have a constant fiduciary duty to the association. A board member's volunteer status does not diminish this duty.

Generally, the board's fiduciary duty to the association may be divided into the duty of loyalty and the duty of care. Under the duty of care, board decisions will be scrutinized by the standard of what an ordinarily prudent board would do in a reasonably similar situation. The duty of care standard means that the

purpose of each board decision is to do what is in the best interest of the association.

If a board member is sued over a decision that is made within the scope of the board's authority and in the best interest of the association, courts will apply the business judgment rule. Because of the business judgment rule, courts will usually not interfere with the internal affairs of the association or substitute its judgement for that of the board.


Though the business judgment rule insulates board members from personal liability, it also presumes that board members will meet certain basic requirements. To better protect themselves from liability exposure, board members should make informed decisions, be familiar with the applicable statutes and the association's governing documents, attend all board meetings, and register all dissenting votes.

Reprinted from caionline.org library. Written by Andrew Elmore, attorney with Chadwick, Washington, Olters, Moriarty and Lynn, P.C. in Fairfax, Virginia □

2005 HOLIDAY RECIPE

- 1 pkg (12) oz whole cranberries Chop cranberries in osterizer a little at a time.
- 1 cup sugar
- 1 16 oz canned crushed pineapple (drained)
- 1 cup small pkg of marshmallows
- 1/2 pint whipping cream (no substitute)
- 1 cup chopped nuts

Chop cranberries, not too fine. Put cranberries, and sugar in a bowl and refrigerate over night. Next day, drain and save sugar juice. (Add pineapple juice to sugar juice. Can be used for basting ham.) Add pineapple, marshmallows, nuts and whipping cream, that has been whipped, to cranberry/sugar mix. Mix all together. Don't mix too far in advance or the whip cream will dissipate. Yummy!



CONA'S HOLIDAY APPRECIATION BREAKFAST
Heritage Springs Country Club
Wednesday,
December 14, 2005.

You're Invited

One or two Pasco County dignitaries, State Senators, and Representatives will be seated at each table.

Tickets are \$11 and may be purchased from any CONA board member. Board member telephone numbers are on the first page of the Newsletter. Don't miss this wonderful event. **Deadline for purchasing tickets is December 7.**

3 STEPS FOR MAKING EXCEPTIONS

One of the basic functions of any condominium or homeowner association is to enforce the community's rules and regulations. In some cases, however, even though a member may be violating a rule, enforcing it may not make sense. For example, a community may prohibit commercial vehicles. If an owner parks the vehicle in his garage, thereby keeping the vehicle concealed, enforcing the rule seems illogical.

When appropriate, community associations can make reasonable exceptions to the rules. Here's how.

1 Determine the violation's Impact on the community. When a resident breaks a rule or violates a covenant, the board must determine the violation's impact on the community. How do you measure Impact? According to Newport Beach, California attorney Ross Feinberg, the board must consider the association's purpose, as defined in the articles of incorporation. Typically the purpose is to maintain the community and to preserve property values. Then the board must ask itself: does the violation have a direct impact on the purpose of the association

The best tool for determining Impact is common sense. For example, will the violation create a nuisance---will it add loud noises or toxic smells? Will it significantly alter the appearance and value of the community? Will it create a safety risk? Is the violation even visible? Will enforcing the restriction violate federal or state laws?

Feinberg frequently uses the example of home business bans. If an owner is running a home business that cannot be detected, it makes little sense to enforce the rule. However, if an owner is repairing refrigerators in his garage, with parts scattered throughout the yard and large delivery trucks and customers making frequent stops, enforcing the rule seems more logical. The board can make a reasonable argument that the business is hurting the community and creating a potential safety risk.

It is also important to remember the intent of the rule. Rules prohibiting satellite dishes, for example, were written to keep large, unattractive dishes from littering a community. Satellite dishes are now available in sizes as small as 18 inches in diameter. The intent was not to ban satellite dishes simply because they were satellite dishes---the purpose was to ban large dishes. Now that the dishes are unobtrusive, the need for the rule is diminished. The impact on the community is minimal.

2 Make a sound business judgment Once the board has obtained all of the facts and determined the Impact of the violation on the community, the board must make a sound business judgment. A sound business judgment is the result of thorough investigation and careful consideration of facts. Feinberg

believes a successful business judgment includes three traits: the judgment was made in the best interest of members, the association acted in good faith to reach the judgment, and it consulted with industry professionals (attorneys, accountants, insurance agents, reserve advisors---whatever the case may require.)

According to Beverly Hills, attorney Len Seigel, a good business judgment gives the board a defense should its decisions be questioned. It allows the board to say it relied on the advice of experts to make what it determined to be the correct decision.

"More and more courts are applying the business judgment rule to community associations," said Massachusetts attorney Stephen Marcus. "It seems that the trend is to not second guess a decision, even if it's wrong, if the board acted in good faith."

3 Document your decision. Good documentation is critical when granting exceptions. Some attorneys suggest recording the decision making process in the minutes of a board meeting; others recommend a resolution stating why the violation did not warrant board action.

However it is recorded, the board's explanation should include as much detail as possible. It should outline why the board made an exception and how the decision was reached.

Feinberg recommends a system he calls PASS: list the Purpose, Authority, Scope, and the Specific occurrence. For example, what was the purpose of the resolution---why did the board grant an exception? What was the authority for making that decision? As far as the scope, who does the decision apply to? To all of the members? To one of the members? Last, what was the specific occurrence that caused the resolution to be drafted?

Whether the board decides to enforce the restriction or to waive it, the owner should be notified of the association's decision. Feinberg does not, however, recommend publicizing the decision to all of the members.

"Explaining the decision in the minutes is more for in house protection" said Feinberg. "If you send a notice to the community, people will think they can break the rule." □

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