COMMUNITY COUNSEL

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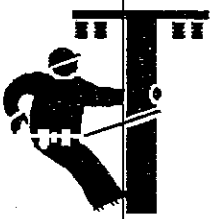
RECENT CASES

- DRAFTER OF GOVERNING DOCUMENTS COULD NOT REPRESENT AN OWNER AGAINST AN ASSOCIATION SEEKING TO ENFORCE THOSE DOCUMENTS.
- WHERE ASSOCIATION STIPULATED THAT SKYLIGHTS ARE ENERGY SAVING DEVICES, IT COULD NOT REFUSE TO ALLOW OWNER TO INSTALL THEM IN COMMON ELEMENT ROOFS.

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

PARKING OF EMERGENCY RESPONSE VEHICLES

Sometimes a conflict arises between an Association's restrictions on parking commercial vehicles and the need of some vehicles to be on call 24/7. A typical situation might involve an electric line repair vehicle that a utility company gives to its linesman, so that the linesman can be called and respond immediately to emergency calls.



Because of the company logo on the vehicle and the obvious configuration of the vehicle for carrying tools and supplies, the daily presence of such a vehicle on driveways and streets creates a violation of the declaration's covenants or the community's published rules.

When challenged by community, the resident pleads overriding necessity and a superior right under law to park the vehicle in the community. The question presented is whether the Association must allow the vehicle, notwithstanding its documentary authority.

IS THE VEHICLE OWED BY A UTILITY AND USED TO PROVIDE EMERGENCY SERVICES?

The answer is that it depends. Among the factors involved in determining the answer are the nature of the vehicle and the company who owns it and the job of the resident who drives it. It also depends on the county ordinance in place in the county where the community is located. While some county ordinances are silent on the issue, others do indeed make provision for parking of emergency response vehicles in residential communities. If local ordinances permit the vehicle to be parked, it should be presumed that there is a strong public policy related to public safety and convenience that may override the private covenants and rules of communities. In appropriate situations, therefore, the Association should yield to the superior authority of local ordinance.

However, while there are many companies that can make a plea of necessity, not all are covered by such an ordinance. A typical ordinance will be limited to utility companies, and such a limitation does not extend to companies like cable TV repairmen, bottled water carriers, septic tank cleaners, ambulances or the like.

In addition, the resident must actually be involved in providing the emergency services. The marked vehicle of a manger or administrator probably would not be permitted under such an ordinance.

If the county has no ordinance on point, or if the vehicle doesn't provide emergency services for a covered company you may continue to enforce your documents according to their terms.

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RECENT CASE SUMMARIES

In **Estright vs. Bay Point Improvement Association, Inc.**, 31 Fla. L. Weekly D643 (Fla. 1st DCA 2/27/2006) Owners sought a writ of certiorari to quash an order of the circuit court granting Association's motion to disqualify Owners' attorneys. Association filed a claim of lien against Owners arising out of Owners' refusal to pay Association for various speeding tickets incurred by Owners' guests and contractors. In response to the claim of lien, Owners counterclaimed against Association for slander of title, deceptive and unfair trade practices, and breach of contract and fiduciary duties. Association then moved to disqualify Owners' attorney based upon the fact that the attorney drafted the documents that enabled Association to place a lien on Owners' property. After hearing argument from both sides, the trial court granted the motion. On appeal, the First District Court of Appeal noted that an "order involving the disqualification of counsel must be tested against the standards imposed by the Florida Bar Rules of Professional Conduct." These rules prevent a lawyer who has formerly represented a client from representing another person in the same or a *substantially related* matter in which that person's interests are materially adverse to the interests of the former client. In its motion to disqualify, Association made the requisite allegations of conflict of interest. In light of Association's prima facie allegations, which Owners did not contest, the appellate court affirmed the order disqualifying Owners' legal counsel.

In **Sorrentino vs. River Run Condominium Association, Inc.**, 31 Fla. L. Weekly D679 (Fla. 5th DCA 3/3/2006), Association brought an action against Owners to require them to remove two tubular skylights installed in the roof and ceiling of their condominium unit. Owners brought a counter suit for an injunction to prevent the removal of the skylights. Owners installed the skylights without the prior written consent of Association. Initially, Owners sought permission to install two tubular skylights "similar to the one installed in . . . . various other units in the community." This request also stated that the work would be performed by a reputable company and it also attached the specifications and a description sheet of the skylights. Association discussed the application at a board meeting and the application was tabled because the board members believed that they needed more information. The board requested that a representative of the company appear to provide answers to questions from the board. However, the installation company responded that it did not have a representative available to attend the next scheduled board meeting. The board made no further attempt to obtain additional information on the application. Because no further additional information was provided, the application was denied at the next board meeting. Even though their application was denied, Owners went forward with their plans and installed the skylights. The trial court noted that the roof was a common element of the condominium and under at least two provisions of the governing documents, prior written approval of the board was required before a structural alteration of the unit and or common elements could be made. When Association learned of the installation, it demanded Owners remove the skylights out of concern that the installation would jeopardize both the roof and the exercise of Association's responsibility for the roof as a common element. Owners responded with a letter to Association and for the first time, they informed Association that the skylights were solar collectors and that pursuant to Section 163.04, Fla. Stat., Owners did not need Association's approval to install the skylights. When Owners refused to remove the skylights, Association filed suit seeking the removal. After a bench trial, the trial court granted the relief requested by Owners, denied the relief requested by Association, and denied an award of attorneys' fees to Owners. On appeal to the Fifth District Court of Appeal, Owners argued that they are entitled to an award of reasonable attorney's fees as the prevailing party pursuant to the Florida Statutes and the governing documents of Association. The appellate court noted that the lawsuit was filed *after* Association was put on notice that the skylights were solar devices. Contrary to Association's arguments, its remedy at that point was not limited to filing a lawsuit for mandatory injunction. Association could have required Owners to submit documentation and proof that the devices came under the protection of section 163.04, Fla. Stat., and it could have obtained a roof inspection to determine the quality and competency of the installation, at Owners' expense. At trial, Association stipulated to both of these facts. It follows that Association could not have forbidden permission to install the skylights and that although Owners should not have installed them without prior written permission, no damage was done. The appellate court noted that a party who prevails on the primary substantive issue in the case is ordinarily entitled to an award of attorneys' fees and costs. In this case, Owners prevailed on the primary substantive issue and as such, Owners were entitled to an award of fees and costs.

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