COMMUNITY COUNSEL

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RECENT CASES

- **Owner could not make Association remove improper additions to others' property without their presence in the suit.**
- **Statute of Limitations to remove a pet is five years because restriction is negative in nature.**

An Editorial – Help Yourself

Does it seem that the "stakes" are higher in just about everything since 9/11/01? Others have said, correctly, that everything changed that day, and aside from residual ripples of insecurity, current feelings of urgency and tension certainly are directly related to worry about the effects of war, and concern for both its participants and victims. But why does the developing 2003 legislative agenda evoke a similar sense of anxiety? Because the stakes ***are*** higher.

In particular, two major issues stand out in the bazaar of innovation and quackery that tempt a legislative wonk like melons on display, and I write this in editorial style both to educate and motivate our readers to act to protect their interests while they still can.

CAM Deregulation & Fire Sprinkler Retrofitting are High Stakes Issues

Last month Governor Bush proposed deregulating the community association management (CAM) industry. His initial rationale was that the CAM Regulatory Council was not self-supporting, and therefore was a drain on tax revenues. But now that a bill has been introduced to increase fees to make up the shortfall, the financial fig leave has fallen away and DBPR has nevertheless introduced a "shell bill" to be used to remove the CAM licensing and state oversight from the industry. If successful, anyone over 18 could claim to be a qualified manager of a community association for fun and profit, even those who may have mismanaged or even ripped off communities elsewhere.

Perhaps the most sobering things that I must do in my law practice is to accept the realization that *licensed* managers with whom I have worked closely have stolen from the people who hired them. I see no reason to expect that deregulation will have anything but a negative impact on the overall honesty of the CAM pool, or that crooks will be justly punished with any greater certainty. So why is the Governor pursuing deregulation? Because, according to his staff, screening, testing and disciplining of CAMs is not a proper governmental function.

So much for consumer protection. I urge our readers to contact the members of the Florida House and the Governor's office to state your opposition to deregulation.

The second issue involves retrofitting high rise condominiums, i.e. those over seventy-five (75) feet, with fire safety equipment including, but not limited to, sprinkler systems. In 2000, a law was passed that mandates such changes in existing structures by 2014, or sooner, depending on the system selected and the policy of the local fire marshal. The costs of putting sprinkler systems in existing buildings can be high and some owners mat be forced to sell if they cannot afford the expense. Given recent horrible nightclub fires in Chicago and Rhode Island, the sentiment seems correct., , though those tragedies involved over crowding, inappropriate conduct and lack of familiarity with exits. Various trade unions, with a lot of political muscle, are opposing proposals to allow condo associations to opt-out of the retrofitting requirement because it means jobs to their members.

However, we see it as an issue of allowing owners, perhaps seniors, to retain their affordable housing. If you agree, contact your legislators and may your views and wishes know. The stakes are that high.

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RECENT CASE SUMMARIES

In **Sheoah Highlands, Inc., vs. Daugherty**, 28 Fla. L. Weekly D474 (Fla. 5th DCA February 14, 2003), Owner brought an action against Association seeking removal of five screen rooms on various units which Owner alleged were constructed in violation of the condominium documents. Three of the screen rooms were constructed prior to 1980. One of the screen rooms was constructed in 1996 and the last screen room was constructed in 1998. None of the owners of the screen rooms were parties to the lawsuit. The trial court ordered Association to remove the screen rooms constructed in 1996 and 1998. However, the trial court held that the five (5) year statute of limitations for Daugherty to seek removal of the screen rooms constructed prior to 1980 had run, and therefore the trial court refused to order the removal of these three (3) screen rooms. The Fifth District Court of Appeal affirmed in part and reversed in part. Specifically, the Fifth District Court of Appeal affirmed the application of the five (5) year statute of limitations period to the instant cause of action. As such, Owner timely filed the action seeking removal of the screen rooms constructed in 1996 and in 1998. However, the Fifth District Court of Appeal reversed the trial court's requirement that the Association remove these two later constructed screen rooms. Specifically, the appellate court held that the trial court lacked jurisdiction over the owners of the screen rooms due to the fact that the owners were not parties to the lawsuit. The appellate court ruled that because the injunction requiring the removal of the screen enclosures affects the rights of persons not before the trial court, it was error for the trial court to order the removal of the enclosures. The Fifth District Court of Appeal remanded the action to the trial court for entry of an order directing the association to enforce the provisions of the declaration of condominium and to take all appropriate action to remove the later two (2) constructed screen enclosures.

In **Pond Apple Place III Condominium Association, Inc., vs. Russo**, 2003 FLW 470247 (Fla. 4th DCA February 26, 2003), Association brought an action against Owners seeking an injunction requiring the removal of a dog. Owners bought their unit in 1995. Association observed Owners walking a dog as early as 1994. However, Owners explained that the dog did not belong to them and would soon be removed. On this assurance Association took no further enforcement action. In 1996 Association delivered a letter to Owners instructing them to remove the dog from the condominium within seven days. A second such notice was sent to Owners on July 1, 1998. After negotiations for the removal of the dog were unsuccessful, Association filed an arbitration action with the Department of Business and Professional Regulation. However, that arbitration action ended in an impasse at mediation. Thereafter, Association filed an action in the circuit court seeking removal of the dog. The trial court held that the complaint was an action for specific performance of a contact and was therefore subject to the 1 year statute of limitations. As such, the trial court dismissed the complaint. In reversing the trial court, the Fourth District Court of Appeal held that where a contractual provision sought to be enforced is negative in nature, injunctive relief is the proper vehicle for judicial enforcement. The applicable statute of limitations for injunction proceedings of the type here under consideration is five years.

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