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New Penalties for Financial Reporting Violations

October 22, 2018

By: David G. Muller

Q: I heard there was a new law that punished condominium associations who failed to timely provide a copy of the annual financial report. Is this true? What are the penalties? S.U. via e-mail

A: You are referring to a recently revised provision within the Condominium Act which became effective on July 1, 2018. The new provision clarifies that if a condominium association fails to comply with a request of the Division of Condominiums, Timeshares and Mobile Homes (the "Division") to provide a unit owner with a copy of the annual financial report, as a punishment the condominium association may not waive the financial reporting requirement for the fiscal year in which the owner's request was made and the following year. The previous version of the law did not specify for how long the association was prohibited from waiving the financial reporting requirement. The new law further clarifies that the waiver prohibition is for a maximum of two years. You should also note that this new penalty only applies when the association fails to respond to a Division request to provide a copy of the financial report to a unit owner.

Q: I live in a large community made up of single family homes, governed by a homeowners association. The pool cleaning company that is under contract with the association to clean the large community pool at the clubhouse also cleans the individual pools of several of the board members. Isn't this a conflict of interest and prohibited by Florida law? The board members say that they pay the pool company the going rate for this service at their home but this just doesn't seem right. B.V. via e-mail

A: There are provisions within the Homeowners Association Act which prohibit contracts between an association and a company when one of the board members from the association has a financial interest in the subject company. There are also restrictions contained within the Homeowners Association Act which prohibit board members from receiving "kickbacks" for awarding contracts on behalf of the association. That being said, there is no statutory prohibition which would prevent a board member from retaining for their individual swimming pool the same pool company which is under contract to clean the community swimming pool, as long as the subject board member is paying the going rate for the service and not receiving a quid pro quo discount as a result of their position on the board.

Q: I timely submitted my written notice to run for the board of directors of my condominium association. I was notified that I was not a proper candidate for the board because of an unpaid fine imposed against me last year. The fine was improper and I challenged it at the compliance committee hearing but it was still imposed. I did not pay the fine because it was illegally imposed against me. Am I a proper candidate to run for the board? L.A. via e-mail

A: The Condominium Act states that a person who is delinquent in the payment of any monetary obligation to the condominium association is not eligible to be a candidate for the board. The Condominium Act further confirms that eligibility to run for the board is established 40 days before the annual meeting and election. Further, an unpaid fine is considered a monetary obligation, which means that you are not a proper candidate for the board as a result of the unpaid fine. If you feel that the fine was illegally imposed against you by the association that is a separate legal issue that you may want to discuss further with a licensed Florida attorney to understand your rights to challenge the fine.

Attorney David G. Muller is a shareholder with the law firm of Becker & Poliakoff, P.A., Naples (www.beckerlawyers.com). The information provided herein is for informational purposes only and should not be construed as legal advice. The publication of this column does not create an attorney-client relationship between the reader and Becker & Poliakoff, P.A. or any of our attorneys. Readers should not act or refrain from acting based upon the information contained in this article without first contacting an attorney, if you have questions about any of the issues raised herein. The hiring of an attorney is a decision that should not be based solely on advertisements or this column.

Editor's Note: David G. Muller is a Board Certified Attorney in Condominium and Planned Development Law with Becker & Poliakoff, P.A., which represents community associations throughout Florida, with offices in Naples, Fort Myers and 10 other Florida cities. The Firm focuses a substantial amount of its practice on condominium and homeowners association law. Attorney Muller responds to your community association questions. Send questions to Attorney Muller by e-mail to dmuller@beckerlawyers.com.