

ACTHA & NEWS UPDATE

Association of Condominium, Townhouse & Homeowners Associations 343 S. Dearborn, Room 304 • Chicago, Illinois • (312) 987-1906

OCTOBER 1994

COMMENTARY

(By: Steven Heuberger, President of Villa Management, can be reached by writing Box 93 in Vernon Hills, 60061 or calling 708-367-4808. They are supporting members of ACTHA.)

(Steve raises some interesting points. We welcome comments to pass on to our members or to Steve.)

Homeowner and condominium boards of directors should consider the following subjects in respect to their future conduct.

Minors

Many associations hire minors as lifeguards, pool attendants and construction workers, etc. Although this may be a wonderful opportunity for minors to obtain gainful employment and defer the cost of their education, nevertheless, it poses a serious financial risk to the association.

The hiring of minors may be defined as illegal, pursuant to the Illinois Child Labor Law Act. The definition of a legally employed minor can be found in the aforementioned Act. I suggest boards or their management companies review that Act before hiring any minor under the age of 16, due to the great financial risk it may present to the association. Essentially, illegally employed minors are any minor under the age of 16 or minors working in certain hazardous occupations.

One of the hazardous operations mentioned in the act is working about or in connection with power driven machinery. Since pools operate with such machinery, it is not difficult to make an argument that a minor pool attendant or lifeguard is an illegally employed minor.

Illegally employed minors have an option to waive the Workers Compensation Act and sue their employers under the common law. Should that situation arise, the association would be uninsured, due to the fact that most general comprehensive liability policies exclude coverage for causes of action brought by an employee of the insured arising out of and in the course of their employment, or by their spouse, child, parent, brother or sister of that employee. In addition, the defense of assumption of risk and comparative negligence are not permitted in a situation where there is an illegally employed minor. Therefore, associations are better advised not to hire minors, unless they can confirm that they would not be defined as illegally employed, and meet all of the necessary requirements demanded by the Illinois Child Labor Act.

continued on next page.

Clinton Health Insurance

Assuming that the Clinton Health Insurance Act passes in some form and ends up mandating that employers contribute to the health insurance of all employees, it could seriously impact the bottom line of all associations.

Although the specifics of the proposed health insurance legislation are unknown, it appears that part-time and full-time employees would be covered. If mandates are imposed, that would seriously impact the budgets of every association who hires part-time and full-time employees. Since many associations are composed of retirees who live on fixed incomes, it does not take a genius to see how this could seriously affect the well-being of those individuals and/or associations.

Associations and the Right to Attorney's Fees

All of us who are familiar with condominium or homeowner associations are familiar with Declarations which provide that the association has a right to recover reasonable attorney's fees under certain circumstances when it sues unit owners. The right to recover attorney's fees is contractual, based upon the Declaration, which each owner takes when they purchase their unit.

There is now talk that what is good for the goose is good for the gander. To those who think so, please think again.

Most boards of directors are composed of individuals who are very hard working and civic minded, and have the best interest of their association and the preservation of property values at heart. I am sure there are some exceptions, and unfortunately it is always the exceptions that get the most publicity. But the majority of the situations are not exceptions. Board of directors have the burden of administering the administration. With that duty comes the responsibility of making policy decisions, etc., some of which may not be popular with all the owners.

If the owners are unhappy with policy decisions, they have the ultimate solution of electing other people to serve on the board of directors at the next annual meeting. They do not need an additional weapon in their arsenal, which will act as an incentive to sue the board of directors for policy decisions that they deem unfavorable to their own self-interest. If judges complain that there are too many condominium and homeowner association lawsuits already on file, can you imagine the increase in the case load if unit owners are allowed to recover attorney's fees by suing boards?

It is time that the Illinois legislature begin supporting and protecting boards of directors, or there will not be any individuals who will submit themselves to the abuse that goes with the territory, as well as the time spent in litigation on minor issues.

Finally, it is time that the legislature realize that when you buy a condominium or a unit in a homeowner's association, you take responsibility for that decision. The obligation rests on the purchaser to follow the provisions of the Declaration, by-laws and rules. It is time that the legislature stop considering everyone who buys a condominium, etc. a victim of the "Big Bad Board."

(One could say being on a board is similar to being a politician: You're damned if you do, and damned if you don't. Can you imagine citizens being granted the right to recover legal fees for suing their elected officials for not following through on their promises. Imagine that! Perhaps awarding attorney's fees isn't such a bad idea after all.)

In conclusion, it might be a good idea for people who are members of condominium and homeowner associations to write their congressional representatives, both state and federal, to point out potential risks and increased costs that certain changes in the law could present.

BOARD OF DIRECTORS

OFFICERS:

President: Beth Lloyd Vice President: Sooti Linn
Secretary: Lucille Wenzel Treasurer: Bud Hermans

DIRECTORS:

Lita Brody Dorothy Lackey Charles Watson
Executive Director: Guel Mennicke Legal Advisor: Charles VanderVennet, Kovitz, Shiffin, Waitzman
Accounting and Tax Advisor: Garry Chanin, Frost, Ruttenberg & Rothblatt, C.P.A.

Note: Materials in this publication may not be reproduced without the express written permission of ACTHA. The statements and opinions in this publication are those of individual authors and ACTHA assumes no responsibility for their accuracy. ACTHA is not engaged in rendering legal, accounting or other expert assistance. If required, the services of a competent professional should be sought. Acceptance of advertising in the ACTHA newsletter does not constitute endorsement by ACTHA or its officers of the advertised products or services. The publisher reserves the right to reject any advertising.