COMMUNITY COUNSEL

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Stand-by Lines of Credit – Insurance Premium Relief?

As we approach the start of 2009 we have only recently completed our survey of the many changes made to community association law in 2008. Given the current economy, any money that an association can save on its obligations is to the advantage of all members, and in the area of insurance premiums, relief is especially needed, given the astronomical rise in premiums over the past ten or so years. The changes made to condominium insurance law this past year afforded some opportunities for relief – particularly by use of the stand-by special assessment that the statute now authorizes condominiums to adopt. The assessment, conditioned on the occurrence of a casualty loss, permits a condominium to raise its deductibles and thereby save money on the premiums it has to pay.

Although not stated in the statute, we believe that in addition to or in lieu of such an assessment, associations maybe well-served to look at obtaining a stand-by line of credit for the same purpose.

A line of credit permits you to call on the lender to fund up to the maximum amount of the credit line at any time during the existence of the line of credit. If you never use the credit line, you pay no interest and repay no principal. Of course there will be a fee for reserving the credit, but traditionally those fees are based on a relatively small percentage of the total amount of credit reserved. One-half of one percent may be a typical fee, and that fee even may be due less frequently than annually. Thus, a $500,000 stand-by line of credit may cost an association only $2,500. In the case of at least one lender with whom I spoke, that fee would not be due more frequently than every three (3) years, meaning that the ability to draw on a pool of $500,000 in credit has an up-front cost to an association of less than $850 per year. If you consider that the existence of a $500,000 line of credit may permit an association to substantially increase its deductibles and/or decrease its coverage, then that association may realize a substantial overall savings. (Of course there will be other transaction costs that vary depending on the size of the requested line of credit).

A stand-by line of credit may be an economical way to reduce annual insurance premiums and save money.

In these days of very tight credit, lending to associations still seems to be strong and money is available to associations from those few financial institutions that commonly deal with community associations as borrowers.

We suggest that the board of each community that maintains a common insurance policy of any notable size at least contact such a lender and run the numbers to determine the costs and benefits of using a stand-by line of credit. By comparing the cost against the incremental savings to be realized by changing coverage parameters, an association may be able to make a dent in its insurance costs. If the analysis looks promising, additional time should be spent comparing the rates and terms of various lenders.

Recent Cases

- **Division rules that condo association must take a one-time vote and get approval of a majority of members to continue to use staggered terms., where its documents incorporate changes in the law into the documents.**
- **Division rules that requiring a rental application, prior Board approval and payment of a screening fee do not restrict a unit owner's right to rent or lease a condominium unit.**

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.
646 EAST COLONIAL DRIVE, ORLANDO, FLORIDA 32803
TEL: (407) 999-7780 FAX: (407) 999-LAW1 E-MAIL: W-M@WMLO.COM
WWW.WMLO.COM

RECENT CASE SUMMARIES

In **In Re: Petition for Declaratory Statement: De La Bahia Condominium Association, Inc. (DS 2008-061, September 22, 2008)**, Association requested an opinion from the Division as to whether it must conduct a vote to readopt or reaffirm its present bylaw allowing staggering the terms of directors every two years under the amendment to Section 718.112(2)(d)1, Fla. Stat., adopted by Chapter 2008-28, s. 7, Laws of Florida. Association's bylaws provide that each director shall be elected for a two (2) year term, with three (3) directors being elected one year, and the remaining four (4) directors being elected the next year. Effective October 1, 2008, Section 718.112(2)(d)1, Fla. Stat., now provides that if an association's bylaws permit staggered, two-year terms for its directors, a majority of an association's total voting interests' approval is necessary to permit association board members to serve such a term. The Division noted that laws are prospective in application. Association's declaration adopts all amendments to the Condominium Act once the amendment becomes effective. Therefore, on October 1, 2008, Association's bylaws will incorporate the statutory amendment. Therefore, in order to continue staggered, two-year terms for its directors, Association must obtain a majority vote of the total voting interests to adopt staggered terms for directors as now required by law.

In **In re: Petition for Declaratory Statement: Sawitoski vs. Southern Breeze Gardens Condominium Association, Inc., (DS 2008-019, June 13, 2008),** Unit Owner sought a declaratory statement from the Division related to whether amendments to Association's governing documents restricted Unit Owner's right to lease her unit in violation of Section 718.110(13), Fla. Stat. Association adopted the amendments with the sufficient vote of the membership, but Unit Owner did not consent to the amendments. The declaration as originally recorded provided certain restrictions on the use of units "… in order to maintain a community of congenial residents who are financially responsible and to protect the value of the units." Furthermore, the declaration as originally recorded stated that no unit could be leased, sublet, or assigned more than twenty-six times per year maximum for a minimum of two weeks each time. Finally, as originally recorded the declaration gave the board the power to approve or disapprove the transfer of ownership of units as well as the power to adopt rules "pertaining to additional restrictions on either the term of leases for individual units or the number of times per year a unit can be leased beyond those rules set forth in the original Rules and Regulations." The first amendment adopted by Association included a requirement that all prospective tenants must complete an application which asks for the number of people who will occupy the unit, for credit references and emergency contact information. Unit owner argued that this requirement for an application restricts her right to lease her unit. Association argued that the new application requirement is procedural, not substantive, and provides Association with a means and mechanism to track compliance with the leasing provisions stated in the declaration. The Division held that the application requirement is a permitted expansion of the tenant registration process that was originally required by the declaration, and not an entirely new requirement. The second amendment authorized the board to approve or disapprove leases in advance of tenant occupying the unit. Approval or disapproval must be given within 10 days or the lease is deemed approved. Unit owner argued that this is a new restriction because it gives Association authority to deny her choice of tenant. Association argued that this provision is not a restriction on Unit Owner's right to lease but a means of ensuring compliance with the governing documents. The Division held that the requirement for board approval when exercised reasonably is not a restriction on Unit Owner's right to lease her unit. Only a restriction on an existing right to lease is prohibited by Section 718.110(13), Fla. Stat. This new approval requirement was consistent with the rights existing under the original declaration. Finally, Association instituted a transfer fee of $100 for each lease approval. Unit owner argued that this transfer fee is a new restriction on her right to lease. Association argued that the transfer fee for leases is permitted and is procedural and not a restriction. The Division found that the transfer fee requirement is not a restriction on Unit Owner's right to lease her unit, so it is not prohibited by Section 718.110(13), Fla. Stat.

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646 EAST COLONIAL DRIVE, ORLANDO, FLORIDA 32803
TEL: (407) 999-7780 FAX: (407) 999-LAW1 E-MAIL: W-M@WMLO.COM
WWW.WMLO.COM