



# Community Newsletter

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

Volume 3 - Issue 7

Council of Neighborhood Associations, Inc. since 1985

October 2005



## C.O.N.A.

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##### Director Emeritus

Charles Rifkin 376-7525

## **Everything you ever wanted to know about...**

### ◆ **Covenant Enforcement Issues**

### ◆ **Procedures Used to Enforce Covenants**

### ◆ **Remedies to be employed including mediation, arbitration, and litigation**

### ◆ **Common Pitfalls in Enforcement Cases**

### ◆ **May a Homeowner's Association whose original covenants contain no leasing restrictions, amend its covenants so it may restrict leasing? If so, how far can they go?**

**Wednesday, October 19,  
at 9:30 a.m. at the  
New Port Richey City Hall,  
in chambers, at 5919 Main Street  
corner of Main and Madison**

### *Our CONA Meeting will feature:*

#### **James R. De Furio, PA**

201 East Kennedy Boulevard

Suite 1460

Tampa, FL 33602-7880

Voice: 813.229.0160

Fax: 813.229.0165

Email: jim@jamesdefurio.com

*CONA member meetings are open to all who wish to attend. Bring a friend. We need your support.*

## **President's Message**

Several days ago I received a call from a lady who was referred to me by Senator Fasano's staff concerning homeowners' insurance. I am at a loss to understand why his staff perceives me to be an expert in the insurance field (or any other field for that matter.)

I listened to her plight that she has insurance under the Citizen's Group and had received her bill for the coming year. It had more than doubled. Due to the fact, as many of us are, she is on a fixed income, she had requested and been granted to split the premium up into two payments, which she stated she was just barely able to do. She had checked with Citizen's and they do not allow more than 2 payments in a year which means for the coming year she would have to pay as much in each payment as she paid all of this year. Going without insurance is not an option, as she has a mortgage on her home and must carry insurance.

Casualty insurance companies are using several different methods to limit their exposure such as canceling policies for no reason, cherry picking, refusing to insure some areas, or they have stopped writing homeowners' insurance, keeping their more profitable auto insurance business. All of this is legal and is based on sound business practices but that does not make it right. **see President, page 2**

## President - from page 1

One might say that casualty companies that refuse to write homeowners' insurance should not be allowed to write car insurance. On close examination, this won't work as many companies only write car insurance and no casualty.

What is the answer? If I knew I would not be writing this article...I would be making millions as a consultant. If nothing else, I would like to see our governor call a special session of the legislature to address this situation. This would only offer some solution if lobbyists are not allowed to influence our elected officials. The only way this will happen is for you, as Joe Q. Public, to put pressure on his office to do so.

Unless something is done, I predict there will be a mass exodus from this great state. ☐

see president - page 3

## More on Insurance

Dberger@becker-poliakoff.com

Secretary of the Department of Business and Professional Regulation (DBPR) Diane Carr has tendered her resignation effective (August 12, 2005). Governor Bush has named Ms. Simone Marsteller to head up the DBPR which licenses and regulates 1.6 million businesses and professionals, from Realtors, cosmetologists and veterinarians to hotels, restaurants,

## Continued

*mobile homes and condominiums.*

The department has a \$152 million budget with 1,491 employees. Ms. Marsteller was the last director of the now defunct State Technology Office.

Seven insurance companies have now decided to stop writing new homeowners policies in the State of Florida since last year's epic hurricane season. The latest two companies to pull out are Safeco and Nationwide. Nationwide is Florida's 4th largest insurance company and they recently received approval to charge rates that are 21% higher than last year on home policies and 25% higher on mobile home coverage. Nevertheless, Nationwide has still decided to stop writing *new homeowners policies. This decision applies to policies covering single family homes, condominiums and mobile homes.* It is getting harder and harder to find insurance companies willing to write policies in Florida and CALL is committed to helping find solutions to this problem

As a result of CALL's inquiry to the Public Service Commission about the recent decision to implement a 17-year old PSC Order reclassifying community association accounts from commercial to residential with a resulting dramatic increase in price and dwindling of potential natural gas suppliers, the General Counsel and Chief of Staff of the PSC are meeting to discuss how this decision will impact thousands of *community associations* around the State. We are hopeful that our inquiry and the inquiry of legislators CALL has contacted to review this matter will lead to an equitable resolution for *community association members.*

If you haven't already done so, please take the time to contact your local State Senator and State Representative and introduce yourself and your community to him or her. The value of doing so cannot be overemphasized. Once the Session starts up again (and the committee meetings in the weeks leading up to Session,) these public officials are often unavailable. NOW is the time to contact them to discuss any concerns you may have about the recent trends we've seen in *community association* legislation and for them to put a face with a name when you email them later in the Session with any concerns you may have. ☐

For more information go to <http://www.callbp.com>

EDITOR'S NOTE: *The State of Florida has already allowed Citizens Insurance to raise their prices twice*

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president - from page 2

## PEOPLE POWER



COCA is working with a number of sources to attempt to get an insurance bill through the legislature in 2006 to help alleviate the hardship many of the homeowners in this state are faced with. Senator Ron Klien of the 30th District has a bill in drafting....some details are listed below:

Full public disclosure and justification by insurance companies in order to justify any rate hike requests and prevent arbitrary cancellations (elimination of secret "black box" models.

• *The establishment of a Public Counsel as official watchdog to exclusively protect consumers' interests in the rate making process.*

• The elimination of the Arbitration Panel: Use of DOAH (Division of Administration Hearings) for administrative challenges of rate hike requests.

• *The establishment of a "loyalty" provision, prohibiting the cancellation of any insurance policy held by a homeowner for five years without claims.*

• Mandate the continuation of appraisal clauses which gives consumers the added protections of impartial, binding arbitration in the case of property

claim disputes.

• *Aggressively pursue and prosecute those who are involved in insurance fraud.*

• Creating "easy to read" policy documents for consumers so that they are fully aware of what is covered under the policy and the insurance companies can verify that they gave the consumer full disclosure on their policies.

• *Work with insurance companies to include wind driven water damage as part of their hurricane policies.*

• Include a mandated response time period. The insured must make the claim in a certain amount of time, and then the company should have a specific time period in which to send out an adjuster and if there is no discrepancy, send out the check for damages within a limited period of time.

• *Ensure that payments for emergency living expenses are made immediately. That would be for people who cannot remain in their homes and must be relocated.*

• Repeal of the Use and File Method by which insurance companies are able to raise rates prior to seeking approval from the OIR (Office of Insurance Regulation.)

**AS TIME PASSES WE WILL BE ASKING OUR MEMBERS AND THE MEMBERS OF OTHER CONA ORGANIZATIONS AROUND THE STATE TO HELP US WITH PHONE CALLS, LETTERS AND EMAILS TO OUR SENATORS, REPRESENTATIVES, AND THE GOVERNOR, TO GET SOME REFORMS PASSED INTO LAW.**

### DIRECTORS & OFFICERS Liability Insurance - Non-Profit Organizations

A nonprofit organization is operated for the benefit of some group of persons. Those individuals, together with employees, creditors, customers, members, state regulators, etc. are all potential plaintiffs against directors & officers of nonprofit organizations due to mismanagement. The fundamental responsibility of directors & officers is to judiciously represent the interests of the organization's members and other constituencies in directing the business and affairs of the organization within the law.

D&O insurance responds to protect an organization for the insured perils surrounding an allegation of a wrongful act. An important feature of a D&O insurance policy is defense costs coverage. The costs associated with defending an allegation of a wrongful act can easily and quickly exceed \$50,000.

#### Example claim exposures for directors, officers, or trustees

##### *Allegation of Wrongful Acts*

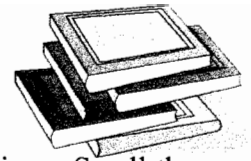
- Conflict of interest
- Fraudulent conduct, reports, financial statements or certificates
- Breach of contract
- Torts

- Violation of statute
- Violation of provisions articles or by-laws
- Improper self-dealing
- Acquiescence in conduct of

- fellow directors engaged in improper self-dealing
- Transactions with companies in which officers or directors are personally interested

see D&O page 4

# HOA Board Operations Manual



Managing a homeowner association is similar to driving a car. From time to time, you need to consult the manual...the source of all wisdom.

Cars come equipped with one but HOAs don't, and for a very good reason. Each HOA is unique. So all the more reason to create a custom Board Manual to have the "need to know" information on hand.

Information to include:

1. Site Map including streets, buildings by address; common area utility valves and controls; equipment
2. Resolutions & Policies (For more on this subject,) see [www.regenesis.net](http://www.regenesis.net)
3. Rules & Regulations
4. Board Members & Contact Information
5. Property Manager & Contact Information
6. Vendor List & Contact Information
7. Vendor Contracts
8. Approved Annual Budget
9. Most Current Financial Report
10. Meeting Minutes for previous 12 months
11. Newsletters for previous 12 months
12. Insurance Coverage Profiles
13. Committees; duties, members and contact info
14. Architectural Design Criteria
15. Copies of Forms (Architectural, Pool Key Request, etc.
16. Maintenance & Insurance Areas of Responsibility List.
17. Owners & Residents & Contact information  
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## *Allegation of Financial Mismanagement*

- Inefficient administration resulting in losses
- Sale of assets for unreasonably low prices
- Wasting of assets
- Extension of credit where not warranted
- Failure to ascertain whether extension of credit is warranted

## *Allegation of Mistakes or Errors in Judgement*

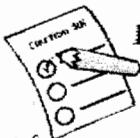
- Disclosure of material facts
- False or misleading reports
- Dissemination of false or misleading information
- Permitting organization to make improper guarantees

## *Allegation of Negligence*

- Continual absence from meetings
- Failure to examine reports and documents before **signing**
- Failure to detect and stop embezzlement of organizational fund
- Failure to file annual report
- Failure to require withholding tax
- Failure to inspect organization books and records to keep abreast of its activities
- Failure to supervise the activities of others in a proper manner
- Failure to verify facts in official documents before signing them and filing them
- Shirking responsibility

If your organization has exposure to any of the items as identified, it is strongly recommended that Directors' & Officers' insurance coverage be secured.

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**Don't Forget !!!**

**November 16 is our Annual Meeting. Call Paul McClintock at 811-3777 if you want to be on the ballot.**

*Holiday Breakfast get together is on the 14th of December this year at the Heritage Springs Country Club. Tickets are available now from any director or get them at the Oct. 19th or Nov. 16th meetings. A good chance to meet your County Commissioners, State Representatives, and Senators. All new chefs this year. Tickets are \$11.*

