



MEMO

Date: January 29, 2004

Re: Condo Regulation

Issue: Whether a director of a condominium association can be personally liable for the selective enforcement of a condominium regulation.

Florida Statute §617.0834 sets forth the standards of performance required of directors of a not for profit corporation. The statute essentially provides that directors are *immune* from liability in their individual capacity, absent fraud, criminal activity, or self-dealing/unjust enrichment. *Fox v. Professional Wrecker Operators of Florida, Inc.*, 801 So.2d 175 (Fla. 5th DCA 2001).

The courts allowed personal liability of condominium directors in very few instances.¹ The few cases in existence deal with the individual director gaining a personal, monetary benefit at the expense of the condominium association (self-dealing/unjust enrichment). For example, in *Munder v. Circle One Condominium, Inc.*, 596 So.2d 144 (Fla. 4th DCA 1992), the developer-director was found to have breached his fiduciary duty by failing to renew the fire insurance on the development's clubhouse, yet the fourth district did not hold the director personally liable. The *Munder* court reasoned that the individual directors cannot be held liable for negligent actions even if such actions were clearly erroneous. *Id.* Further cases illustrating the court's reluctance to impose personal liability on condominium directors include:

- a. *Taylor v. Wellington Station Condominium Association, Inc.*, 633 So.2d 43 (Fla. 5th DCA 1994) (holding that in order to hold a director, who was a shareholder in developer's corporation and who had failed to collect monies from developer to

¹ There does not exist a case whereby a court considered imposing liability on a director due to his or selective enforcement of a condominium regulation.

- the detriment of the condominium association, individual and personally liable, there must be evidence of willfulness)
- b. *Olympian West Condominium Association, Inc. v. Kramer*, 427 So.2d 1039 (Fla. 3d DCA 1983) (directors are not personally liable for failure to correct construction defects)
 - c. *Bodin Apparel Inc. v. Superior Steam Service, Inc.*, 328 So.2d 533 (Fla. 3d DCA 1976) (directors not personally liable in tort action despite failure to provide workers compensation insurance for employee).
 - d. *Perlow v. Goldberg*, 700 So.2d 148 (Fla. 3d DCA 1997) (directors could not be liable where directors had failed to properly administer the insurance funds)

Therefore, pursuant to case law, the only way to impose personal liability on an individual director is to show that the director has committed an act or omission in bad faith or with a malicious or evil purpose. Although “bad faith” is not defined in *Florida Statute §617.0834*, the term bad faith has been equated with the actual malice standard. *Parker v. State of Florida Board of Regents*, 724 So.2d 163 (Fla. 1st DCA 1998). In order to show actual malice, a party must show that there was an evil or malicious intent. *City of Hollywood v. Coley*, 258 So.2d 828, (Fla. 4th DCA 1971). In addition, maliciousness means without reasonable cause, out of ill will and with a desire to do harm for harm’s sake; a wrongful act without reasonable excuse. *K-Mart Corp. v. Sellars*, 387 So.2d 552 (Fla. 3d DCA 1983).

Accordingly, unit owners of condominiums will face serious difficulty when attempting to hold an individual director liable for his or her actions. In most cases, the courts will not allow cases to go forward which attempt to impose liability on a director because he or she took actions in his or her role of director.