COMMUNITY COUNSEL

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RECENT CASES

- HOA DEED RESTRICTIONS ARE CONTRACTUAL IN NATURE, NOT REAL PROPERTY INTERESTS.
- OFFER OF JUDGMENT STATUTE DOES NOT APPLY TO ALL ACTIONS FOR DECLARATORY RELIEF.
- CITY COULD NOT CLOSE A MOBILE HOME PARK IN VIOLATION OF STATE STATUTE.

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

ACT NOW – STOP THE MADNESS

In the most unseemly, sausage like political process seen in Florida since the presidential election debacle, the Governor's office has taken aim squarely at the Condominium/ Cooperative Arbitration Program, and is acting to eliminate this small program which most association attorneys and knowledgeable commentators agree is about the only program overseeing community associations to come down the pike in the last two decades that actually works.

Under the initial guise of saving taxes - anticipated to total $ 0.40 per unit - the Department of Professional and Business Regulation's (DPBR) Legislative Affairs Office blithely branded the Program's work as inconsequential "fat dog and parrot cases," even though DPBR's staff admits that they had never scrutinized the actual content of the case decisions being written, and merely relied on the one or two word categories used by staff to chart their work flow statistics. DPBR ignored the fact that for a current filing fee of $50, associations now get well-reasoned, thorough and authoritative written decisions on many important aspects of association operations - including reconstruction and repair matters, use of funds, elections and recalls, claims of discrimination and countless use rights disputes - all within a period of from 30 to 100 days; as opposed to the two to three year wait typical in most courts. Additionally, the quality and correctness of the legal reasoning is far superior to what would be produced by the trial courts, because of the narrower focus and greater expertise of the arbitrators. The fact that their decisions are published and form a collected body of searchable knowledge that is avail to guide the actions and planning of associations, has undoubtedly also prevented the filing of countless other cases. Few of their decisions are even appealed.

In its zeal to win or to not have to admit it made a mistake, DPBR recently generated a shoddy, unworkable and unconstitutional bill that purports to privatize arbitration without giving any thought as to how this can be done. More interesting, however, is the abandonment of the pretext of tax savings. Instead, the bill shifts the savings back to the "Compliance Section," the same people who just a few short years ago brought you fine after fine for every conceivable minor oversight. Remember that most compliance cases originate from the frequent complaints written by the natural ally of the Compliance Section investigator - the dissident owner seeking to embarrass the current community leadership. Aside from the return of big brother, what is really happening here is that the Governor's other pledge - to make government work like business – is coming true. The Compliance Section is becoming a money-making operation for government.

KEY SENATORS TO CONTACT TO SAVE ARBITRATION ARE POSEY, CAMPBELL, AND GELLER

Speak up now, particularly in the Senate, where some sanity still exists. Write, e-mail and call your state senators and urge them to keep the Condominium and Cooperative Arbitration Program intact.

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RECENT CASE SUMMARIES

In **Cudjoe Gardens Property Owners Association, Inc., vs. Payne**, 26 Fla. L. Weekly D537 (Fla. 3rd DCA, 2/21/2001) the homeowners Association brought an action against the Paynes to enjoin construction in violation of the Association's declaration of deed restrictions. The trial court dismissed the complaint on the Paynes' assertions that the amendments to the declaration were void because the written ballots of the property owners did not comply with the two-witness requirements of Florida's version of the "Statute of Deeds," codified at §689.01, Fla. Stat. In reversing the trial court, the Third District Court of Appeal held that the restrictions contained in the declaration are simply equitable rights arising out of the contractual relationship between and among the property owners, and do not constitute interests in real property to which §689.01, Fla. Stat., applies. In reaching its decision, the Third District Court of Appeal relied in part upon an opinion of the attorney general which states that a restriction resulting from a restrictive covenant is a creature of equity arising out of a contract and does not give rise to an interest in real estate.

In **National Indemnity Company of the South vs. Consolidated Insurance Services, et al.,** 26 Fla. L. Weekly D291 (Fla. 4th DCA 1/24/2001) the Fourth District Court of Appeal addressed, among other points of law, whether the "offer of judgment" provisions of §768.79, Fla. Stat. and Rule 1.442, Fla.R.Civ.Pr., (which allow a party making an offer of judgment to recover attorney's fees in actions for money damages, where the other party does not recover substantially more than what has been offered) are applicable in statutory actions for "declaratory judgment" (where the court is called upon to determine and declare the parties' rights and duties.) In affirming the trial court, the Fourth District Court of Appeal agreed that a suit seeking a declaratory judgment is not always a "civil action for damages" within the meaning of the offer of judgment statute. The Fourth District Court opined that trial courts should inquire into whether the "real issue" is one for damages or declaratory relief. In this case, because the "real issue" in the case was a determination of the availability of insurance coverage, and the complaint sought no money damages, then the declaratory judgment action was not a "civil action for damages" within the meaning of the offer of judgment statute. As such, Fourth District Court of Appeal upheld the trial court's denial of attorney fees to National Indemnity based solely upon National Indemnity's offer of judgment.

In **Donald Williams, et al., vs. City of Sarasota, Florida**, 26 Fla. L. Weekly D309 (Fla. 2nd DCA 1/24/2001), Williams and a group of residents of a mobile home park brought suit against the City of Sarasota alleging that certain charges levied by the City for water, sewer, and garbage were in violation of laws governing mobile home parks. Williams also complained that an ordinance passed by the City for the purpose of closing the mobile home park and evicting the residents violated state laws governing mobile home parks. Specifically, Williams alleged that the ordinance violated the Florida Statutes because the City failed to comply with the statutory prohibition against official action that would result in the removal or relocation of mobile home residents without first determining that adequate facilities exist for relocation. The City admitted that it failed to comply with the statutory prohibition and failed to determine that adequate facilities existed for the relocation of the residents of the mobile home park. Even so, the trial court ruled in favor of the City and held that the charges for water, sewer, and garbage were proper and that the ordinance passed by the City was valid. The Second District Court of Appeal affirmed the trial court's ruling approval of the charges for water, sewer, and garbage fees without discussion. However, the Second District Court reversed the trial court and held that the City's ordinance seeking to close the park and evict the tenants was in violation of Section 723.083, Fla. Stat. As such, the ordinance was unenforceable for the purpose of evicting the residents of the park.

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