

Speed Bumps, Florida-Admitted Insurance Carriers, Boat Storage, and Provision of Sign Language Interpreters



BY GARY A. POLIAKOFF, J.D.
AND RYAN POLIAKOFF

DEAR POLIAKOFFS,
I live in a community in Melbourne, Florida. During a board meeting two months ago, several owners expressed safety concerns to the board and our property manager regarding drivers speeding through our roads. The suggestion was made to install speed bumps, like many of us have observed throughout multiple developments and businesses in the Melbourne area. The

property manager told those in attendance that, if we installed such bumps, the association would become liable for any and all damages caused to vehicles. How accurate is the property manager's statement? And, if installing such safety measures is possible, what are the necessary steps we need to consider in protecting everyone's rights?

Signed,

P.B.

DEAR P.B.,

Speeding is an extremely common problem in large communities, and it can be dealt with in different ways. For example, many cities will, on request, send police officers into communities to set up speed traps or monitor for other traffic violations

(such as ignoring stop signs). Other communities install radar signs that post each driver's speed, and hopefully encourage drivers to slow down. And, sometimes, speed bumps (the long, narrow ones) or humps (the big, wide ones) are used, as well. The first question to address, when proposing speed bumps, is whether the roads are public or private. If they are public, the association cannot simply install speed bumps—they would need to be approved by the municipality, and even then, they may not be allowed, under any circumstances



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(although, in your city, it sounds as if they are broadly accepted). If the roads are private, and owned by the HOA, the city would still need to approve them, but, also, you would need to consider whether installing speed bumps would be considered a material alteration of the common areas, such that it may require a membership vote. And, many cities will only allow the larger humps, if at all, because small speed bumps can interfere with emergency vehicles. If the association is allowed to install speed bumps, and if the membership, where needed, approves, the question of damage to vehicles would come down to negligence (carelessness) on the part of the association. So, the association should make sure that the bumps are well marked with warning signs and painted a contrasting color. Also, the association should consult with its insurance company to make certain that it would be covered if an accident were to happen and be linked to the speed bumps. There are many variables that need to be considered, and your manager's answer, while it may sometimes be correct, only paints a portion of the story.

DEAR POLIAKOFFS,

I live in a townhome condominium community. Recently, the board renewed our insurance policies, all with surplus lines carriers. As you know, this leaves us without the protection of the Florida Insurance Guaranty Association. Somewhere in the Florida Statutes (I don't remember the specific chapter), I thought I read that condominium associations are obligated to procure insurance from an

admitted insurer licensed in Florida. Only if they are turned down can they resort to a surplus lines carrier. My concern is that our present insurance policy might violate the statutes since we never applied for insurance with an admitted carrier. I would be grateful if you could clear up this confusion for me. Thank you so much for the work you do.

Signed,

S.M.

DEAR S.M.,

Florida Statute 718.111(11) deals with all things insurance when it comes to condominiums. The statute has gotten somewhat more liberal over the last few years, and it does not require that condominiums buy insurance from

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admitted Florida carriers. It simply requires that a residential condominium use its "best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association pursuant to this subsection." Adequate insurance is defined as insurance based on the replacement cost of the property, as determined by an insurance appraisal (which must be conducted every 36 months). The statute allows group insurance, and even self-insurance, under certain circumstances. Any policy can include a deductible, as long as the size of the deductible is consistent with industry

standards. Note that it is not uncommon for an individual condominium's governing documents to require that insurance be purchased from Florida-admitted carriers.

DEAR POLIAKOFFS,

I live in a development of condominiums and townhouses, which has a total of 214 units. Some of the units are one-story pool villas. There is an owner with a two-car garage model who decided to store his boat in his garage when he comes down for the winter season. He trailers it with a hitch when he goes fishing, and then he stores it back in his garage. I have put in a written complaint to management and the association board, together with a copy of Article IV, "Use of Property," which is in our documents. This states "No boat, boat trailer, camper, or vehicle shall be left or stored on the condominium property." I was told by a board member that, as long as the garage door was closed, it was not a problem. Is this so, and if not, what is the responsibility of management and/or the board to rectify this situation?

Signed,

L.L.

DEAR L.L.,

Your board has a fiduciary duty to enforce the association covenants, so if there is a rule, it should be policed to a reasonable extent. If the board ignores a clear violation, it raises the possibility that a

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future homeowner will be able to defend against a covenant enforcement action for the same issue by claiming that the association has waived its right to enforce the rule, or is attempting to enforce the rule selectively (only against some owners)—both of which would bar enforcement. You should start your analysis by looking to the definitions in the declaration of condominium to determine what the phrase “condominium property” actually covers. If the term is defined only as the common elements, the board would be correct that there is no problem with an owner keeping a boat inside his garage (or in his home, for that matter, if such was possible). But, if the term is defined more broadly, the owner may be prohibited from keeping his boat in the garage, even if it is his own property (and whether or not the door is closed). And if that is the case, and the board ignores the violation, it may be unable to enforce the covenant against another owner, even if that other owner is keeping his or her boat out in the open. Accepting that your behavior and actions may be regulated, even within your own home, is one of the essential elements of condominium living.

DEAR POLIAKOFFS,

I was wondering if you knew the ADA requirements for an HOA’s responsibility to provide sign language and captioning services for deaf and hard of hearing residents who attend board meetings, as well as to provide sign language interpreters for deaf individuals who are selected to be on committees.

Signed,

L.F.

DEAR L.F.,

The Americans with Disabilities Act prohibits discrimination against persons with disabilities (a physical or mental impairment that substantially limits a major life activity) in employment, access to public entities and public transportation, and access to places of public accommodation (such as stores, restaurants, schools, and hotels), among other things. The law does not apply to private property that is not generally open to the public. As such, it rarely governs homeowners associations or condominiums. Instead, housing providers are governed by the Fair Housing Amendments Act, which requires, in the context of a person with a disability, that the association allow reasonable modifications of the common elements to allow the disabled person full use of the property (at that owner’s expense), and that the association allows reasonable accommodations of its rules and regulations (most commonly this covers allowing service animals, but it also covers any situation where an association rule must be modified). You ask about providing sign language and captioning services at board meetings and for members of committees. The HOA has no requirement to provide either, but, if a disabled owner wanted to install a captioning device in a boardroom at that owner’s cost, or if the owner wanted to bring an interpreter with them to meetings (again, at the owner’s cost), that would likely be covered by the Act. ■