



**Is Your Association
Considering a Large Project?
Will Your Association Need to
Borrow Funds to Complete the
Project?
If so, is the Project Properly
Approved?**

By: Damon M. Kress, Esq.

Virtually every association has at least one of two mechanisms in place to prevent the board from embarking on projects that are so costly that the association is required to finance the project through a bank loan. The first mechanism limits the association's "power to spend." In these instances a provision is included within the governing documents limiting the association's ability to spend, more than a predetermined sum, on any given project without first securing approval from a specific percentage of the community's membership. These provisions provide the membership an opportunity to pass upon what the governing documents classify as "large" projects before the board obtains the authority to spend those funds. These provisions also protect the membership against being compelled to pay for a large project unless a sufficient percentage of the community agrees that the project is necessary.

The second mechanism that may be included within an association's governing documents limits

the association's "power to borrow" in order to fund a specific project. In these instances a provision is included within the governing documents limiting the association's ability to borrow more than a predetermined sum without first securing approval from a specific percentage of the community's membership. These provisions provide the membership the opportunity to pass upon whether the association should be permitted to borrow funds to complete what the governing documents classify as "large" projects before the board obtains the authority to borrow those funds. These provisions also protect the membership against being compelled to repay loans for large projects unless a sufficient percentage of the community agrees that the project is necessary.

Although your governing documents may not include both provisions, if either provision is present, the association's board of trustees should be cautious about attempting to secure a bank loan to finance a large project without first securing the membership's approval. In an Unpublished Opinion issued on January 22, 2013 in Claridge House One Condominium Association, Inc. v. Claridge House Owners for Justice, et al., 2013 N.J. Super.

Unpub. LEXIS 135 (App. Div. 2013) the Appellate Division of the New ION Jersey Superior Court affirmed the trial court's decision limiting the association's power to borrow money unless it first obtained the membership's approval to spend the money on the project for which the funds were borrowed. This "Unpublished Opinion" is not officially binding on any courts throughout the state. However, it should provide board members insight in what it likely to happen should their association fail to heed its warning. ■

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FHA Recertification

By: Scott K. Penick, Esq.

In 2010, the Department of Housing and Urban Development (HUD) turned the financing of FHA mortgages upside down by announcing the end of spot approvals for condominiums and a new requirement of biannual community-wide certification for FHA mortgages.

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Many condominium associations went through the process of obtaining initial FHA approval, but the two-year recertification period has now come and gone – or is approaching expiration – for many of those communities.

WHEN TO SEEK RECERTIFICATION:

Condominium associations can seek recertification up to six months before and six months after the expiration date of their FHA certification, which is good for a two-year period

This process is essentially identical to the process of obtaining the initial FHA certification – with minor tweaks in HUD's documentation requirements.

Associations should calendar the expiration dates of their certification to ensure that recertification can be obtained without a gap. When associations wait to seek recertification until a potential buyer discovers that s/he cannot obtain an FHA mortgage, unit sales often fall through due to the typical six to eight week approval process. Since many industry commentators suggest that 30% to 40% of condominium mortgages are FHA-backed, FHA certification should increase the potential market for buyers of condominiums in an association.

BARRIERS TO CERTIFICATION:

Whether an association is seeking initial certification or recertification, the following issues are the most common barriers that prevent associations from obtaining FHA approval:

- Delinquencies are in excess of 15% of the membership.
- There is ongoing litigation that is not covered by insurance- Especially litigation involving construction defects.

-Rentals exceed 50% of the total number of units.

- There is inadequate reserve funding – less than 10% of the annual budget. ■

Scott Penick, Esquire is the Chair of McGovern's Corporate Law Group.

Understanding a Unit Owner's Right to an Assistance Animal

By: Karen A. Benton, Esq.

More and more associations are facing the issue of emotional support and assistance animals. Often, these animals do not present any problem for an association, but what happens when an emotional support or assistance animal violates the association's pet policy? In those instances, several factors weigh into the decision making process to determine whether a medical necessity claim is valid and whether the requested accommodation is reasonable.

Anti-Discrimination Laws

Most of the law regarding pet restrictions has developed in the landlord/tenant realm, but similar application of the law has been growing in associations. Several protective statutes have been interpreted as requiring exceptions to pet restrictions for animals providing "emotional support" in addition to animals that have traditionally been thought of as assistive, such as seeing-eye dogs or hearing dogs for the deaf.

However, individuals cannot claim an exception to pet restrictions for "emotional support" without a medical basis and a letter or a prescription from a medical doctor or psychologist. The person requesting the exemption must have an actual disability.

According to a 2004 statement released by HUD, a housing provider may request reliable disability-related information in response to a request for a reasonable accommodation that (1) is necessary to verify that the person meets the Act's definition of disability, (2) describes the needed accommodation. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.

If an association chooses to challenge a medical necessity claim and enforce its pet restrictions, the person requesting the accommodation has the burden of proving a four-part test in order to succeed in a claim against the Association. Under the Fair Housing Administration Act (FHAA), the person requesting the accommodation must prove

1. He or she suffers from a handicap as defined in the FHAA;
2. The Association knew of the handicap or should reasonably be expected to know of it;
3. Accommodation of the handicap is necessary to afford the resident an equal opportunity to use and enjoy the dwelling; and
4. The association refused to make such accommodation.

Regarding the "necessity" of the animal (part 3 of the test), in the 2004 case of *Oras v. Housing Authority of City of Bayonne*, the court determined that the following factors should be evaluated:

1. The extent plaintiff's ability to function is facilitated by the accommodation;
2. The training the animal received; and

3. The [defendant's] existing policy of permitting certain tenants to have [other types and sizes of animals].

Each situation is extremely fact specific and requires a balancing test of all the facts.

Reasonable Accommodations

The FHAA prohibits housing discrimination based on several classifications, including "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a disability] an equal opportunity to use and enjoy a dwelling." Along with the tests noted in Part I, above, courts frequently determine whether a requested accommodation is reasonable by using a balancing test that would weigh the association's economic or aesthetic concerns against the disabled person's benefit from the accommodation. It is essentially a cost-benefit analysis.

It is important to note that a reasonable accommodation does *not* have to be specific compliance with the person's request. In *Jones v. Aluminum Shapes, Inc.*, the court explained that a reasonable accommodation is "the duty ... to attempt to accommodate the physical disability" but it is not a duty "to acquiesce to the disabled [party's] request for certain benefits." For example, a person is not necessarily entitled to have an animal of any size or to bring that animal anywhere on the property.

In order to maintain uniform enforcement, any association facing challenges to its pet policies should pass a resolution; laying out the specific requirements a unit owner must meet in order to be allowed to have an assistance animal in the community. ■

Upcoming Speaking Engagements

Cost Saving Resolutions and Reducing Delinquencies

Hosted by Michael Polulak, Esq. & Ryan Fleming of JGS Insurance

**Thursday July 24th, 2014
6:00pm**

**Salt Creek Grille
4 Bingham Avenue
Rumson, NJ 07760**

***Please RSVP by Friday July 18, 2014**

Via email to mpolulak@TheAssociationLawyers.com or by phone 732-246-1221

Past Events

Patricia Hart McGlone, Esq. spoke on the handling of property damage claims in a community association at an education session during the Community Association Institute Delaware Valley and Pennsylvania Chapter 2014 Annual Conference and Expo on April 24, 2014 held at Citizens Bank Park, Philadelphia. Managers in attendance received continuing education credit.

Pat presented the legal perspective on property damage claims. The other speakers were Jennifer Wojciechowski, JD, of Community Association Underwriters of America, to present the insurers perspective and Robert Strickland of Unlimited Restoration, to explain the restoration company's role after a loss

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