

Advisory Council on Condominiums
Aventura City Commission
19200 West Country Club Drive
Aventura, Florida
June 28, 2007

Members present

Vice-Chair Peter Dunbar
George Geisler
Karen Tysenn
Melissa Van Dine
Paul Wean

Division staff present

Colleen Donahue
Kevin Stanfield
Carol Windham

Verification of timely publication of meeting notice in Florida Administrative Weekly.

PUBLIC INPUT

Tamaira Perez, parcel owner in Miramar Gardens, 530 units, homeowners' association. Stated that her major problem is the management company; she has reported the manager and his wife (a CAM complaint) to DBPR in 2004 and she is still waiting for action. The wife was acting without a license and DBPR ended up issuing her a CAM license. Asked how long does it take for this CAM (Robert Duggar) to be disciplined.

Kevin Stanfield stated that while the Division does not regulate CAMs, the department does, and he asked for the names of her contacts. Vice-Chair Dunbar reminds Ms. Perez that the Advisory Council does not address HOAs or CAMs, but that Mr. Stanfield will research her complaints as a courtesy. Member Wean asked if the CAM is using attorneys in these foreclosures; Ms. Perez stated yes, and Member Wean asked if she's filed complaints with Florida Bar. Ms. Perez stated yes, twice, but after receiving a complaint number she never heard from them again.

Ms. Perez stated that someone should regulate HOAs; she felt that there is no regulation, so the criminals seek out the HOAs. She felt that when filing the CAM complaint, she had to do all the investigative work and then hand it over to DBPR.

Jalelle "Doe"; condominium unit owner in Coconut Grove (did not want to give her last name or name of the condominium); she read a statement about Becker & Poliakoff, stating that they represent boards only, not unit owners. Felt that Becker & Poliakoff employees serving on the Advisory Council are not participating to help unit owners but only to report to other lawyers, then hurt the unit owners. Asks that he (Member Joseph Adams) remove himself from the Advisory Council. She also asked that Governor Crist and the House of Representatives close DBPR's "CAM division" because even if a CAM is licensed or unlicensed, or steals their money, the CAM division does not enforce the statute by issuing fines or revoking licenses and allows CAMs to continue stealing their money.

Member Tysenn asked if her association has paid their \$4 annual fees – Ms. Doe answered yes. She also stated that the same board has been in place for 30 years, and no other unit owners will raise any concerns or run for the board. She filed a complaint against the board with the Division; Financial Examiner Supervisor Pat Flynn issued violation letters and fines, but unit owners ultimately have to pay for these fines. She also stated that she has been harassed and sued for filing a complaint with the Division.

MOTION: Member Wean, that the Florida Legislature pass a general SLAPP suit statute

SECOND: Member Tysenn

VOTE: Motion carried (Vice-Chair Dunbar dissenting)

Discussion ensued: Member Wean stated that he believes it would be a mistake to put the SLAPP suit statute into condominium law; felt that most SLAPP suits are related to developers, not associations. Felt it would be a mistake to pigeonhole in either the condominium or HOA statute, instead thought there should be a general prohibition against SLAPP suits.

Charlotte Greenberg; President of Broward Coalition, representing 200 HOAs and condominium associations. She believes in the balanced consideration of unit owners and board members, keeping in mind that associations are comprised of strangers who are volunteering to run a quasi government. Many are unfamiliar with process of running associations. Her group is affiliated with the Space Coast Condominium Association. Stated her support for keeping separate condominium and HOA statutes. Also felt there should be term limits for board seats on a rotating basis, but understands problems of small associations getting members to serve on board.

Stated that she understands why the Ombudsman position was created but sees problems. Has seen improvement with the new Ombudsman – now it's more neutral and balanced. Thinks everyone needs to look at the Ombudsman's Office as relating to DBPR; problems with DBPR's authority and with the Ombudsman's authority – who does what? She thinks department is overwhelmed. Vice-Chair Dunbar stated that he appreciated her suggestions and felt that DBPR has fallen into a situation where it is difficult for them to respond; ten years ago there were 100 more employees. Cost cutting efforts have reduced their ability to educate and enforce.

Member Wean asked her about revisions to the statute regarding insurance. Ms. Greenberg stated that unit owners carry insurance for what happens inside their condominiums, so it would be logical that the common elements outside be covered by association. Let the two insurance companies fight it out if there is a large casualty. Stated that mandatory insurance coverage for unit owners would be a good idea.

Lisa MacGill; shareholder with Becker & Poliakoff; represents condominium and homeowners' associations in Dade, Broward and Palm Beach County. Also serves as President of South Florida CAI. Stated that her primary concern, and the concern of CAI and CALL, is the reconstruction and repair of casualty damage. Section 718.111(11), as of January 1, 2005, requires the association to insure all original construction of condominium building. The association's deductible for losses, especially wind losses, is a very large number - sometimes over a million dollar deductible. This mandate by the Division (the Plaza East Declaratory Statement) has created a myriad of problems. Felt that when someone is purchasing a condominium, the buyers should be entitled to rely

on the declaration to determine their exposure in terms of repair and maintenance.
(Same for the association)

Felt that this punishes unit owners who have been proactive in maintaining and improving their properties – installing code compliant shutters, maintaining shutters, impact windows, etc., to insure and protect their unit against losses in a storm. If those owners are responsible for prorated costs of repairing units belonging to owners who have not taken these steps to protect their properties, it serves as discouragement to engaging in future maintenance and protection. What is their incentive in engaging in proactive maintenance programs? Stated that some associations may want the ability to allocate expenses against owners, and this should be an option open to associations through amending their condominium documents.

Stated that this issue needs to be addressed legislatively, giving unit owners and associations the ability to choose and expect what their responsibilities will be after a casualty.

Stated that her second issue (on her own behalf, not on behalf of CAI or CALL) related to the administrative costs incurred in complying with records inspection requests. None of her associations will argue that unit owners have rights to inspect records but thinks mandating a response within 5 days can be burdensome. Many boards don't have offices and the records are in various locations; if the request is voluminous, it is problematic for boards to comply within time restraints. It's also a cost issue – with associations that have hired managers, the CAMs have become more inclined to charge the association a fee for tending to records inspection requests and they can be substantial. Not advocating limiting the right of owners to inspect, view or obtain copies of records. But compliance with the time restraints in the statute is burdensome and maybe alternatives should be proposed to assist associations, especially small ones, or find a way to pass the costs along to the person making the request.

Member Tysenn asked if records could be placed online for easy access. Ms. MacGill stated that even if they were online, she doesn't think that would comply with statute. She appreciates the suggestion, but some owners do not have the capabilities to do this in an electronic format. Member Wean expressed concern about proposal of putting some records on online; even if password protected, could potentially allow many others to view records that are not intended for public view.

Member Wean asked for her suggestions to revise section 718.11(11); she stated that the association should be responsible for insuring common elements and those parts of the property that the association is responsible for maintaining, as specified in declaration.

Craig Hannon; unit owner in Ft. Lauderdale, 552 units in his condominium association. Stated that he attended town hall meeting sponsored by Representative Robaina in North Miami, and he wishes the Advisory Council had been there to hear horror stories that were discussed at that meeting. He has filed complaints and has gotten satisfaction with DBPR in getting board to fix the roof; stated that DBPR has helped him greatly. Stated that the problem is not with DBPR but with Chapter 718; felt that there are a lot of loopholes and it protects associations, not unit owners. Stated that associations have lawyers and big law firms; where does the unit owner go for help? Most average owners can barely afford maintenance fees, so they can't afford to pay for a lawyer.

Also described fraud arrests made in Hallandale, in the condominium embezzlement case. Thinks this could be going on all over South Florida. Asked Council to speak to legislature and help unit owners being abused with no term limits. Felt that term limits should be added to the law – 2 year terms. Also asked that DBPR go in and audit all the associations to show where money is going and make sure money is being spent appropriately.

Vice-Chair Dunbar asked about small associations and term limits; Mr. Hannon stated that he understood it would be a problem in small associations, but most associations in his area are large.

Beverly Kennedy; unit owner, Waverly at Los Olas, 395 unit condominium. Stated that unit owners come from around the world and some don't speak English. Felt education is lacking for boards. Her condominium was a conversion; she was a renter and bought a unit. Developer put into bylaws that each commercial unit has 16 votes; therefore the developer can pick board. Owners should only have one vote per unit regardless of residential or commercial. Developer has Becker and Poliakoff as their attorneys.

Stated that the Ombudsman is nice but she has not lived in condominium. Thinks they need a local ombudsman in South Florida to help solve problems on ongoing basis.

Barbara Winn: unit owner and board president, Waverly at Los Olas Condominiums. Stated that she had a few issues to share with Council; felt that in light of current economy and the increasing amount of foreclosures, associations are losing money. Since becoming president, she has stepped up referrals for foreclosure to limit the association's exposure; asks if council might consider revising statute. Currently asking owners to pay for delinquent owners and cover the costs. A community ombudsman could have grievance process to limit people's use of facilities as punishment.

Norman Caplan; unit owner in Sunrise (did not want to name community). Felt that meeting notice was buried in newspaper. He lives in a senior community. Stated that term limits won't work in his community because nobody wants to serve on the board. Term limits would work if people would show up, but he can't get enough people to run for a real choice in the election, so the same people serve. Thinks majority of board members are honest and hard working volunteers. Problem is that new unit owners need to be educated (not just board members) because new residents don't know they need insurance, for example. Stated that unit owner insurance should be mandatory; people don't even know about assessment insurance. Meetings are poorly attended.

Tamaira Perez spoke again to the Council; she asked to see a change in the attorneys who represent boards; instead of representing the board, they should represent the association members. Felt that association members never find out what goes on between board and attorneys. Asked for a law requiring attorney to represent the association members, because board in her community works for the management company. Stated that timely records access worries her because she's had bad experience accessing records. Felt that her association dragged out process so that they can falsify documents and provide false records to different parties – one for judge, one for DBPR, etc.

OLD BUSINESS

Insurance Issues

MOTION: Member Tysenn; to redraft section 718.111(11), F.S. for presentation to legislature

SECOND: Member Geisler

VOTE: Motion carried unanimously

MOTION: Member Wean; to prepare draft language to allow documents to specify insurance responsibilities.

AMENDED

MOTION: Member Wean, that section 718.111(11), F.S., be substantially revised to provide that mandatory coverages will be based upon the responsibility that either association or unit owners have to repair the property.

SECOND: Member Geisler

VOTE: Motion carried unanimously

Discussion ensued regarding the motion; Member Wean agreed to prepare draft language for review at Friday's meeting. Draft language will give Council a starting point and hopefully allow Council to then obtain input from insurance experts.

MOTION Member Wean; to make unit owner insurance coverage mandatory; and if not purchased by the unit owner, the association can make the purchase

SECOND: Member Van Dine

VOTE: Motion carried (Tysenn dissenting)

MOTION: Member Tysenn; that there be a required notice provision, for the unit owners, at the time the deductible amount is set

SECOND: Member Van Dine

VOTE Motion carried unanimously

MOTION: Member Wean; to base deductible based upon AMI appraisal and industry standards

SECOND: Member Geisler

VOTE: Motion carried unanimously

MOTION: Member Van Dine; to adjourn meeting

SECOND: Member Geisler

VOTE: Motion carried unanimously

Meeting adjourned at 8 p.m.