

The Latest App

As a Board member, have you ever wished for a Smartphone app that would write the minutes of your Board meeting? If you are on a condominium or cooperative Board member, have you ever wondered what the deadlines are for the various steps and notices leading up to your annual meeting and election? Do you ever have basic questions and wish you could push a button and have the answer delivered instantly? Those features and more are now provided in the revolutionary new community association app from Becker & Poliakoff.

Minutes of Meetings

The Becker and Poliakoff app allows you to set up basic information, such as the names and titles of the Board members and the quorum requirement from your Bylaws. Thereafter, every time a meeting is called to order, the app uses the Smartphone's internal clock and calendar and logs in the date and time the meeting was called to order as well as the time it was adjourned. As each agenda issue is discussed, you enter the topic and the vote required and, tap next to the Board member's name whether the director voted "for", "against" or "abstained" on the issue. At the conclusion of the meeting the report may be emailed to the secretary or others of your choice and printed out for your minute book.

That Helps Board Members of Community Associations

Annual Meeting Calculator

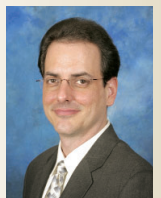
For condominium associations and cooperative associations there are four major hurdles to any annual meeting and election: 1) the first notice mailed to the members 60 days prior to the date of the meeting; 2) the date the notices of intent are due, 40 days prior to the annual meeting; 3) the time frame for receiving candidate information sheets from the unit owners, 35 days prior to the date of the annual meeting; 4) and the second notice of the annual meeting which is 14 days prior to the meeting unless the Bylaws require a longer time frame. On the app you enter the date of the annual meeting, tap one button and all of this information populates the screen.

Questions and Answers

Some of the most commonly asked questions are answered in short video clips from the head of the Firm's Community Association practice group. If one of the listed questions is a concern you share, tap the question on the screen and you will be linked to a video response. It is like having an attorney in your pocket.

Clients of the Firm

While the app is for both clients and non-clients, our clients are able to check on their collections activities through a link to the web portal as well as connect to the Community Association Legislative Lobby.



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Contracts for GREEN Construction



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Many contracts used in green building projects are not always ideal for green building projects.

Often, contractors, design professionals, or owners will use their old standard construction contracts. But those forms might not take into account some of the nuances or issues that can arise on a sustainable project.

For example, green building contracts should strive to be more specific about what the green goal is. Terms like “green building”, “sustainable building” or “high-performing building” lack the specificity of what the goal is. Further, it is not enough for the owner to say it wants LEED platinum rating, or LEED certified, or Green Globe? There is a difference. Or, maybe the goal is to save money on electricity, or to reduce the amount of water consumed. Those should be specifically identified, so if the goal is not achieved, there will not be confusion as to what the goal was. Confusion often leads to a dispute, which often leads to litigation.

The contract should also reflect who is responsible for achieving the project’s green goals. It can be the architect, an engineer, or contractors and sub-contractors or suppliers. Each segment of the construction project should be aware of what

responsibilities it is undertaking in the green building process. And, they may want to get paid more for taking on the added risk.

The aforementioned should also be aware of what guarantees they are making in terms of sustainable performance or certification. If an architect undertakes the responsibility of achieving a certain level of certification, and that goal is not met, the contract should be clear about what the repercussions are. Or, the contract can address what happens when a component such as an HVAC system does not achieve the level of performance a contractor represented. If

the contract is silent, the design professional, contractor, or whomever may find themselves facing a lawsuit for breach of contract.



In some cases, an alternative to a guaranty is to allow for performance bonuses based on the certification or performance levels achieved. In other words, a contract will describe a base fee for services on the project, and then allow for additional compensation depending on level of certification the building gets, or based on the level of performance of the building after occupancy. This is helpful because it can be difficult to guaranty these levels on certain projects. There are some form contracts out there that are tailored for green construction projects. But just about every project is unique and generally there is no one size that fits all. So, before you sign that green building contract, whether you are an owner or part of the construction team, and whether its for new construction or even a renovation or retrofit, make sure you are contractually protected, and that everyone is on the same page as to the green goals.

continued from page 4 Casualty Repairs

However, a condominium association may, upon the approval of a majority of the total voting interests, opt out of the statutory provisions for allocation of repair or reconstruction and may allocate, repair or reconstruction expenses in the manner provided in the Declaration as originally recorded. Many Declarations of Condominium as originally recorded provide that uninsured losses caused by casualty within a unit are to be borne by the individual unit owner. Absent such an opt out vote, any repairs necessitated by a casualty loss which must be insured by the Association must also be repaired by the Association if insurance proceeds are unavailable.

This obligation to repair in the event of casualty is different from the obligation to perform routine maintenance and repairs. Routine maintenance or repairs of the various elements of the condominium property will be governed by the terms of the individual condominium documents. Every set of condominium documents differs in this regard. For detailed advice you should therefore contact your association attorney.

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Statutes

One of the biggest problems with looking up the Florida Statutes on a Smartphone is that they are not searchable. The app allows for you to enter key words and search Chapters 718, 719, and 720, Florida Statutes.

Maps and Directions

By allowing the GPS on your phone to be used, the nearest Becker and Poliakoff office will be listed and you will be given directions to the location.

Devices

The app is designed for Apple Smartphones and iPads as well as Android phones and pads.

Questions, Concerns, or Recommendations

We want you to enjoy using the app and invite your comments. Send your questions about the app (not legal questions) to CondoLaw@bplegal.com. Our goal is to make this a useful tool for you and your community association. Your comments, suggestions and ideas for other features and functions are welcome.

The Becker and Poliakoff app is designed to be an informative, educational tool and is not recommended as a substitute for consultation with your community association attorney.



DEADLINES *to* SUE for BUILDING DEFECTS



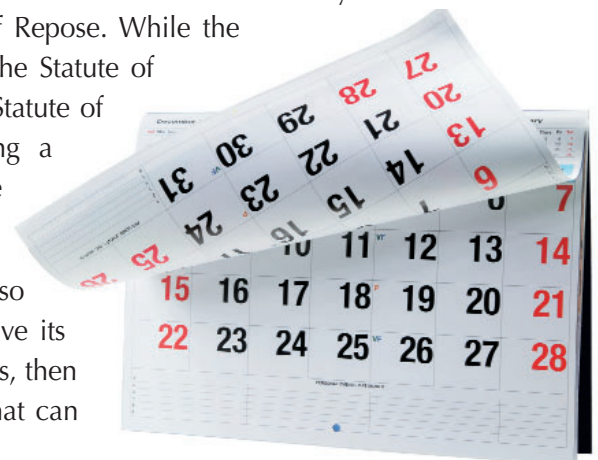
By **Scott Kiernan**
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Condominium Associations in Florida should always beware of looming deadlines if it believes it was saddled with construction defects before turnover from the developer.

Condominium owners in Florida are very fortunate to have various legal rights for construction defects against the parties responsible for the selling, design and construction of a Condominium unit. If the construction defects are widespread throughout the Condominium property, the Condominium Association can bring construction defect claims on behalf of all owners. However, nothing lasts forever, especially the right to sue for building defects.

In Florida, the time frame (Statute of Limitations) within which a Condominium Association may file a lawsuit for construction defects on behalf of its owners is only 4 years from the time the Condominium Association knew or should have known of the defect(s). But what if that 4 years has passed and new defects are just discovered? There may still be time. A Condominium Association may still pursue a claim for *latent defects*. A latent defect is one which is not discovered through the exercise of due diligence, for the period of 4 years from the time the defect was actually discovered. But this too does not last forever, because of something called the Statute of Repose. While the Condominium Association may still be able to file a lawsuit under the Statute of Limitations for 4 years from the time the defect was discovered, the Statute of Repose cuts off all construction claims after 10 years, preventing a construction defect lawsuit from being filed after 10 years from the date the building received its original Certificate of Occupancy.

The critical questions to ask is when did this defect rear its ugly head so as to be considered *latent*, and did the Condominium building receive its Certificate of Occupancy within the last 10 years? If the answers are yes, then your Condominium Association may still be one of the lucky ones that can seek construction accountability, via a lawsuit if necessary.



CASUALTY REPAIRS VS. ROUTINE MAINTENANCE

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Pursuant to Section 718.111 (11), Florida Statutes, every residential condominium in the State of Florida must obtain adequate property insurance. All insurance policies may include deductibles as determined by the Board which must be consistent with industry standards. Every property insurance policy issued or renewed after January 1, 2009 must provide primary coverage for all portions of the condominium property as originally installed or replacements of like kind and quality in accordance with the original plans and specifications. Such coverage must, however, exclude all personal property within the unit and all floor, wall and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and window treatments within the boundaries of the unit.

Pursuant to Section 718.111(11)(j), Florida Statutes, any portion of the condominium property that must be insured by the Association against property loss which is damaged by an insurable event, shall be reconstructed, repaired or replaced as necessary by the Association as a common expense. All property insurance deductibles, uninsured losses and other damage in excess of insurance coverage are the responsibility of the Association as a common expense unless such damage was caused by the intentional conduct or failure to comply with the rules of the Association by a unit owner.

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