Q: I am the president of a condominium association. We have 40 units and a budget exceeding $140,000.00. The president of another condominium association informed me that every condominium association with 10 or more units or a budget over $100,000 must have a licensed property manager. Is this true? **T.N. (via e-mail)**

A: No. I believe the person you were speaking with may have been confusing the issue of whether a condominium association must employ a community association manager with the issue of whether a community association manager must be licensed if the association chooses to employ a manager.

There is no provision or law that requires a condominium association (or a cooperative or homeowners' association for that matter) to hire a community association manager. A condominium association may manage itself, if it so chooses. However, if the association chooses to retain a community association manager (either an employee or independent contractor/management company), the law provides that the manager or management firm must be licensed. There is a so-called "de minimis exception" when the association or associations to be served by a manager collectively contain less than 10 units or have a budget of less than $100,000.

"Community association management" is defined rather broadly in the Florida Statutes to mean any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

Q: In your remarks about "pets" in a recent column, I believe a comment should have been made regarding the American Disabilities/Service Dogs based on the revision effective March 15th of 2011. **C.S. (via e-mail)**

A: It is important to recognize that there are two different federal laws that impact an association's ability to enforce pet restrictions due to a disability of the unit owner. You have asked specifically about the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination against individuals with disabilities in any "place of public accommodation." The law defines a "public accommodation" to include an inn, hotel, motel, or "other place of lodging." There is caselaw from federal courts concluding that a residential apartment or condominium is not a "public accommodation" and that therefore the ADA does not apply to such facilities. However, recent regulations adopted by the Department of Justice (DOJ) have clarified that the ADA would apply to an apartment or condominium if the facility has the characteristics of a hotel, i.e., stays of 30 days or less, accepts reservations from walk-ups or call-ins, provides linen service, etc. Whether the ADA applies to your condominium will depend on the specific facts. As indicated in your e-mail, the service animal regulations were recently revised, such that for purposes of the ADA, a "service animal" only includes a dog (and a miniature horse under certain conditions) that has been individually trained to do work or perform tasks for a person with a disability. Emotional support animals are not service animals under the ADA.

The law that would more likely be applicable to a situation involving a unit owner in a residential condominium is the Fair Housing Amendments Act of 1988 (FHA), which prohibits discrimination against disabled persons in housing. It is a violation of the FHA for a "housing provider", which includes condominium and homeowner's associations, to refuse to make "reasonable accommodations" in its rules, policies, practices or services, when such accommodation may be necessary to afford a handicapped person an equal opportunity to use and enjoy a dwelling or the common areas associated with the dwelling. Therefore, a handicapped person may be entitled to keep an assistance animal as a reasonable accommodation if the person has a handicap and there is a nexus between the handicap and the assistance that the animal provides.

One factor distinguishing the FHA from the ADA is that under the FHA and its regulations, which are adopted by the Department of Housing and Urban Development (HUD), there is no specific definition of "service animal." Accordingly, the FHA is not limited to dogs. Also, the FHA has been applied to emotional support animals, and whether or not training is required under the FHA depends on the facts.

Both DOJ and HUD have confirmed their respective positions that it is not necessary for an assistance animal under the FHA to qualify as a service animal under the ADA, and vice versa. Because violations of the ADA or FHA can result in substantial liability for an association, the manager, and even individual board members, it is important to consult with qualified counsel when dealing with one of these situations.

- Joe Adams is an attorney with Becker & Poliakoff, P.A., Fort Myers. This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.