

Florida

www.flcaj.com

JOURNAL

COMMUNITY ASSOCIATION

JOURNAL

NEWS | INFORMATION | LIFESTYLES

January 2004

FORMERLY
Managers Report
MAGAZINE

2004

Salary Survey

2003
Article Index

Legally Bound
Employment Law
Part One

Bay Forest
Recipe for a Great Community



An Ounce of Prevention, a Pound of Cure. . .

by Phillip Croyle, Esq.

Apart from a heavy divorce practice, there is often no more emotionally draining area of law practice than that generally involving the complicated relationship of community associations with their members. Although owners/members, by virtue of their very purchase of their real property, have contracted with their neighbors to love and obey their communal restrictive covenants, board-enacted rules and regulations, enabling state statutes and implementing administrative regulations, it is essential human nature that no one likes to be told what to do or how to do it. Much like lovers whose relationship is in deep distress, boards and

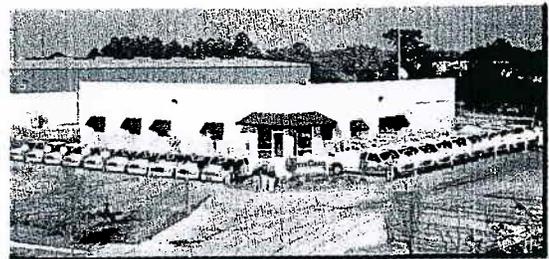
their members are often overwhelmed with the clash between voluntary submission to another and the resentment, frustrations, and anger such submission causes when carelessly managed.

That's where I come in and those like me—the association's counsel. Too many times we alone stride out of the smoking rubble of the former loving relationship after having used an arm of the state—our courts—to force another to do something often abhorrent to them, frequently at an unconscionable price to one of the combatants who has overestimated the strength of their position. Through proper planning, work, and commitment, managers and their boards can essentially retire us lawyers by remarkably limiting the crisis situations on which we thrive and for which you have no choice but to engage us. Here's how, in my humble opinion. I make no apologies for idealism, by the way.

All board members and their manager should have a working knowledge of

the association's bylaws and relevant statutes. Among attorneys, there's a certain knowledge that the attorney who usefully knows the rules of procedure can defeat another less adept. It's no different among directors, or in dealing with directors, or with members. Those who master specific procedure usually control outcomes, all other things being equal. Read the material, and read it with an appreciation for the subtleties of the English language. Remember, documents and statutes were written by attorneys who essentially do nothing more than read and write for a living. In the absence of another taking the time to read and understand the same material, of course we have the last word. Reading and understanding English is not reserved to attorneys. Just do the work and you and your boards are near level with your counsel's understanding of the procedural workings of your association. One caution—I have no solution for boredom.

Communicate with the members and encourage your board members to divest themselves of ego and pride in the outcome of honest disputes. It's been said that the tightest grip you can have on another is with an open hand—a very powerful play on words—with equal application to groups as well as individuals. All association business, apart from privileged discussions with counsel, should be utterly transparent to all involved. Notice meetings properly, and encourage member attendance. There should be no hidden agendas,



Roof & Exterior Cleaning For The Commercial World

Toll Free, (866) 86-**TERRA**

Fax Free, (866) 35-**TERRA**

Web Site, www.terraclean.us

TerraClean is owned by Alfred & Karen Lockyer who created Mallard Systems.



and conflicts of interest should be openly acknowledged and worked around or through. Seek meaningful member input in some reasonable way on all things before implementation. Ask questions, genuinely listen, and seek to understand all points of view no matter how inelegantly expressed. Recognize that honest people can honestly disagree and, to the extent possible, effectuate collaborative solutions. Whether a board member or manager, lose arguments gracefully—you simply failed to persuade. Your children will still love you and you haven't lost your day job.

Drill your directors and officers to know and appreciate the limitations on their authority. Directors have no power outside of the calling to order and adjournment of a properly noticed meeting of the board.

Officers have no more authority than that stated in the bylaws or specifically delegated by the board as reflected in the minutes of the meeting where the delegation occurred. Nothing promotes disharmony more than a director who exercises non-existent authority in and around the community or than an officer who acts or causes another to act using power outside of that properly appurtenant to the office. Crises of the type which cannot be met by the property manager rarely occur. Hold a special board meeting if you must; but, a deep breath and a thoughtful pause will do much to alleviate the urgency in any situation.

Encourage boards to use their lawyers before they think that they need them. There's some old saying that goes something like "A penny of prevention is worth a pound of cure." Please call us while the issues and stakes are still small and manageable, as when you're putting together your annual meeting package and have any question at all about notice, ballot/proxy language, or some other procedural question, or before your HOA tacks on those fine charges to an owner's account and the lien is in the recorder's office right before the owner is to close his mortgage refinancing. That's what we're here for and why most of us maintain our own professional liability insurance. Let us bear the burden and blame of making interpretations and having a final examination of written materials and procedural trails before things get out of your office or your board's hands to the members. Memorialize

Understanding the Needs of our Community Association Clients

PROJECT FINANCING

*Concrete Restoration • Roofing / Siding
Plumbing • Painting / Waterproofing
Irrigation Systems
Clubhouse and Recreational Facilities
Fire Safety Systems
Elevators • Windows • Security*

STATE OF THE ART LOCK BOX SERVICES

*Internet Web Based Technology
Image Capture of Checks and Coupons
Online "Stop" Orders
Online "Exception" Processing • Online Research
Automated Payment Posting
Direct Payments via ACH
Instant Bank Statements (e-statements)*

WE EVEN FINANCE INSURANCE PREMIUMS

Toll Free:
800-233-7164 ext. 143



www.kislak.com



our involvement for your records! Now—aren't you sleeping better already? And again—if you've done the work suggested and you think the advice or opinion your counsel is offering is off base in any regard, speak up. Rumor among most is that we're human and not deep water predators whose only instinct is to seek blood! We all may not walk entirely upright yet, but we do have much to offer while everyone is thinking clearly and positions have not become rigid.

Practice risk management as preached by your insurance agent(s). Have a walk-over bridge or lakes in your community that are attracting kids who then act recklessly? Ask your agent about preferred warning signs and follow through. Have a hot-headed director who comes perilously close to defaming members during board meetings? Consult your agent about the scope of your Directors and Officers coverage and make the hard call on the removal of the director, if need be. As with your counsel, memorialize the agent contact and comments received. Insurance companies do not make money paying claims, providing coverage, or fronting legal defense costs. They make money the old fashioned way—by collecting your rising premiums and exploring every avenue designed to deny coverage or defense. Classic. Playing a victim is so unbecoming, don't you think? So, don't put your boards or yourselves in that position. Ask, memorialize, and follow through.

Finally, be reasonable in all things, especially regarding your associations' rules and regulations. Unlike restrictions contained in recorded declarations, rules are not cloaked with the same degree of deference and enforceability if an alleged violation is vigorously defended. Identify a specific need, and design the rule to meet the identified need with the least possible intrusion on the life of your members. Make sure that all of the members are aware of the rules. Publish or disseminate all rules to the membership on the occasion of any addition, deletion, or revision to any rule. Revisit all of your existing rules periodically and strike or amend those whose reason for being has become muddled over time. Enforce your rules evenly and with utter disregard for race, nationality, familial status, sex, or orientation. Appoint serious and contemplative persons to your architectural review boards and violation/fine committees. Do not selectively enforce among owners/members (you'll know it when you smell it and certainly your lawyer will) and, by all means, eliminate your association's violations of its own rules. Have a prescription on fences on a lake maintenance easement? Then why, the judge will ask, does your common area clubhouse have a fence in that



LETTERMAIL/POST-LETTER STANDARD	GENERAL LITRE	STANDARD	GENERAL LITRE	LETTER MAIL STANDARD	GENERAL LITRE
.96	100	1.40	3.00		
1.60	150	2.60	5.20		
	200				
	250				
	300				
	350				
	400				
2.10	450	4.60	10.00		
	500				
	550				
	600				
	650				
	700				
	750				
	800				
	850				
	900				
	950				
	1000				

same easement area? What's the distinction, if any? If none, take the clubhouse fence down and don't wait to figure all this out until the eve of the trial attempting to enforce the restriction. You'll lose and all involved will have a really tough time at the next board meeting.

With just a little effort and some common sense, boards, members and their managers can minimize the stresses within their complicated relationship and noticeably reduce their legal budget line item, which is not a bad thing at all. I hope some of this helps in some small way. ■