



PUD Quarterly

Condo Ombudsman to Speak at POAP Meeting—March 22

Don't miss our next POAP meeting, Thursday March 22nd at the North Collier Regional Park!

We have assembled an impressive roster of presenters, highlighted by our keynote speaker, Danille Carroll, Florida's Condominium Ombudsman. Ms. Carroll directs the State office that fields the many questions and concerns that condominium boards and owners have regarding condo associa-

tion operations and management.

The Ombudsman and her staff prepare educational material for association board members and condo owners. In addition, the office appoints people to monitor condominium elections, makes recommendations for legislation, and prepares reports for the Governor, the State House and Senate, and the Department of Business and Professional Regulation.

Canvassing the state to meet with as many condo associations as possible has kept the Ombudsman very busy. We are pleased that she is available to bring her message to Collier County's community association leaders. We know that you will find the Ombudsman's perspective on condo association issues to be informative and enlightening.



Association Tax Time Tips

Many condominium and homeowners' associations are surprised to learn that their not-for-profit organizations are required to file annual tax returns.

Most associations file as a regular corporation under Internal Revenue Service Form 1120, or as a homeowner association under IRS Form 1120-H. Certain criteria must be met in order to file Form 1120H, generally having to do with characterization and sources of the association's income and expenses. Associations that file Form 1120H are not required to file a Florida income tax return.

An association's federal tax return is due the fifteenth day of the third month after the end of the tax year (i.e., if your fiscal year ends December 31, you must file your annual federal tax return by March 15 of each year, unless an extension has been filed).

Associations may receive a filing extension of up to six months, but to do so, your association must file an extension request form *and* pay any expected tax due by the original return filing deadline.

The lack of taxable income never eliminates the need to file. If previous boards failed to submit tax returns, the current board is *not* absolved from filing a return for the current year or for any previous year. Clearly, if you've just taken over an association that's never filed a federal tax return, you should consult a CPA as soon as possible.

When seeking professional accounting services, look for accountants qualified in procedures for "CIRA's" (Common Interest Realty Associations). You will be pleased with the decision to hire a pro in the event of an audit.

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Meeting Announcement:
Property Owners Association Presidents
Thursday, March 22, 2007
10:00 A.M. to 2:30 P.M.
North Collier Regional Park
16100 Livingston Road
Park Exhibit Hall

Proxies and Elections

March is a busy month for many HOAs and condo associations throughout Collier County. Perhaps the most significant association activity during the month is the association's annual meeting. Old business and goals set at the previous years' meeting are reviewed to gauge how well association plans were carried out. Plans for the coming year are presented and new business is introduced. But the most important piece of business conducted at the annual meeting of the association is the election of members to the board of directors.

As with many aspects of HOA and condominium governance, procedures for conducting elections differ between the two. Although the Homeowners Association Act (Chapter 720, Florida Statutes) does not prohibit proxies from being used in the election of directors, your HOA's governing documents – typically, the bylaws – may prohibit their use.

Conversely, the Condominium Act (Chapter 718, Florida Statutes) prohibits proxies from being used in the election of directors but many condo associations

choose to opt out of this requirement. Section 718.112(d)(8) of the Condominium Act states, "...an association may, by the affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its by-laws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy."



Check the governing documents if you are unsure of what is allowed in your association.

If proxies are allowed for electing directors in your association, be sure that you understand the guidelines. Proxies in both HOAs and condominium associations must be dated, signed, and state the date, time, and place of the meeting for which the proxy is given. Once tended, the proxies must remain part of the association's official records for at least one year. Specific requirements for condominiums can be found in Chapter 718.112 (2)(b), F.S. and 61B-23.002 (1) and (2), F.A.C., and 720.306 for HOAs.

Proper procedure must be followed in executing a valid proxy. Failure to adhere to the rules could disqualify your vote and potentially expose your association's election to challenge from the membership.

Attend Board Meetings By Phone

A point of confusion for some association members surrounds the legality of board members taking part in a regular or special meeting via speakerphone. The short answer is that remote participation is allowed – thankfully so, since more than a few board members are seasonal residents and may be unable to be physically present on the day of the meeting.

Telephone conferencing is permitted by provisions found in Chapter 617, Florida Statutes, the Florida Not For Profit Corporation Act, which, along with Chapter 718 and Chapter 720, governs most community associations in Florida.

The law further requires that a speakerphone or similar device be available at the official location of the meeting, so that any owners in attendance can hear what each director has to say,

and each director on the telephone can hear comments at the meeting site. A director participating in a meeting by this means is deemed to be present in person at the meeting. In addition, directors participating remotely via telephone can be counted towards determination of a quorum and on roll call votes taken at the meeting.

The traditional manner of how board members convene to conduct association business will no doubt change in the years ahead. Expect to see more remote participation by board members as communication technologies mature, providing greater logistical flexibility. Of course, the Legislature will have to address the extent of what is permissible, so, stay tuned!



Board Members Can Participate Remotely

Construction Lien Law

Perhaps your board has appropriated association funds to completely remodel the clubhouse, updating the kitchen and workout room at great expense with all the latest appliances and equipment. Or maybe you are an association property owner who has recently remodeled your bathrooms or added that spa you've always wanted in your pool area. The contractor who coordinated these projects came highly recommended and displayed an impressive portfolio of his prior work. Glad to put the disruption that remodeling can cause in the past, you look forward to getting things back to normal in the community and enjoying the fruits of all that planning.

But, wait – you discover to your dismay that your highly regarded contractor (whom you have paid) has not paid the subcontractors and suppliers. Such circumstances can arise for a number of reasons – dispute between the contractor and subcontractors, dispute between the contractor and the association, disputes

over the quality of materials supplied, etc. Bottom line, you are left with a number of unhappy (and unpaid) subcontractors and material suppliers, exposing you to the threat of liens being placed against your property.



Found in Chapter 713 of the Florida Statutes, the Construction Lien Law outlines the process that associations and property owners must follow to avoid liens being placed against property if a subcontractor or material supplier is not

paid. Failure to follow the process could result in an association or property owner paying twice for the same work.

Compliance with the law includes:

- **Filing a document in the public records as a “Notice of Commencement”**
- **Cataloguing notices from potential lienors known as “Notices To Owner”**
- **Securing “Lien Waivers” from potential lienors as progress payments are made, and Final Lien Waivers when final payment is made.**

By following the Construction Lien Law, owners can be assured that upon completion of construction and payment of the contract price, your property will be free and clear of all liens.



Let's Be Crystal Clear

It's no secret that Collier County's beaches are a top draw for residents and visitors alike. National travel publications regularly cite the 17 miles of pristine beaches along Collier County's coast as among the best anywhere. In fact, in 2005 the Travel Channel named Naples as "America's Best All-Around Beach."

Coastal tourism, dependent in part on clean beaches, generates substantial revenues for state and local governments. It is also abundantly clear that polluted waters cause economic losses when beachgoers cannot use the beach or swim in the water.

Preserving and protecting the area's natural beauty for all to enjoy is everybody's business. Sadly, there are far too many examples of spoiled environments caused, in part, by indifference and a pervasive “let the other guy worry about it” attitude.

Fortunately, Collier County residents have shown a genuine concern for keeping our beaches in world-class condition and a willingness to join community conservation initiatives. Though evident to most of us, it bears repeating that we must all do our part in maintaining this treasured resource.

Here are some simple measures we can all employ:

- Conserve water
- Use such natural fertilizers as compost for gardens
- Maintain septic systems
- Properly dispose of animal waste, litter, toxic household products, and used motor oil

Adopting just these few practices can significantly reduce the amount of pollution in coastal waters.



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Our Mission :
To deliver to our residents and visitors
local government services that
exceed all expectations



Reviving Governing Documents

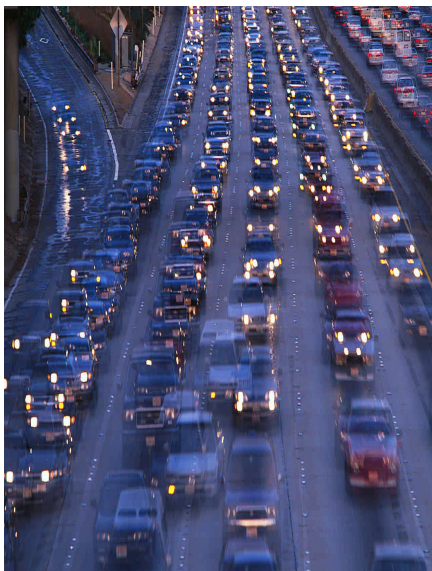
Homeowners' associations that wish to reinstate covenants that were extinguished by Florida's Marketable Record Titles Act may do so by following the procedures found in 720.403-407, F.S.



In general, to revive a declaration of covenants, parcel owners of a community must initiate an organizing committee comprised of community members. The committee must prepare the declaration of covenants and have a majority of affected parcel owners approve it. Then the proposed revived declaration must be sent to the Department of Community Affairs, which has 60 days to review it for compliance with the statutory requirements. If the proposed revived declaration is approved by the Department, it must then be recorded with the clerk of the circuit court in the county where the affected parcels are located. The revived governing documents are effective upon recording.

Important Service From the State

The Florida Department of Highway Safety and Motor Vehicles is now offering an emergency contact information registration.



This is a free service that may save lives. Here is how it works:

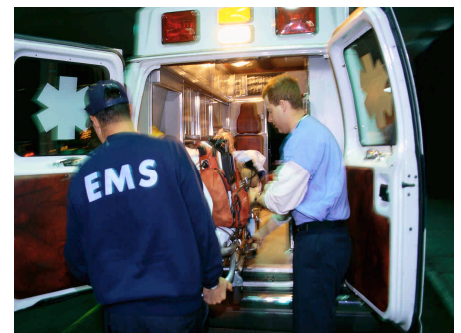
If you are ever in an accident and are injured and unable to speak, the officers will be able to type your driver's license number into their computer and, if you have registered your emergency contact information on the DHSMV web site, they will be able to pull up your contact information immediately.

By having access to this information at the accident site, emergency personnel will be able to save time if you are seriously injured by being able to contact someone who can make decisions about your care. If you live by yourself or have teenagers that drive, it is even more important to register. If you have elderly parents or relatives who are still driving, this may also be a valuable resource.

The process is quick and easy and you are allowed to enter two emergency contacts.

Only those with Florida driver's licenses or Florida I.D. cards can register.

Follow the link below to register:
<https://www6.hsmv.state.fl.us/dlcheck/findcustomer>



According to a 2005 report by the Florida Department of Highway Safety and Motor Vehicles, nearly 750 accidents per day occur on Florida's roadways.