

## C.S.I.: Common Area



### *Dog DNA Registration for Poop Crackdown*

By **Lance Clouse, Esq.**  
lclouse@becker-poliakoff.com



Has crime scene investigation gone to the dogs? In some communities, the answer is yes! Tired of dealing with complaints of dog owners not picking up their dog's waste, some community associations have taken dog poop into their own hands, metaphorically speaking.

Dog waste can become a problem for communities that allow pets. Aside from being unsightly "land mines", pet waste left in common areas can also create health and safety issues for community associations, including contributing to water pollution and spreading parasites and bacteria. Traditionally, unless someone witnessed an owner failing to pick up the waste after the dog had finished doing its business, the "crime" would go unsolved. Today, with the miracles of modern science, the dog poop scofflaws can now be brought to justice. There are now companies, such as PooPrints ([www.pooprints.com](http://www.pooprints.com)), that provide DNA dog poop matching services to assist property management companies and association boards with addressing their

pet waste issues. According to PooPrint's online information, they maintain a "patented DNA World Pet Registry" to add and manage community pets, in order to facilitate matching collected poop samples to the correct dog (and their loving owners). According to PooPrint's promotional materials, "Every pile of unscooped dog waste has a unique DNA 'pooprint' that can be used to identify the specific pet".

How does it work? The pet owner is supposed to swab the inside of the dog's DNA-rich cheek to obtain a sample, and then the swab is mailed to the lab for analysis and registration. The theory is that once most or all of the dogs on the property have been registered, dog owners will be more inclined to pick up the pet waste in order to avoid being fined or having other enforcement actions taken against them. In fact, PooPrints' website boasts about property manager testimonials that claim their community experienced "an almost immediate reduction in pet waste between 75 to 100%" after implementing the DNA registration program.

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# Back To Basics

## *The Condominium/Cooperative Association Election Process*



By Mark Friedman, Esq.  
mfriedman@becker-poliakoff.com



As annual meeting season is once again upon us, a review of the basics for condominium elections is in order.

### First Notice - 60 days notice

- Required unless your condominium consists of 10 units or less and the association has opted out of the statutory election process.
- Do your documents require the owners to appoint a voting representative? If so, this is a good time to send out a Certificate of Appointment of Voting Representative.
- Don't forget to complete the Affidavit or proof of notice.

### Notice of Intent - Due 40 days prior to the date of the scheduled election

- The prospective candidate has the burden of proof notice was delivered on time.
- Extensions not permitted.
- Eligibility determined upon submission of notice of intent.

### The Candidate Information Sheet - Submitted 35 days prior to the annual meeting

- Limited to one side of an 8 ½ x 11 inch page.
- Candidates given wide latitude as to what they can say - do not edit, alter or modify the content.

### Second Notice of the Annual Meeting - Must be sent in accordance with the Bylaws but no less than 14 days prior to the annual meeting and election.

Include the agenda, a proxy (if applicable), ballots & envelopes (if there are more candidates than open positions) and any other relevant documents.

### Two Envelope System

- Outer envelope addressed to the Association or other person/entity authorized to receive the ballots (i.e. management company) with space for:
  - ~ Name of voter/unit owner;
  - ~ Unit numbers and
  - ~ Signature line.

- Smaller inner envelope also furnished to owners.
- Owners of multiple units may enclose several separate inner envelopes which are required in a single outer envelope.
- No "do-overs". Once the ballot is received, it cannot be changed or rescinded.

## Ballot

Section 61B-23.0021, Florida Administrative Code, provides certain requirements for the appearance and handling of the ballots.

- All candidates listed in alphabetical order by surname.
- Cannot identify incumbents on the board.
- Write-in candidates are not allowed.

## FATAL FLAWS in the Election Process

Failure to follow the procedures for giving the first notice of the date of the election.

Failure of the written ballot to indicate the name of each eligible candidate.

The failure of an association to mail, transmit or personally deliver a copy of a timely delivered information sheet from each eligible candidate to the eligible voters.

## Board Certification

Self-certification or proof of attendance at class approved by the Division is required. Please check with your Association Attorney to learn about free board certification classes by the Firm in your area.

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At the time this article was written, the registration fee for each dog is \$29.95, and the analysis of waste collected "at the crime scene" is \$49.95. The company provides a Waste Sample Collection Kit for \$10.00, which includes a small spatula and proprietary collection solution in a "leak-proof container." The company's information instructs the person collecting the sample to collect a nickel-sized amount of waste into the container, "shake well," and mail it to their lab for analysis. They claim that they will provide results in as little as 5-10 days from receipt of the sample. Once completed, the manager or board member can log on to the website to match the sample with the registered dog and take appropriate enforcement action. Of course, if a dog is not registered, then you may not know whose pet is the culprit, but perhaps the process of elimination may be helpful as well.

Of course, as with all new advances, there can be practical problems, such as effectively implementing such a program and obtaining enough participation by the dog owners to provide a meaningful number of registered dogs in the community. In addition, as was the case before this option existed, a community would still have difficulty with enforcing the rule against visitors with unregistered dogs, or owners who hide their pets and fail to participate in the registration program. As positive incentives to get dog owners to participate, some asserted benefits to the dog owners

who register with the program include: secure on-line storage of pet vaccine records, veterinarian records and genetic profiles; access to coupon codes and discounts on pet supplies, and avoidance of being hassled for dog waste that was not your pet's. However, inevitably, some owners will view the registration program as an invasion of their privacy (or their dog's privacy?) and refuse to participate in a program initiated by the "Big Brother" association.

If voluntary compliance with the Association's DNA program is not effective, the association may need to consider amending its use restrictions and pet policies to give the association more authority to compel participation in the DNA registration program, or the program will be of little use. Consult your community association attorney to discuss what options your association may have to implement an effective DNA pet program in your community (but please leave the evidence at home).





# Maximizing Rental Income



By **Andrew Provost, Esq.**  
[aprovost@becker-poliakoff.com](mailto:aprovost@becker-poliakoff.com)

A common problem facing associations is generating cash flow from foreclosed units owned by an association. Often leasing a foreclosed unit is the most practical solution but this too can present a number of issues. Association owned properties are typically subject to pending or imminent mortgage foreclosure actions that, upon completion, will strip the association of ownership. Due to these circumstances, prospective tenants are left with uncertainty regarding the ultimate duration of their lease and fear that they may be immediately evicted upon completion of the mortgage foreclosure. As a result, many associations find it difficult to obtain tenants willing to enter into a long

term lease or pay a rental rate on par with market value.

Tenants and associations should be aware of the Protecting Tenants at Foreclosure Act of 2009 (the "Act"). The Act is a federal law designed to protect tenants from eviction because of foreclosures on properties they occupy. The Act was originally set to expire on December 31, 2012 but was extended until December 31, 2014. If the Act applies to the association's lease with a tenant, the tenant is afforded some protection from being immediately evicted upon completion of the mortgage foreclosure. A 90 day notice to vacate is required to be given to the association's tenant if the new owner following the mortgage foreclosure sale intends to occupy the unit as his or her primary residence or sells the unit to a person that intends to occupy the unit as his or her primary residence. If the new owner does not intend to occupy the unit as his or her primary residence, the new owner must honor the entire lease term. Therefore, if the Act applies to the association's lease, the association's tenants will be afforded at least 90 days notice before facing eviction or may be able to remain in the unit for the duration of their lease.

The association's lease with the proposed tenant must first qualify for the protections afforded under the Act. The Act applies to any "bona fide" written lease agreement with a tenant. A "bona-fide" lease is defined as an arms-length transaction between the association and the tenant where the rental rate charged for the lease is not substantially less than fair-market value and the lease is entered into prior to the date on which title is issued to the new owner following the mortgage foreclosure action. It is important for prospective tenant to understand that all of these elements must be met in order for him or her to obtain protection under the Act. For example, if the prospective tenant tries to negotiate a rental rate significantly lower than other rentals in the community, the prospective tenant should be informed the low rate could result in the new owner immediately seeking to evict him or her from the unit upon completion of the mortgage foreclosure action. Most importantly, associations should consult with an attorney before entering into any such lease to ensure the rental agreement adequately protect the association in the event the lease is properly terminated short of full term.

In summary, the Act can be utilized by associations assist in maximizing the rental potential of association owned units while providing an association's tenants protection from being evicted without reasonable notice.