COMMUNITY COUNSEL

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Recent Cases

- **"Business judgment rule" does not protect a rogue director who ignored corporate directive of the Board.**
- **Association loses inverse condemnation case when easement is determined to be in favor of the general public.**

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.

Handicapped Parking - Yes or No?

Is your association providing reasonable access to people with disabilities and special needs? Accessibility is one of the greatest concerns for residents and visitors who face mobility challenges. It is unlawful for an association to refuse to make reasonable accommodations in rules, policies, practices or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to enjoy major life activities and to use public facilities, if any. Your association should examine its common area parking accommodations to determine whether you are in compliance with the law. The law in this case is either the Fair Housing Amendments Act of 1988 (FHAA) and its state law equivalent, Chapter 760, Fla. Stat., or, to the extent that facilities may be "public," the Americans with Disabilities Act.

The federal and state statutes governing handicapped parking primarily apply to public places. Homeowners associations and condominiums are normally intended to be private residences. However, if some areas operated by the association are generally open to the public and/or provide a commercial service to the public, they may qualify as a public accommodation and would be subject to the Americans with Disabilities Act of 1990 (ADA). For example, the parking areas in pre– or post- turnover communities that have sales offices on site are subject to the ADA. The ADA provides specific categories of commercial service facilities that fall within its jurisdiction. Examples include, but are not limited to, rental and sales offices, restaurants or cafes, galleries, public access parks and recreation facilities, schools, day care centers, and golf courses.

Check whether any of your facilities are "public"

However, most post-turnover communities, even those with a community clubhouse where homeowners gather for community events or recreation areas, are probably not open to the public. Those facilities must instead comply with the requirements of the FHAA. The standard is quite different and it is important to know which one governs you.

If you have only non-public facilities, Section 553.07, Fla. Stat. exempts your facilities if they were constructed prior to October 1, 1997. In that situation you must allow additional handicapped parking spaces to be assigned to handicapped residents if it is reasonable to do so, and if any modification to the spaces is needed to allow their use, these must be paid for by the handicapped resident.

If you have public parking areas, Chapter 553, Fla. Sta., provides general building construction standards and incorporates into Florida law the standards of the ADA and the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Section 4.1 of the ADAAG explains the rules for required spaces and provides a chart regarding the specific number of handicap accessible parking spaces that should be allotted when an accommodation provides public parking. Generally, if an association provides less than 25 ***public*** parking spaces, at least one parking space must be handicap accessible and meet certain area guidelines. Section 553.5041(4)(c), F.S., creates the responsibility to increase the number of ***public*** parking spaces for persons who have disabilities on the basis of demonstrated and documented need.

If you wonder if any of the facilities being operated by your association would be considered a public accommodation, or if you have any questions regarding parking issues, you would do well to check immediately to avoid the possibility of a civil rights claim, a claim which is usually not covered by officers and directors insurance policies, even though the minimum penalties for violation start at $10,000.00.

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RECENT CASE SUMMARIES

In **Aerospace Accessory Service, Inc., vs. Abiseid**, 31 Fla. L. Weekly D2841a (Fla. 3rd DCA, 11/15/2006) Corporation brought an action for breach of fiduciary duty against one of its officers and directors. Director was an officer and also a salesperson for Corporation. Director earned a ten (10%) percent commission on services and parts Director sold, upon receipt of payment from the customers. Director received a specific corporate directive from Corporation's president and the board of directors prohibiting Director from extending additional credit to one of Corporation's customers. This prohibitory directive was issued because Customer's account with Corporation was delinquent in the amount of $25,000. Despite having knowledge of the corporate directive, Director extended an additional $65,000 in credit to Customer. Thereafter, Customer filed for bankruptcy, resulting in a financial loss to Corporation. Corporation filed this action seeking recovery from Director of the money lost through his noncompliance with the corporate directive. The trial court entered summary judgment in favor of Director and held that the "business judgment rule" codified in Section 607.0831 of the Florida Statutes, protects directors from personal liability when a director breaches or fails to perform his duties as a director even if, as a result of the breach or failure to perform those duties, the director derived an improper personal benefit, either directly or indirectly. Director argued that since he received no benefit from the extension of credit and noncompliance with the corporate prohibitory directive, he was protected from liability to corporation. On appeal, the Third District Court of Appeal reversed the trial court. The appellate court noted that the protected director's decision is not Director's unilateral action, but that of the president and the board of directors of corporation when they directed all company personnel not to extend credit to Customer. Director's unilateral action in direct conflict with the protected decision of the board of directors is not itself protected by the Florida Statutes. Director's violation of the corporate directive was nothing more than a breach of that corporate decision. The appellate court noted that if it were to accept Director's position, it would grant an individual director the authority to veto corporate policy. Corporate chaos would be the result, as each director could act on his own whim with impunity. Certainly, the Florida Statutes were not adopted in order to create situations wherein a director could individually repeal duly established corporate policy and escape liability for damages caused by his or her unilateral actions.

In **Palm Beach Polo & Country Club Property Owners Association, Inc., et al. vs. Village of Wellington, et al.,** 31 Fla. L. Weekly D2929a (Fla. 4th DCA 11/22/ 2006) City brought an action for injunction against Association to obtain an injunction. Association sought to stop the installation of a water main in an existing easement which water main was to serve the new Wellington Mall. Association prevented the construction by placing machinery and equipment in the easement to stop city's ability to complete the water main. Association generally alleged that the subject easement was to the County, not to the City, and therefore the City had no right to install the water main in the easement. Association brought a counterclaim against City and others for inverse condemnation and other damages. Association eventually voluntarily removed the equipment blocking the easement and the water main was installed. City dismissed its complaint. However, Association moved for summary judgment seeking to prove that the subject easement belonged to the County, not the City, and as such Association claimed entitlement to damages for inverse condemnation. The trial court granted judgment in favor of City and Association appealed. On appeal to the Fourth District Court of Appeal, Association argued that the language creating the easement was ambiguous and therefore summary judgment was not appropriate. The appellate court disagreed, finding that the easement clearly and unambiguously created a perpetual easement dedicated to the public.

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