

COMMUNITY MANAGEMENT CONCEPTS

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FROM THE DESK OF THE PRESIDENT

Kirk Bliss, AMS[®], CAM[®], ARM[®]

CMC—40 YEARS IN BUSINESS 2012!

Since CMC was founded in 1972, the company has always held true to the simple principle on which the business was founded—to help our clients succeed and prosper. Over the years, the community association industry has become more complex; and as a result, we enlarged our focus. Today, we offer our clients a wide range of solutions to help them succeed in this challenging environment.

We provide a full range of custom-tailored programs and services to meet individual community and homeowner needs. There are many reasons why CMC/Associa is the leader in community and homeowner association management. Here are the top five:

VALUE: CMC/Associa leverages its resources and experience to save your association significant time and money.

TECHNOLOGY: Our leading-edge technology protects your private data and provides secure online access 24/7.

EDUCATION: Our professional development programs yield exceptional employees – who provide you exceptional service.

CUSTOMER

SERVICE: Providing friendly, local and prompt service to you and your association is our hallmark.

EXPERIENCE: We've been providing professional management since 1972. You can count on us for long-term stability and meaningful experience.

A successful company is about more than the nuts and bolts of business. It's also about helping its people grow. It's about maintaining a vision of what is possible. It's about believing in the future. We believe that each person has unlimited, untapped resources inside. At CMC, we try to help people find and develop their potential.

We believe in abundance. There is enough to go around, and prosperity is always possible. All we have to do is see what's possible and work to achieve it.

We believe in our clients. The future is bright and good, and the best is yet to come. Thank you for helping us grow and for the hard work you perform on a daily basis.



In this issue

Client Expansion.....	2
Audit	2
Associa Supports Kids...	3
Choosing the Right Attorney.....	3
Condominium Owners Have Rights	6
Enhancing Board Meetings.....	6
Due Diligence	7
Officers of the Board	7
Powers & Duties of the Condominium Board of Directors	8
Reserve Study Checklist	10

40th Anniversary



Associa[®]

Community Management Concepts, Inc.



Client Expansion

CMC IS EXCITED TO ANNOUNCE ITS RECENT PARTNERSHIP WITH THE FOLLOWING NEW ASSOCIATIONS:

- **Spring Ridge of Hernando Homeowners Association, Inc.:** 328 single family homes located in Brooksville, Florida – full management services.
- **Bal Harbour Condominium Association, Inc.:** 250 units located in Largo, Florida – financial management services.
- **The Bentley at Cobb's Landing Condominium Association, Inc.:** 200 units located in Palm Harbor, Florida – full management services.
- **Terrace Park of Five Towns, No. 10, Inc.:** 44 units located in St. Petersburg, Florida – financial management services.
- **Shores of Long Bayou V Condominium Association, Inc.:** 24 units located in St. Petersburg, Florida – full management services.
- **Brookers Landing Homeowners Association, Inc.:** 105 single family homes located in Palm Harbor, Florida – full management services.
- **Ivy Lake Estates Association, Inc.:** 551 single family homes located in Odessa, Florida – full management services.

All of us at CMC are thrilled and honored to have the opportunity to manage these fine communities and to assist them in reaching their neighborhood goals.

AUDIT – Protecting an Association's Financial Assets

Manjola Kavariq—Client Controller

Now that 2012 has begun, most community associations (that is, those associations with a calendar year-end) begin planning for closing their books and preparing their year-end financial statements. The three types of preparation of a year-end financial statement are:

Audit | Review | Compilation

A **compilation** offers the least amount of assurance and is the lowest level of service available during the review of the association's financial records.

A **review** has limited assurance, does not dig as deeply into financial records of the association and uses only the end of year financial statements information provided by the management company.

Required or not, an **audit** is one of the most important methods that can be used to protect an association's financial assets because it is a formal method of checking the financial records and procedures. The fiduciary duty of the board requires that it act for the benefit of the community as a whole. The association's documents make the board responsible for the financial management of the association.

As we know, Florida statute requires associations with annual revenues from all sources of at least \$400,000, and which operate at least 75 units

(50 parcels for HOAs) to have their financial statements audited by a certified public accountant (CPA). An association that operates fewer than 75 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by GAAP. It is important to note that, although the financial statements on which the CPA expresses an opinion are prepared by the CPA, the financial statements are those of the association and for which the association must take responsibility.

Effective October 1, 2008 Florida Statute 718.111(14) requires that an Association may not waive the financial reporting requirements for more than three consecutive years. The CPA was required, under generally accepted auditing standards (GAAS), to utilize a risk-based approach in conducting an audit of financial statements. The standards are designed to result in more effective audits as a result of better risk assessments and the execution of audit procedures responsive to the risks. This process includes the documentation and assessment of controls over financial reporting, and is generally accomplished through inquiry of association management at a formal meeting in the audit planning

(continued on page 4)



Associa Supports Kids

Did you know that Associa Supports Kids (ASK) will help children in your community who participate on or in youth sport and fitness teams?

Associa Supports Kids educates parents and children about safety in and around the home and sponsors youth sports and fitness programs to help kids lead a more active lifestyle.

The ASK Sports Program is a grassroots, community program designed specifically for your community. The ASK Sports Program supports local youth sports and fitness activities with a sponsorship of up to \$250 annually per team. Sponsorships are available to teams with at least one member of the team living in your community.

Last year, Associa Supports Kids donated to youth teams in baseball, basketball, cheerleading, dance, hockey, soccer and swimming. The requests range from financial assistance for uniforms and end-of-year awards to building new baseball fields and supplementing coaching salaries...ASK even helped with the purchase of starting blocks and new lane lines.

We'd like to help by partnering in your community. Are there kids in your community who participate on a youth sport or fitness team? Do they need help affording uniforms, registration fees or travel expenses? All they need to do is complete and submit the ASK Sponsorship Request Form.

For the ASK Sponsorship Request Form, email Christy Earl at cearl@associaonline.com. We will supply your team with the ASK logo and other necessary information for sponsorships and printing opportunities on uniforms, flyers, posters, playbills, websites, etc.

Don't forget that you can also reserve the ASK mascot, Scout, for your next community event. At neighborhood events, Scout hands out Safety Tip coloring books, plush Scout toys, rub-on tattoos and Scout's own books like *Scout Goes to the Beach*, *Scout Goes to a Sleepover* and *Scout Stays Active and Strong* to each child in attendance. Parents receive an ASK safety brochure and a ChildPrint identification kit. We can help ensure you have Scout and ASK materials at your next event.

With basketball season in full swing and spring sports just around the corner, now is a great time to look to Associa Supports Kids for financial sponsorships. Serving your community is important to us. We look forward to helping.

To find out more about Associa Supports Kids, visit our website at www.associasupportskids.org or contact your community manager.



Choosing the *Right* Attorney for your Community Association

Hopefully, with the following guidelines and recommendations located herein, you'll have the ability to avoid the pitfalls of poor legal representation and enjoy the comforts of finding an attorney that you can trust.

CONTACT FIRMS that specialize in community association representation.

- How many years has the attorney been working with community associations and what percentage of his or her practice is devoted to the representation of community associations? 5%, 50%, 100%?
- Does the attorney or law firm have a system for learning about any changes to the law, new case decisions, new administrative rulings or industry trends?
- Does the attorney or the law firm take a leadership role in organizations dedicated to advancing the needs of community associations?

INTERVIEW THE ATTORNEY who would potentially be assigned to the association. In the interview, request a list of associations currently represented.

- What do other associations have to say about this attorney or the firm's work? Are they on top of the changes to the

law each year? What kind of programs and services do they provide to their community association clients?

- If you're looking at one of the large firms, make sure you know who your attorney will be. It may be one of the partners who visit you, but will your work be assigned to someone else in the firm?

REVIEW THE COURT RECORDS of those associations to see the cases filed and the substance of the claims. This helps you to determine whether the cases are related to collections matters or for incidental infractions.

- Does the attorney have a history of disciplinary action with the Florida Bar; and if so, for what reason and what was the disposition of those complaints?
- Does the attorney or the firm for whom the attorney works represent any other clients that may have conflicts of interest that could impact the community?

IN A SECOND INTERVIEW with the attorneys culled from your list, discuss the meaning of "representation". Determine whether the attorney understands that he/she represents the "association" and not the Board of Directors. The attorney must

(continued on page 5)

AUDIT – Protecting an Association's Financial Assets, cont.

phase. The CPA performs tests of the controls and prepares an audit program that considers the information obtained from management, as well as the results of the testing of the controls.

The auditor is required under professional standards to make inquiries related to fraud (this is generally accomplished by the completion of a questionnaire, supplemented by face-to-face inquiries, as necessary).

During the planning and preliminary stages of the audit, the auditor will request that the association provide copies of various types of information, including the following:

- Financial statements and supporting schedules for balance sheet accounts (for example, bank reconciliations to support cash; delinquency reports to support receivables, etc)
- Contracts
- Insurance information
- Loan agreements
- Minutes of meetings of the board of directors and owners
- Notices of special assessments
- Reserve studies

Because of increased delinquencies, the auditor must support the amount that has been recorded as allowance for doubtful accounts (allowance), if any, and, frequently, must record an adjustment to establish or increase the allowance. The auditor will also make inquiries about matters of litigation.

At the conclusion of the audit, the auditor will normally issue a draft of the audited financial statements for the association's approval. Among other things, management of the association will represent to the best of its knowledge, that (a) the association has responded honestly and completely to all inquiries; (b) all financial information, related data, and minutes have been made available to the auditor; (c) the association is not aware of any fraud that may have occurred or any violations of laws or litigation that would have an effect on the financial statements; and (d) that the association is responsible for presenting its financial statements in accordance with generally accepted accounting principles.

Upon the receipt of the signed management representation letter, the audited financial statements are issued, together with the auditor's report on the financial statements. The report contains an opinion as to whether the financial statements are presented fairly "in accordance with accounting principles generally accepted in the United States of America." Unless the scope of the audit has been limited for one reason or another, or the auditor is unable to obtain sufficient support for a material

financial statement balance or amount, the auditor's opinion on the financial statements will be unqualified. Besides the audited financial statements, the association should expect to receive a letter of recommendations (or management letter) in connection with the audit. This letter offers suggestions for the improvement of internal controls and operating efficiencies. A letter communicating the results of the audit and, if applicable, a letter of significant deficiencies, are also issued to management. The letters referred to in this paragraph are for the information of the board of directors only and are not intended to be distributed to the membership.

While the conduct of the annual audit is the responsibility of the auditor, the collaboration with the management of the association will contribute to the timely and effective completion of the audit. Association management must recognize that the financial statements are its responsibility and are the association's financial statements. Association management should also be concerned about the preparation of its income tax returns and should be able to feel confident that its CPA has taken into account all of the relevant tax considerations in preparing the association's income tax returns.

Even if there is no specific requirement, it is good business practice for most any association to undergo a periodic examination of its financial position and related documentation and procedures – whether annually or every two or three years.

Even though audits can be expensive, they are the most valuable tool in the financial management of an association. With a little careful planning, you can directly impact the cost of that audit. And one final tip: at the conclusion of an audit, be sure to ask the auditor what you could do better to reduce their time next year. They'll be happy to share that information – it makes their job easier!



Choosing the *Right* Attorney, cont.

be reminded that he does not represent the board members individually or collectively and that he is to represent the entire membership. Representing the association is a bit different from the representation of a for profit, or a non-profit corporation. One difference is that without funding from the owners of properties located in the community governed by the community, the "association" would cease to exist; and that the association membership consists of a majority of owners who live in their homes that are their biggest investment and where they rear their children.

- Has the attorney ever served on a community association board? It usually helps create a sense of understanding and empathy when an association attorney has actually sat in the shoes of a volunteer board member.
- Does the attorney have common sense and experience to realize when they are "being played"? Experienced community association attorneys get a sense when one board member is seeking advice that was not sanctioned by the full board but is really a personal agenda item for that director. Similarly, experienced community association attorneys know not to take sides when there are intra-board disputes and remind the board that it is their duty to advise the entire board what can and can't be done within the confines of the statutes and the association's governing documents.
- Make a list of questions directed to the way in which the attorney would address certain specific matters affecting the owners. His/her responses will narrow your list considerably.

DOES THE ATTORNEY HAVE THE ABILITY TO COMMUNICATE CLEARLY IN WRITING AND VERBALLY? It doesn't matter if your attorney graduated from Harvard if no one can understand the advice he or she is rendering. Lengthy

paragraphs in legal opinions that could have been written by James Joyce are one tip-off that you might have a problem. It might be good to suggest asking an attorney to give a writing sample; perhaps an opinion letter with sensitive information redacted. CMC does this when interviewing job candidates, and associations should do this to see if the attorney's communication style is a good fit for them.

ASK THE ATTORNEY WHETHER HE CHARGES FOR "REVIEWING"

the governing documents of your community each and every time an issue requires an opinion. Many attorneys charge for this over and over so that the association has a significant sum invested in the attorney's reading and re-reading your documents. Once is enough. After that, if he/she needs to read the documents there must be no charge.

GET A FEE SCHEDULE and calculate the association's needs vs. monthly invoicing.

- The old adage "you get what you pay for" is true with legal services. However, an attorney or law firm that has procedures in place and the expertise necessary to handle your matters is extremely important from a cost standpoint. Hourly fees should not be the determining factor, since it is very possible (even probable) that someone with the right expertise, resources, reputation and support can accomplish the client's objectives more cost effectively. The client should not have to absorb 'recreating the wheel' in each legal matter, but must also have the personalized representation and advice necessary to enable them to make appropriate business decisions.

- What does the law firm or attorney offer in addition to fee for services?
- Do you benefit from educational sessions, newsletters and legal updates, legislative advocacy, or other efforts?



HOW MANY OF THEIR PROCEDURES ARE AUTOMATED? Greater automation should result in lower costs to you.

However, at the same time, do their procedures appear to be too automated? Cold form letters can leave a bitter taste in the mouths of owners who receive them.

THE ATTORNEY SHOULD NOT MAKE THE CLIENT'S DECISIONS. The attorney should advise the client what is proper or improper pursuant to law and the governing documents. If there are options, the benefits and detriments of each should be sufficiently explained. Red flags should go off in your head if an attorney 'requires' a client to work with a particular vendor or discourages the client from making its own decisions.

ACCESS TO THE LAWYER—WHEN YOU CALL OR EMAIL, WHO GETS IT?

The more people that touch it, the more people bill on it. There ought to be a way to have questions answered in an efficient and timely manner without paying hundreds of dollars to get an easy and quick answer.

This is just a summary of how to choose an attorney for your association. In the final analysis, talk about his/her values and how the law is applied while respecting the owners.

Condominium Owners Have Rights: Even Valid Rules Are Not Always Enforceable

A unit owner lives in a two-story townhouse-style condominium. They asked their condominium association board of directors for permission to install several indirect ground lights to illuminate the area in front of their unit at night, including the walkway from the parking lot. Citing a condominium rule that prohibited owners from installing any items on common property, including "lights" and "other objects", the board denied the request. Is the owner out of luck?

"Common property" includes the land that is not within the condominium units. The land in front of the unit is clearly common property. The Florida Condominium Act provides the board of directors with rule-making authority governing the operation and use of the common elements, and allows for restrictions on the use, maintenance and appearance of the units and the use of the common elements. Thus, the board clearly had authority to make a rule concerning the use of the land in front of the unit.

To be valid and enforceable, a rule or regulation adopted by the board (as opposed to a restriction contained in the declaration of condominium) must meet a two-tier test. First, it must be within the scope of authority of the board. Second, it must be reasonable and not arbitrary or capricious. To be within the scope of the board's authority, it must not contravene an express provision of the declaration or a right reasonably inferred from the declaration. If the rules and regulations are uniform in their application and enforcement and are reasonably related to promoting the health, safety and welfare of the unit owners, then it meets the second test.

In this case, the rule did not contravene an express provision in the declaration or a right reasonably inferred from it. However,

whether the rule against lights is reasonable and not arbitrary or capricious is very debatable. What interest is the association protecting by prohibiting the lights? A blanket prohibition against such outdoor lighting is probably difficult to justify. The electricity service for the lights can be tied to the owner's service, so the association would not incur any expense. A few small walkway lights will not likely affect the association's insurance premiums. On the other hand, the unit owner's personal safety is clearly a legitimate reason for installing the lights. The reasons for installing lights would appear to outweigh any reason the association could offer to oppose the lights. Therefore, the rule seems unreasonable, arbitrary and capricious when applied to such lighting.

If the association amended its rule to delete the prohibition against outdoor lighting, it could adopt a uniform policy requiring lighting to be of a certain type, limited to certain specifications, such as height and intensity, and other reasonable limitations to ensure a uniform and aesthetically pleasing appearance. Indeed, in the foregoing actual situation, and based upon the explanation offered above, the association amended its rule and adopted new guidelines to allow outdoor lighting of a specified type.

Board members and unit owners alike must always consider the reasons why rules exist, and in each situation, whether enforcement of the rule serves any legitimate association interest.



ENHANCING BOARD MEETINGS

Successfully having more productive meetings starts with a well thought out plan. Form a practical outline with a set start and end time. Having a practical outline in place allows you to be goal orientated and goal focused. Keep your outline short and to the point. Having an outline that has loads of points can lead to lost time and loss of focus of the meeting. Establish a list of priorities for each meeting and have a focal point on

the main priorities. Stick to the main topics from the set outline. If you have 75 issues you want to deal with, extend them out over the course of the year. By running a board meeting this way you will be more organized and see better results if you are able to manage your agenda.

Keep an established time over meetings, normally no longer than an hour. If you create a set agenda, having set limits

only enhances the meeting. The duration of your board meetings can have a key impact on volunteers and keeping them as volunteers. Keeping meeting times shorter will keep volunteers from becoming bored and allowing for a more focused group. Remember to stay on topic and remind everyone to do the same. This will lead to more decisions being made and less time wasted.

OFFICERS OF THE BOARD: WHO CAN GIVE YOU THE AX?

The secretary of a condominium board wanted to know if her board of directors proceeded correctly when they chose a new secretary at their annual meeting.

This was the scenario. It was a five-member board, and four positions were up for election. She was serving the second year of a two-year staggered term so her position was not up. She contended that since her position on the board was not vacant, then the position as secretary was not vacant.

To answer this question, we must first look at the bylaws of the association. Unless the bylaws say differently, her tenure as secretary does not necessarily go with her service on the board. Additionally, do the bylaws contain a provision stating a “fixed



(continued on page 8)

DUE DILIGENCE Important for Community Leaders

Board members at a local condominium have been embroiled in a legal battle involving the community pool for years. Clever investors bought the pool parcel at a tax sale in 2003. Condominium owners didn't even know about any property tax delinquency until the investor put up a locked chain link fence and a “no trespassing” sign, blocking entry. Finally, after years and years of litigation, the appellate court ruled that the swimming pool was a common element of the condominium, and the statute barring separation and partition of common elements prevented a tax deed sale even though the condominium association failed to pay the property taxes assessed against the parcel. The condominium association regained control after the court set aside the tax deed, and it reimbursed the investors for the amount paid for the parcel, plus interest.

THIS CASE SHOULD REMIND COMMUNITY LEADERS OF SOME BASIC DUE DILIGENCE TASKS.

Many developments – whether a homeowner association or condominium – contain property that for one reason or another is not categorized by the Property Appraiser as common element

or common area. In some cases the property was not officially deeded to the association. Often, the tax collector will continue to utilize the developer's prior address or an old management company address for all tax notices, since no one updated the records. If taxes remain unpaid, the county will hold a tax certificate sale. Whoever bids for the lowest interest rate for a particular property, and the taxes which are in arrears, will obtain the tax certificate. Once a tax certificate is outstanding for a period of two years, the tax certificate holder may apply for a tax sale to occur. Unfortunately, failure to update records maintained by the Property Appraiser can lead to issuance of tax certificates and then tax sales can take place without any real notice to the association.

The distressed real estate market increases the chances that issues like these will ‘slip through the cracks’. Some developers went bankrupt or lost the property as a result of foreclosure before transferring title or completing the development. Simple title searches will often reveal whether all property subject to the covenants or declaration of condominium has been categorized properly for tax purposes.

Community leaders should be aware that under Florida Statute §193.0235, ad valorem taxes or non-ad valorem assessments by a county, municipality, special district, or water management district may not be assessed separately against common elements utilized exclusively for the benefit of lot owners within a subdivision, regardless of ownership. Any subdivision property that is designated on the plat or plan as a common element is included in this definition. Therefore, recreational facilities or property actually and exclusively used by the lot owners, regardless of ownership, and designated as such on the plat, approved site plan, or otherwise as a common element for the exclusive benefit of lot owners should not result in a separate tax bill, but many associations pay these taxes for years and years since they didn't take the appropriate action. The same is true with respect to the common elements of a condominium. Valuation of the units for property tax purposes takes into account the common elements. Don't let this happen to you – make sure the community common elements or common areas are categorized and assessed properly before you pay years of tax bills or face similar disputes.

OFFICERS OF THE BOARD, CONT.

term” such as 1 year or 2 years or, do they say “until a successor is elected”?

Unless the bylaws require a membership vote for a specific officer, the officers are chosen at the organizational meeting of the board, which may take place at the “Annual Meeting” or at the “time, place, and manner” set forth in the bylaws. It should be noted that the organizational meeting is the only time that the board can vote by secret ballot.

Although board members can only be removed from the board by a vote of the membership, officers serve on a board of administration at the “pleasure of the board” and may be removed from office “with or without cause” by the members of the board whenever they feel it is in the best interest of the association. If the officers were elected by the membership, then the membership would have to remove them.

She also claimed that the vote for secretary was improper since a motion was made and seconded but no formal vote was taken.

Procedurally, the vote was not taken properly. Someone could have raised a “point of order” making that claim. The chairman would have to respond. However, if no one objected when the motion was stated and seconded, it is possible to assume that the motion was passed by “general consent”.

Roberts Rules of Order talks about procedures for small boards, it says: “In a board meeting where there are not more than about a dozen members present, some of the formality that is necessary in a large assembly would hinder business. The rules governing such meetings are different from the rules that hold in other assemblies”. In other words, even though your governing documents tell you to follow Roberts Rules, you can bend them a bit. This includes motions not needing to be seconded. We have yet to see a board member get arrested by the Roberts Rules police.

When in doubt, contact your association’s legal counsel.

Powers and Duties of the Condominium Board of Directors

The Association is responsible for the operation and management of the community's affairs pursuant to the Florida Condominium Act. The Association is governed by the Board of Directors, sometimes known as the Board of Governors or Board of Administration. The Board operates the Association.

Chapter 718 of the Florida Statutes specifies the duties of the Board as does Chapter 617, the Not-For-Profit Corporation Act. The Articles of Incorporation and the by-laws set forth additional provisions regarding Directors such as the number of Directors, residency requirements and specific limitation of powers, such as expenditure limitations.

Recall is the ultimate limitation of the Board's power. The Board or an individual Board member may lose the support of a majority of the membership and may be recalled at any time. Pursuant to statute and most Association documents, vacancies on the Board may be filled by the remaining Directors.

The Board members have a fiduciary duty to the membership. The general standards for discharge of a Director's duties are outlined in Section 617.0830 of the Florida Not-For-Profit Corporation Act. All Directors should act in good faith with the care an ordinary, prudent

person in a like position would exercise in similar circumstances. A Director must act in a manner he reasonably believes to be in the best interest of the Association. The Court held in a recent case that a Director has no real liability unless there is fraud, self-dealing or unjust enrichment.

A Director may rely on information, opinions, reports or statements, including financial statements that are prepared or presented by officers or employees of the Association when the Director reasonably believes such person to be reliable and competent. The opinion of legal counsel, public accountants or other persons as to matters the Director reasonably believes to be within that person's professional expertise may be relied on. The Directors are protected by law if they rely on the advice rendered by a professional. Therefore, whenever the Board faces a question as to its operations or procedures, the Board should request an opinion in writing from a party skilled in the respective area.

(continued on page 9)



Powers and Duties, cont.

The most important power and function of the Board is to establish and collect the assessments. The collection of assessments is essential to the operation of the Association and should be conducted in a fair manner based on established policies.

Maintenance of proper financial records of the Association is part of the budget and assessment process. Most Boards have the significant authority to establish budgets and impose assessments as deemed necessary; however, the Condominium Act creates substantial requirements for financial reporting, standards for budgets and record keeping in this area. The service of a professional management firm familiar with condominium budgets and accounting is recommended.

The Board's authority to acquire, convey, lease or mortgage Association real property is limited pursuant to statute unless specifically authorized in the Declaration. Traditionally, unit owners must approve such matters.

Most Association documents convey authority on the Board of Directors to adopt reasonable rules and regulations. The rule-making authority of the Board allows the Association to control use of the common elements and

use of the units. Rules can also address inspection of records, reply to owner inquiries, club house and pool use and parking issues. All rules must be reasonable and must not contravene a right granted in the Declaration or reasonably implied from terms of the Declaration.

As condominiums are parcels of real estate created upon the recording of a Declaration of Condominium, the law is drafted to protect the status quo. The Board must operate and maintain the common elements. No material alteration or substantial additions may be made unless specifically allowed by the terms of the Declaration; or if the Declaration does not so provide, then only with approval of seventy-five percent (75%) of the total voting interests. The purpose of this provision is to ensure that a purchaser of a condominium can anticipate that his property will remain as originally purchased and not subject to annual revisions by each new Board. Of course, the opposite position is that a condominium may remain pastel pink forever unless a change is authorized by the members.

It is well established that the Board may exercise a wide range of decision-making authority based upon the Business Judgment Rule. The Business Judgment Rule has afforded Boards the right to make certain changes in common elements. For example, arbitration decisions have held that worn Chattahoochee decking may be replaced with paver bricks and revisions to the common area landscaping plan may be made by the Board without a vote of the members.

The degree to which a Board maintains the common elements is clearly within its discretion. All decisions of the Board regarding such maintenance are

presumed correct, absent the showing of mismanagement, fraud or a breach of trust. The Business Judgment Rule even prohibits arbitrators from substituting their judgment as to the appropriate degree of maintenance.

The Board may employ and dismiss personnel necessary for the maintenance and operation of the common elements. Additionally, the Board has the authority to contract for management. When a manager is retained, the Board does not eliminate any of its own powers but merely gives the control of the day-to-day functions to the manager.

The Board of Directors, in maintaining the condominium, will eventually be involved in roof replacement. In repairing roofs, as with any other portion of the common elements, material alterations are not to be undertaken, however, the Board has the authority to make reasonable decisions under the Business Judgment Rule. An example of the authority of the Board on a re-roofing job would be the decision regarding the quality of replacement roofing and all of the associated specifications of the contract. The Board, however, would be prohibited from changing the type of roof, such as from shingles to roll roofing, or to change colors.

Another significant function of the Board is enforcement of the Declaration. It is within the business-making authority of the Board to determine when a problem should be addressed by the Association. A situation which exists only between two neighbors is not an Association issue. However, if a larger number of members are affected by one party's conduct, the Board may determine when to act.

One useful power of the Board is to appoint committees. The Board may appoint committees for any function it

(continued on page 10)



Powers and Duties, cont.

deems necessary to carry out Association business. If the documents allow fining, the Board may appoint a Fining Committee. The imposition of fines may allow the Association to control violations of its documents from within without resorting to litigation or arbitration.

Many condominiums have Directors who are part-time residents. The part-time residency of Directors may create a problem in establishing a quorum during the summer months. Unless the Articles of Incorporation or bylaws provide otherwise, the Board of Directors may,

by a majority of its full membership, designate from its members an Executive Committee. If given full authority, the Executive Committee may exercise all authority of the Board with the exception of: filling vacancies on the Board, revising the bylaws or approving or recommending to members actions required to be approved by the membership. The Executive Committee is used by many Associations.

As the Board is acting on behalf of the membership, it is essential that the Board keep appropriate records of all of

its meetings. In addition to providing authority for actions to be taken, the meeting minutes also create a corporate history which future boards will rely on and utilize.

The power and authority of the Board of Directors is to make all reasonable decisions to govern the condominium. The Board members should act as conservative businessmen burdened with the duty to maintain the status quo. Directors should rely on the written advice of professionals to limit their own personal liability.

Reserve Study Checklist

Every association should develop a long range plan to properly maintain common area components like roofs, siding, and decks. **HEALTHY RESERVE FUNDS ARE CRITICAL BECAUSE:**

- Buyers finding lack of reserves back out of real estate purchases.
- Lenders finding lack of reserves may not lend money.
- The board has a fiduciary responsibility to plan for predictable expenses.
- The costs of maintaining the property will be fairly shared by all owners.
- The reserve study provides a predictable maintenance plan.
- A healthy reserve fund helps maintain the highest market value of the homes.
- Adequate reserves help avoid special assessments which are both unfair and difficult to collect.

To conduct a reserve study, you need the following information:

- Component description
- Number of units per component
- Replacement cost per unit/component
- Year built or placed in service
- Life expectancy in years

The first step is to make a list of all common and limited common elements. These are defined in your association's governing documents. Some examples include: decks/patios, gutter and downspouts, roofing, siding repair, elevator renovation, fire protection equipment, pavement overlay and seal coating, restriping, pool equipment, furniture, pool replastering, fences and signage.

The following is an example of a reserve study component list.

RESERVE STUDY COMPONENT LIST

- | | | | | | |
|---|--------------------------------|---|---|--------------------------------|-------------------------------|
| • Governing Documents (Declaration, Bylaws) | • Clubhouse-Appliances | • Elevator Technology Update | • Lighting-Interior- (describe fixture) | • Pool-Pump | • Spa-Re-plaster |
| • Site Plan | • Clubhouse-Flooring | • Entry Access System | • Mailboxes | • Pool-Re-plaster | • Spa-Water Heater |
| • Blueprints (As Built) | • Clubhouse-Furniture | • Fence-Chain Link | • Office Equipment | • Roof-Composition Shingles | • Sprinkler System |
| • Current Year's Budget | • Clubhouse-Office Equipment | • Fence-Masonry or Brick | • Paint-Exterior | • Roof-Cedar Shingles/ Shakes | • Storage Units |
| • Most Recent Year End | • Clubhouse-Painting-Interior | • Fence-Wood | • Paint-Interior | • Roof-Flat-Built Up | • Tennis Court Net |
| • Financial Statement | • Clubhouse-Window Treatments | • Flooring-Carpet | • Path Reconstruction | • Roof-Gutters & Downspouts | • Tennis Court Fencing |
| • Current Reserve Balance \$ _____ | • Concrete Safety Repair | • Flooring-Vinyl | • Paving-Asphalt-Overlay | • Sidewalks/Driveways-Concrete | • Tennis Court Resurface |
| • Interest Earned on Reserves: _____% Bridge Reconstruction | • Deck & Deck Rail Replacement | • Flooring-Wood | • Paving-Asphalt-Sealcoat | • Siding & Trim Repair | • Tree Work |
| • Building Security System | • Doors-Building | • Flooring-Other: _____ | • Pond-Fountains & Pumps | • Signage-Building | • Window/Skylight Replacement |
| • Building Fire Detection System | • Doors-Entry | • Fire Sprinkler System | • Pond-Clean Up | • Signage-Main Entry | • Other: _____ |
| • Building Telephone System | • Doors-Garage | • Garage Door Operator | • Pond-Renovation | • Signage-Street & Directional | • Other: _____ |
| • Chimneys/Caps | • Doors-Parking Garage | • HVAC-Heating & Cooling Equipment | • Pool-Deck | • Signage-Street & Directional | • Other: _____ |
| | • Elevator Cab Renovation | • Landscape Renovation | • Pool-Filter | • Spa-Filter | |
| | • Elevator Safety Inspection | • Lighting-Exterior- (describe fixture) | • Pool-Furniture | • Spa-Pump | |
| | | | • Pool-Water Heater | | |