



Tape Recording May Not Be Property of Association

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Q: The Florida Homeowners' Associations Act allows a parcel owner to record meetings. Our HOA has its own tape recorder, but it is not always used. If a Board member uses his personal tape recorder, is that recording a "private" recording that the Board member can use and keep, or is it owned by the association? **E.P. (via e-mail)**

A: In my opinion, under the facts you have described in your question, the recording would be a privately owned recording that is not association property or part of the association's official records. Unless the recording was made at the direction of the board, or by the secretary acting in his or her capacity as secretary of the association, I do not believe the association has any claim to the recording.

Your question highlights an issue that must always be kept in mind by directors. As you may know, directors have a fiduciary duty to the association to act in good faith and in the best interests of the association. However, this does not mean that directors lose all of their rights as members. The difficult issues arise when a director's actions as a member conflicts with their obligations as a director. For example, if the reason for your question is that there is some dispute over action that was taken at a meeting that can only be resolved by reviewing the recording, then arguably the board member that made a private recording

might reasonably have a fiduciary duty to the association to provide the recording, since doing so would benefit the association. Admittedly, making a legal argument or legal claim out of this issue would be a bit of a stretch, as I am not aware of any cases or established law on this point.

In my experience, the more common issues concerning the tape recording or videotaping of an association meeting involves who makes the tape, and how the taping is done. As you may know, only unit owners are legally entitled to attend board or member meetings. The one exception involves a non-unit owner who has been given a valid power of attorney from an owner. In my experience, it is not unusual for a non-owner videographer, or even a court reporter, to show up at the meeting. The association is entitled to prohibit those people from attending the meeting, absent a valid power of attorney designation. In addition, under both the Homeowners' Associations Act and through administrative rules adopted by the Florida Division of Condominiums, Timeshares and Mobile Homes governing condominiums, the Board is permitted to make rules in advance of the meeting governing the recording of board and member meetings. The rules can require giving prior notice to the board of an intent to record, can require the recording members to stay in one place while recording, and can prohibit equipment from being placed in

inconvenient or distracting locations. Additional lighting can reasonably be limited or prohibited in the case of video recording. Such rules are designed to allow the meeting to progress without interruption or distraction due to the recording.

Q: You recently wrote about a change in the Florida Homeowners' Association Act that precludes a property manager from also being a board member or officer. I could not find this change in the Florida Statutes, could you provide the citation. **A.L. (via e-mail)**

A: As discussed in my October 3, 2010 article

entitled "Homeowners Association Act Clarifies Pay Issue", Senate Bill 1196 amended Chapter 720 of the Florida Statutes, effective July 1, 2010. The new law provides that a board member, officer, or committee member may not be paid for their service, and "may not in any other way benefit financially from service to the association." The new statute is cited as Chapter 720.303(12), Florida Statutes. As noted in the previous column, exceptions exist in the law, including compensation authorized in the governing documents or by a vote of the association membership.

Joe Adams has focused his practice on the representation of community associations since 1987, and has provided legal counsel to well over one thousand community associations throughout the state. Joe has served as Chairman of the State Advisory Council on Condominiums and has written this column since 1995.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com. This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.