COMMUNITY COUNSEL

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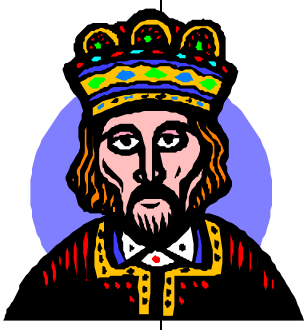
The Association President

Many Board and Association members fail to distinguish between the role, function and powers of officers on the one hand, and directors on the other. Generally, Associations are governed by a Board of Directors who are elected by the members and who act only when properly meeting as a committee of the whole. No director has inherent authority to act alone. Officers (who may be some or all of the same Board members) are elected by the Board and carry out the specific charges given them by the Board. They also complete other tasks assigned them by the Association governing documents. We start a review of the various officers with the office of president.



THE PRESIDENT IS NEITHER ROYALTY NOR A SUBSTITUTE FOR THE BOARD. HE / SHE IS MERELY A CATALYST

The president is neither royalty nor a one-person substitute for the Board when setting policy. He or she is merely a catalyst and focus point for most Association action. The president should see to the execution of the Board's actions, but can also spur action on matters which the president deems important because the president has the power to call meetings of the Board and of the members. When the president believes a matter needs to be addressed, the holder of that office has the power to present the case for action to the proper body authorized to set policy on that matter. Because the president presides at such meetings, that officer also has some ability to shape and direct the discussion.

Unless the governing documents provide to the contrary, the president is generally recognized to have authority to appoint committees. (Some documents instead vest this authority in the entire Board.) When appointing committees, the composition of the committee and the direction given to the committee can be used by an astute president to influence the ultimate recommendation to be made by the committee.

The president is also responsibility for signing various official documents on behalf of the Association. While this function is generally ministerial, not involving the exercise of discretion, it can be a source of mischief, since third parties are entitled to rely on the documents executed by the president. Thus the Association may be bound by the legal doctrine of "apparent authority," even when the president was not actually authorized by the Board or members to sign a document.

RECENT CASES

- Association can not unilaterally assess for attorney's fees in non-collection cases.
- Due to lack of prior enforcement screened enclosure allowed.
- Trial court order did not grant an easement over common elements in violation of Condominium Act.

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.

WEAN & MALCHOW, P.A.
1305 EAST ROBINSON STREET, ORLANDO, FLORIDA 32801
TEL: (407) 894-0040 FAX: (407) 894-5677
W-M@IX.NETCOM.COM

RECENT CASE SUMMARIES

In **Black vs. Bedford at Lake Catherine Homeowners Association, Inc.,** 26 Fla. L. Weekly D2941 (Fla. 4th DCA 12/12/01), Owner's lot was subject to a 3' foot easement as provided for in Association's declaration of covenants and restrictions. Association attempted to revise Owner's property line, to prevent Owner from removing a palm tree located within the 3' easement area, and to assess Owner for attorney's fees in Owner's quarterly dues statement. Owner brought suit against the Association in six separate counts, four of which alleged violations of the declaration. Owner also sought to enjoin the Association from modifying Owner's rights and obligations under the easement. In two other counts Owner sought declaratory and injunctive relief to stop the Association from assessing attorney's fees against them without notice and a hearing, and Owner also sought declaratory relief as to whether Owner was required to obtain permission before removing the palm tree from Owner's lot. The declaration provided for an award of attorney fees and costs to the prevailing party. The trial court granted summary judgment in favor of the Owner for each of the four counts alleging violations of the declaration. However, the trial court refused to grant to the Owner a recovery of reasonable attorney fees under the declaration. The Fourth District Court of Appeal reversed the trial court and awarded attorney fees and costs to the Owner. The appellate court held that because the Owner prevailed on every issue adjudicated in the litigation it was the prevailing party for determining entitlement to attorney's fees.

In **Cernosia vs. Amblewood Condominium Association, Inc.,** Case No. 00-1803 (Draper, Arbitrator, 7/5/01) Unit Owners brought an arbitration action against Association alleging that Association unreasonably withheld approval of the Owner's proposed patio enclosure. Owner had discussed his intent to replace the existing screen porch with the president of Association, though he never explained that he planned to enlarge the screened area by approximately three feet. Soon after the changes to the patio were completed, Association informed Owner he had to submit plans to enlarge the screen patio to the architectural review committee. Approximately one month after Owner submitted his ARC application, Association notified Owner that the plan was not approved and that a fining committee had been appointed. The fining committee recommended a fine of $100.00 per day. Owner immediately removed the screen enclosure, paid the $100.00 fine and filed the arbitration action. Owner produced evidence that numerous patio enclosures within the Association were approved by the Association or were otherwise tolerated by the Association. The arbitrator noted that the crux of the case was whether the Association exercised its authority to approve or disapprove the screen enclosure in a reasonable manner. The arbitrator found that over the years Association had approved a wide variety of screen porch enclosures and those that Association did not approve were tolerated. The arbitrator further found that a "vertical plane rule" relied upon by Association to reject the application was in fact not a "rule" and was violated by numerous other enclosures. Therefore, the arbitrator ruled that Association's rejection of the application was unreasonable and Owner could reinstall the screen enclosure as previously constructed, invalidated the fine and ordered Association to refund it to Owner.

In **Turtle Beach of Ocean Ridge Condominium Association, Inc., vs. Republic Security Bank**, 26 Fla. Law Weekly D2929 (Fla. 4th DCA 12/12/01) Bank brought a declaratory judgment action alleging that as owner of certain property located within the Association, Bank had egress/ingress rights under an easement created by the declaration of condominium. The trial court entered summary final judgment in favor of the Bank and held that the Bank ". . . . *shall be entitled to be serviced by the waste water treatment plant, provided that such owners shall pay their pro rata share of the costs and expenses incurred in the operation, maintenance and repair of the waste water treatment plant and appurtenances thereto*." The Association argued that the trial court's ruling violated Section 718.403, Fla. Stat., by granting to the Bank easement rights over all the common elements of the condominium. In affirming the trial court, the Fourth District Court of Appeal held that the trial court's ruling did *not* violate Section 718.403, Fla. Stat.

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