

# COMMUNITY COUNSEL

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## RECENT CASES

- ♦ **FILING OF FEDERAL DISCRIMINATION CLAIM DOES NOT HALT A PRIOR STATE SUIT TO ENFORCE THE RENTAL APPROVAL PROVISIONS OF CONDOMINIUM DOCUMENTS.**
- ♦ **CONDOMINIUM ASSOCIATION FINED \$1500 FOR FAILURE TO ALLOW INSPECTION AND COPYING OF OFFICIAL RECORDS.**

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.

## The Mysteries of "Turnover"

Though we do not lightly turn down work, we often advise clients in the process of "turnover" that it is neither complicated nor diabolical. Most often it can be accomplished without the presence of legal counsel, though it is not surprising that fledgling communities, previously run by the developer, are somewhat intimidated at the prospect of forced self-governance. We often see communities, wrongly, attempt to influence developer conduct by refusing to be "turned over."

First and foremost, turnover is the meeting at which, for the first time, the end-owners of lots or units elect a majority of the directors who will run the corporation. By this statute at or near the time this occurs, the developer is required to also surrender the past records of the Association and its financial assets. The developer, under current law, is also required to have the financial records audited and the audit presented to the Association. The applicable statutes, such as Sections 718.301, F.S. (for condos), 719.301, F.S. (for coops), and 720.307, F.S. (for HOA's) all give a detailed checklist of what the developer should be handing over. Regardless of developer compliance, the new Board should be sure to inventory what it actually receives. Depending on the type of community involved, there may be gov-

ernmental help available (in theory) to assist communities who do not get what the statutes require.

Far more daunting to a newly turned over organization, is the process of (1) learning the issues facing the Association, (2) absorbing its financial position and making necessary budgetary and reserve adjustments and projections, (3) dealing with past developer misconduct, such as neglect of covenant enforcement and assessment collection and – of course – (4) inventorying the physical facilities for construction and design defects and needed maintenance. In the face of these practical tasks, probably the paramount organizational skill that a new Board must learn is the need to delegate and prioritize. Though delay is frustrating, a community that doesn't have adequate financial resources, commits a dreadful

error when it tries to do too much at once. It will ultimately achieve nothing well.

The role of legal counsel, immediately post turnover is to review the issues facing the community, assist in evaluating them and helping to prioritize actions, based on need, financial considerations and even warranty and statute of limitations considerations.



**TURNOVER IS LIKE BEING BORN. IT IS AN INEVITABLE PROCESS THAT DOESN'T NEED A LAWYER PRESENT TO OCCUR.**

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## RECENT CASE SUMMARIES



In **Cypress Gardens Condominium Association, Inc., vs. Mieli**, 26 Fla. L. Weekly D2384, Association brought an action against Owner of a unit to evict the tenant to whom Owner had rented the unit. Association alleged that the rental of the unit was in violation of the Association's governing documents because the tenant did not complete a "tenant application form" and also because Owner refused to provide a copy of the lease to Association. A few months after the lawsuit was filed, the Owner and the tenant filed complaints with the Department of Housing and Urban Development ("HUD") claiming race and color discrimination. Only a few days before the trial in the state court action, HUD determined that there was reasonable cause to believe that discrimination occurred and that the Fair Housing Act had been violated. As a result of the finding of probable cause, Owner and his tenant filed a lawsuit in federal court seeking a declaration of unfair housing practices, injunctive relief from discrimination, and civil penalties and damages. Owner and the tenant also moved for a continuance of the state court trial pending a resolution of the federal lawsuit. The trial granted the motion for continuance and found that the federal court claims were inextricably intertwined with the state court action. As a result, the trial court stayed the declaratory judgment/eviction action pending a resolution of Owner's federal court "HUD" claim. The Fourth District Court of Appeal reversed the trial court and ordered the trial judge to proceed with the trial on the Association's declaratory judgment/eviction action. The Florida court held that the state court action was filed first and involved only issues of state law, including the interpretation of the Association's governing documents.



**In Re: Petition for Arbitration of Mark Brin, Petitioner vs. Nobel Point Condominium Association, Inc., Respondent**, Arb. Case No.: 01-2354, Summary Final Order (July 20, 2001), an arbitration action was filed against Association alleging that unit Owner was denied access to the official records of the Association. By certified letter, Owner asked to see the "official records" and also asked specifically to view the "current, official and up to date roster of all unit owners, their mailing addresses, local and outside of Pompano Beach, including all phone numbers, unit identifications, dock assignments and parking space identifications." Initially, Association agreed to produce the books and records for inspection. However, on the date for the inspection Association denied Owner access to the records. Association explained that it had referred the inspection request to its attorney for advice. Thereafter, Owner sent two additional requests to view the official records of Association. Association ultimately sent Owner a letter advising that access was not denied, merely postponed pending review by Association's attorney. Association's attorney advised that the official records would be open for inspection but that individual unit owner files would not be available for inspection and copying. Association sought to further limit the inspection based upon a rule adopted by Association which Association interpreted to limit Owner's right to inspect to only three documents. Association had adopted a rule which limited unit owner inquiries to one inquiry per month, limited to three questions including sub-parts. Association believed that this rule limiting unit owner inquiries applied to Owner's request to inspect the official records. The arbitrator ruled that the requests were valid and that Association had improperly denied Owner access to the official records. The arbitrator specifically held that the unit owner roster, including names, addresses and telephone numbers was not privileged information and were subject to unit owner review. The arbitrator held that Association had willfully denied Owner access to the official records on three occasions and awarded Owner minimum statutory damages of \$1,500.00.

