LEGAL BEAT

a production of Glazer & Sachs, P.A. and CONDO CRAZE & HOAs.

THANKS TO YOU – WE WON THREE YEARS IN A ROW!

On behalf of everyone at our law firm, THANK YOU for voting for Glazer and Sachs, P.A. as best association law firm in the State of Florida. After the votes were tallied we are truly honored to say we've come out on top, being awarded the highest level by the voters, Diamond **for the third year in a row**!

Please know that whether it's representing you in court, at administrative proceedings, attending your meetings, talking to you on the radio or teaching you at our seminars, we appreciate getting to know you and we are humbled by the opportunities given to us to help you. We will continue to do our best to earn and keep your confidence, and support.

Again, thank you.

BUILDING A WALL

Suppose your condo President was able to prove that as a result of not having a protective gate or wall around your community, there is resulting crime and trespass? Can the Board of Directors simply order a gate to be built around the community? The answer is YES. In Williams v. Sky Harbour Condominium Apartments, the arbitrator held that unit owner approval was not required for the construction of a fence on the condominium property where the condominium building, located in busy Tampa Bay, was vulnerable to intrusion by persons without any legitimate connection to the project. The incidents ranged from potentially serious attacks on persons, to trespass on the property and in the pool, to theft of property, and to unauthorized fishing. See also Southridge Homeowners Association, Inc. v. Barbieri, Arb. Case No. 94-0382, Summary Final Order (December 27, 1994)(association could have properly determined to install security lights without a vote of the owners if there existed convincing factual predicate that the board's action was necessary to protect the common elements or inhabitants from a known danger). In the instant case, the association demonstrated that people with no legitimate business on the condominium property had entered the property from the UniVest parking lot; a few thefts, a break-in and vandalism had occurred; trash from the parking lot was blowing into the condominium property; and a large number of unit owners felt unsafe and worried about the potential theft of their cars without a fence between them and the UniVest parking lot. In short, a threat existed. Installation of a fence was a reasonable response to this threat.

Welcome Aboard!

As our readers know, our firm's practice is devoted to representing community associations and their owners, around the entire state.

OUR LAW FIRM INCLUDES ATTORNEYS WHO ARE EXPERTS AND SPECIALIZE IN ALL ASPECTS OF FLORIDA ASSOCIATION LAW.

We are proud to announce the addition of the following associations as our clients:

AVILA CONDO ASSOCIATION – Sunny Isles Beach

BELLA VISTA LAKE CONDO ASSN - Kissimee

CASA NOVA CONDO APTS - Hollywood

COCO PALMS HOA – Coral Springs

EL-AD ENCLAVE AT MIRAMAR CONDO - Miramar

HILLCREST #7 - Hollywood

IMAGINATION FARMS HOA – Cooper City

LAGO MAR NORTH LODGE CONDO – Fort Lauderdale

MEDITERRANEAN AT ISLANDS AT DORAL HOA - Doral

OCEANVIEW BLDG A CONDO – Sunny Isles Beach

PARK PLACE AT THE LAKES CONDO –Palm Beach Gardens

PATIO HOMES OF PINE RIDGE - Plantation

PINES OF DELRAY NORTH – Delray Beach

RIVIERA POINT BUSINESS CENTER CONDO -Doral

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TUSCANY PROPERTY OWNERS ASSN – S. Palm Beach

VILLAGGIO COMMUNITY ASSOCIATION - Kissimee

VILLAS SOCIAL CLUB - Lauderhill

We certainly appreciate the trust and confidence placed in our firm and look forward to working with everyone in your communities.

Eric M. Glazer

CONDO CRAZE & HOAs

OUR BOARD CERTIFICATION AND LEGAL UPDATE 2019 COURSE IS BACK!!!

Join us and our sponsors **March 14, 2019** at Dave and Buster's in Hollywood for this year's first event! Check-in and buffet dinner starts at 5pm.

The law now provides that within 90 days of getting elected to a condominium or homeowner's association Board of Directors, you must get certified or you are removed from the Board. One way to get certified is by attending a state approved course. Attorney Eric Glazer has designed a course that was approved by The DBPR, which allows him to certify attendees as eligible to serve on a Florida condominium or H.O.A. Board of Directors.

OUR RADIO SHOW! It has been so much fun to broadcast the Condo Craze and HOAs Radio Show for the past ten years. We so enjoy discussing legal issues, speaking with our listeners live on the air and answering your questions each Sunday at 11:00 a.m. Condo Craze and HOAs is broadcast live on 850 WFTL in South Florida, and listened to throughout the state by downloading the 850 WFTL app on your cell phone or by going to www.850wftl.com. All past shows can also be listened to by going to: www.condocrazeandhoas.com. We hope you tune in and contribute to the dialogue.

Other Board Certification Classes –for Condos and HOAs

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March 7th 2019 5:00 pm	Panama City @ The Shrimp Boat Restaurant
March 14th 2019 5:00 pm	Hollywood - Dave and Busters
March 29th 2019 9:00 am	Naples – New Hope Center – at the L&L Condo and HOA Expo
April 9, 2019 9:00 a.m.	Miami - James Knight Center– at the L&L Condo and HOA Expo
April 17, 2019 9:00 am	Palm Beach Convention Center – at the L&L Condo and HOA Expo
April 24th, 2019 9:00 am	Broward Convention Center – at the L&L Condo and HOA Expo
April 29, 2019 9:00 am	Tampa Convention Center – at the L&L Condo and HOA Expo
Reserve early	at www.condocrazeandhoas.com

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For the past 25 years, our firm has included attorneys who specialize and are experts in Florida association law and have counseled thousands of clients on all issues facing associations or their members.

Our practice is primarily devoted to community associations and owners. Additionally, our litigation, mediation, arbitration, construction and appellate practice has decades of experience before state and federal trial courts, all appellate levels and both state and municipal administrative forums.

ABOUT OUR FIRM……..

Eric Glazer: Our firm is proud to announce that as of June 1st, 2018 Eric was part of the first ever group of attorneys in the state to become Board Certified in Condominium and Planned Development Law. Out of over 77,000 attorneys in the state, only 127 are Board Certified in this area.

Richard Sachs is a certified federal court mediator and both he and Eric are certified by the Florida Supreme Court as state Circuit Court mediators. Richard also serves as the co-chair of the Construction Law Section of the Broward County Bar Association.

James Earl previously served as the Chief Arbitrator for the Division of Condominiums, Timeshares and Mobile Homes for nine (9) years.

Pennie Mays is Board Certified in Construction Law by The Florida Bar and has spent her career representing associations against developers and contractors and other commercial litigation.

Ralph Ruocco has been representing associations on their collection matters for nearly fourteen (14) years. In addition, he concentrates on reinstating HOA declarations that have expired, with the Department of Economic Opportunity.

Paul Kim is practicing for 11 years and devotes much of his time to litigation in state and federal court and arbitration including but not limited to service and emotional support animal issues, disability and discrimination law, rule compliance and complex bankruptcy issues.

Our firm prides itself on our ability to represent associations and their owners on any legal matter that comes their way. Whether it's representation in the courtroom, in administrative hearings, attending your meetings, answering your calls, speaking with you on the radio or teaching you at our seminars, it is always an honor and a pleasure to serve you.

Our Wonderful Sponsors

Operating in Dade, Broward and Palm Beach, TPMG specializes in management of HOAs and condominiums. Troy Modlin is the CEO of TPMG and has a background in law, insurance and education. He has serviced communities for the past ten years in South Florida. "As the founder of TPMG, I provide every Board Member with my personal cell phone number so they can reach me at any time to discuss any situation. My goal as the owner is to make sure my company and its employees always over delivers. I will always deliver on my promises." To reach Troy, give him and his staff a call at: (954) 640-0291

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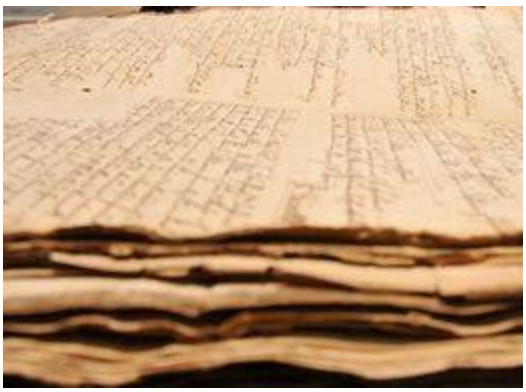
SUPER Lawyers: The firm is proud to announce that once again, attorneys Eric Glazer and Richard Sachs have been nominated by their peers as Super Lawyers in the State of Florida.

MAJOR NEW RESPONSIBILITY FOR HOA DIRECTORS



As many officers and directors of Florida homeowner associations have learned the hard way and now know, the governing documents in a Florida homeowner's association expire if not properly "preserved" within thirty years of the documents originally being recorded. That's right. Suddenly, you are living in a community not governed by any covenants and restrictions, no enforcement provisions, no authority of a Board and no obligation for owners to follow the rules or even pay assessments.

Florida Statute 712, The Florida Marketable Record Title Act, "MRTA" is the culprit.

A Florida homeowner's association was always able to "preserve" the documents from expiring by a vote of 2/3rd's of the Board, proper notice to the community and the filing of certain documentation in the public records. Many boards knew the importance of meeting the deadline to preserve the documents and many did not. Those associations that blew the deadline now had, and continue to have, an expensive process on their hands whereby a majority vote of the community is required to "revitalize" the declaration of covenants, instead of a 2/3rd's vote of the board. In addition, even if the vote is obtained, approval is still required from The Department of Economic Opportunity. Inasmuch as thousands of HOAs are at risk of losing the ability to maintain their restrictive covenants, The Florida Legislature passed some important amendments last legislative session that became effective on July 1st, 2018.

720.303(2)(e) states: **At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.**

Clearly, there is now a mandatory obligation of the Board to hold a meeting each year and consider preserving the documents.

In addition, Florida Statute 720.3032 was amended to allow the association to file a simplified form in the public records indicating a desire to preserve the governing documents.

Finally, 712.05 was amended to clarify that subsequent to July 1st, 2018, if the association records an amendment to their governing documents before they expire, the governing documents are preserved.

There's still a couple of loose ends that the statute needs to clarify. For example, why is a meeting of the association required every year, once the documents are officially preserved. Should the form be recorded every year? However, these kinks will be worked out. **The bottom line is that HOA directors now have a clear and unequivocal obligation to follow the new law and hold a meeting regarding the preservation of the documents. The law is already in effect.**

DO NOT BLOW THE DEADLINE TO PRESERVE THE DOCUMENTS. To "revitalize" expired documents is expensive, time consuming and no sure thing.

DID YOU GET IT IN WRITING?

We have all been in circumstances where someone promised something, reneged on that promise and we wished we had the original promise in writing. "Getting it in writing" can also be crucial in the condominium and HOA context.

Several years ago our firm successfully argued the case of Curci Village Condominium Ass'n, Inc. v. Maria, 14 So.3d 1175 (Fla.App. 4 Dist.,2009). We represented the condo association. The unit owner made landscaping modifications to the backyard of her condominium unit after having purchased her unit directly from the developer. Before control of the Association was transferred to the homeowners, she inquired whether she could put "decorative improvements" in her backyard. The manager of the developer who was also the president and director of the Association at the time, told her that he "didn't see a problem with it" as long as it did not impede the water runoff, was not permanent in nature, and did not require a permit. He told her that stones and mulch would be fine. When he gave her his "opinion" that it would be fine to make these modifications, he did so as president and director of the Association. The owner never requested or obtained written permission from the Association to make the modifications. The board of directors did not discuss during any meeting the decision to grant the owner permission to make modifications. Relying on this President's verbal representations, the unit owner installed mulch beds, small paver stones, and crushed rock along the outside of the property. She also placed chairs and other leisure furniture in the area.

Shortly after control of the Association was turned over to the homeowners some four months later, the Association sent a letter to the owner stating that the modifications were causing damage and flooding to the common areas and were violative of the declaration. The unit owner sued the Association, alleging a claim for declaratory relief and requesting that the court enter an order finding that she was not required to remove the landscaping modifications. She also sought damages pursuant to section 718.303, Florida Statutes, due to her being forced to defend the landscaping modifications.

The Association claimed that the unit owner was in violation of the declaration of condominium. Section 22.14 of the declaration provides that "[n]o balconies, patios or terraces shall be extended, enclosed or decorate[d] in any way whatsoever by a Unit Owner without the prior written consent of the Board of Administration." Likewise, section 22.06 states that "every Unit Owner shall ... [m]ake no alteration, decoration, repair, replacement or change of the Common Elements or to any outside or exterior portion of the building without the prior written consent of the Association."

The trial court ruled in favor of the unit owner. The association then appealed. On appeal, the 4th District Court of Appeals held:

The declaration of condominium, which is the condominium's "constitution," creates the condominium and "strictly governs the relationships among the condominium unit owners and the condominium association." Woodside Vill. Condo. Ass'n v. Jahren, 806 So.2d 452, 455-56 (Fla.2002). A declaration of condominium must be strictly construed. Palm Beach Hotel Condo. Ass'n v. Rogers, 605 So.2d 143, 145 (Fla. 4th DCA 1992). Two sections of the declaration required the owner to obtain written permission of the board prior to making improvements or alterations to her property or the common elements. She was required to comply with the provisions of the declaration pursuant to its own terms and section 718.303, Florida Statutes.

Continuing, the court said, the board of directors did not give Santa Maria permission to make the modifications, and Santa Maria could not reasonably rely on a verbal representation to constitute the specific requirement of a written approval from the board. Santa Maria did not request or obtain written consent from the board prior to making the modifications as required by the declaration. Further, the President stated that when he spoke with Santa Maria about the modifications, he told her that he "didn't see a problem with it" and it was his "opinion" that the modifications would be fine. Santa Maria received merely a verbal opinion from one member of a three member board of directors. The fact that he was also president of the Association and a member of the developer does not change that result. It is of no consequence that the modifications were made before the transfer of the Association took effect, because the declaration was already in effect at the time Santa Maria spoke with him. Because the declaration explicitly required the prior written consent of the board of directors, Santa Maria could not have reasonably or justifiably relied on his verbal statements.

The bottom line is that if a declaration or section of the bylaws requires that permission or approval of an action requires a writing, make sure to get it and never rely on an oral approval, especially if it's only from one member of the board.

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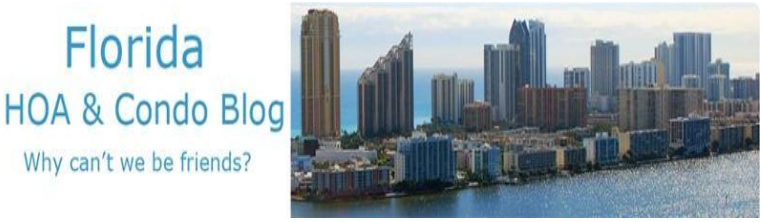

Join us on Mondays, Wednesdays and Fridays by participating in our community association law blog. We choose a new topic each week. You get the attorney's point of view on Monday, the manager's point of view on Wednesday and the unit owner's point of view on Friday. Of course, you get everyone's point of view by reading the comments and questions. Go to: www.hoa-condoloawblog.com.

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Bar Licenses: Florida; New York; and District of Columbia Admissions: U.S. Supreme Court; 11th Cir. Court of App.; S.D. Fla.; M.D. Fla.; N.D. Fla.; E.D.N.Y.; and S.D.N.Y. ADR: Certified Cir. and County Court Mediator, Board Certified in Condominium and Planned Development Law, 2018.

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CONFUSION REIGNS IN CONDOMINIUM ELECTIONS

Remember the TV show Eight Is Enough? Apparently, that's how The Florida Legislature feels about your right to serve on a condominium board of directors. Eight years in a row is enough. This does not mean however that if you already served eight years in a row on a condo board that you are precluded from running or even serving. The new statute 718.111(2)(d)2 states:

A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

A recent declaratory statement from the DBPR makes it clear that as of July 1st, 2018 all prior years of service count toward the 8 year limit. However, this new law only applies in condominiums whose declaration of condominium contains language known as "Kaufman" language which automatically incorporates new condominium laws as they are "amended from time to time" into the declaration.