

**Florida Bay Club Condominium Association, Inc.**  
P.O. Box 372520, 103500 Overseas Highway  
Key Largo, FL 33037  
Phone 305-451-0101 ext. 204, Fax 305-451-0443  
[flabayclub@gmail.com](mailto:flabayclub@gmail.com)  
Website. flabayclub.com

**Emergency Board Meeting Thursday 16<sup>th</sup> July 2015**  
**In association Office at 7pm**

## **Agenda**

**Call to Order**

**Certification of a Quorum**

**Business**

**1. DPBR Letter**

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**Minutes of Emergency Board Meeting Thursday 16<sup>th</sup> July 2015**

**Meeting called to order at 7.07 pm, by Treasurer Truran.**

**Certification of a Quorum.**

**Directors present by conference call.**

Directors West, Gandham, Kauffman and Treasurer Truran.

**Business**

**DPBR Letter.**

Bernadette explain she had spoken with David Rogel, about the different options and what would happen if the money was not paid back. He explained if we didn't get it back Florida Bay Club could be fined.

The Boards decision with great regret was to ask for the monies to be repaid, David Rogel would send the letter.

Director West motioned, Director Gandham seconded, no-one opposed motion carried.

**Ken Lawson**, Secretary

**Rick Scott**, Governor

May 20, 2015

Bernadette Pinto  
Community Association Manager  
Florida Bay Club Condominium Association  
P O Box 2520  
Key Largo, FL

Respondent: Florida Bay Club Condominium Association  
Complainant: David Lautenslager  
Project: Florida Bay Club  
Case#: 2015020499

Dear Ms. Pinto:

The Bureau of Compliance-Timeshare Section is investigating a complaint regarding the use of association's funds for the personnel legal expenses of an owner related to the association's president and lack of proper procedures to elect the board members. Following are the allegations stated in the complaint:

1. As part of the yearly owners meeting for the Florida Bay Club in Key Largo, there was a letter from the President Matt Peabody that says there was an emergency meeting of the Board of Directors and they voted to pay for \$7,500 for the legal expenses for his wife. I have attached a copy of his letter. I believe that his wife's actions are her responsibility and the FBC should not bear the burden of those expenses. The Board of Directors should not be able to vote for payment of her personal expenses.

The Florida Vacation Plan and Timesharing Act states, "*The managing entity shall act in the capacity of a fiduciary to the purchasers of the timeshare plan.*"

The Florida Condominium Act states, "*An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association.*"

Since the December 26, 2014 incident was not related to an official business of the Association, association's funds should not be expended for paying the legal expenses of an owner. The altercation between two owners on the association's property is a personal matter and all related costs should be borne by the individual owners. Any potential liabilities created by the action of any owner on the association property should be covered by the insurance policy.

Association's funds are used to pay the common expenses of the association. Since personal expenses are not considered common expense, association funds should not be used for that purpose.

It appears that certain owners are visiting the timeshare plan regularly and outside their use periods despite the fact that they have been advised not to violate the association's rules and policies with respect to this issue. This matter should be resolved through the local law enforcement agency to avoid any future confrontations and altercations between the owners.

2. The board of directors failed to issue a notice of the meeting related to the approval of the attorney's fees and failed to prepare the minutes of the meeting.

The Florida Condominium Act states, "*Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency.*"

Until it was determined that the December 26, 2014 incident was an emergency, a notice was required prior to the board's meeting. Please provide a copy of the notice of the meeting, agenda, and the minutes of the meeting for the Division's review.

If the notice was not issued, please explain when and where was the meeting held and on what basis was the meeting considered an emergency meeting?

3. The association is not conducting the elections in the proper manner to elect the board members.

Section 718.112(2)(d)2., F.S.: *Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot.*

Section 718.112(2)(d)3., F.S.: *The bylaws must provide the method of calling meetings of unit owners, including annual meetings.*

Please note that any owner who wants to serve on the board should be able to put his or her name on the ballot by submitting his or her intent to run notice to the association.

Please provide a copy of the 2014 and 2015 election materials including the notice of the annual meeting, a copy of the ballot/proxy, the proxy tally sheet, and minutes of the meeting for our review.

Please provide your response along with the supporting documents to my attention by June 3, 2015. Thank you for your assistance and cooperation regarding this matter.

Sincerely,



Ahmed Y. Kassoo  
Investigation Specialist II  
BUREAU OF COMPLIANCE  
407-650-4075

[ahmed.kassoo@myfloridalicense.com](mailto:ahmed.kassoo@myfloridalicense.com)

Ken Lawson, Secretary

Rick Scott, Governor

June 12, 2015

David H. Rogel, Esq.  
Becker & Poliakoff  
121 Alhambra Plaza, 10<sup>th</sup> Flr  
Coral Gables, FL 33134

Respondent: Florida Bay Club Condominium Association  
Complainant: David Lautenslager  
Project: Florida Bay Club  
Case#: 2015020499

Dear Mr. Rogel,

Thank you for your response dated June 5, 2015 regarding the subject complaint. Please note that our investigation is still in progress.

In your response you state:

**The Board was of the opinion that the expenses incurred by Mr. Peabody could be the subject of the Association's obligation to indemnify Mr. Peabody as set forth in Article XI of the Articles of Incorporation and the applicable provisions of Florida law. The Board also felt that this altercation and the ensuing expenses would not have occurred but for the litigation between the Association and the Lopez'. While the Board still believes that the expenditure was appropriate, it understands the position taken in your letter and agrees that it would not advance this type of expense again.**

The Florida Vacation Plan and Timesharing Act states, "*The managing entity shall act in the capacity of a fiduciary to the purchasers of the timeshare plan.*"

The Florida Condominium Act states, "*An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association.*"

The indemnification provision in Article XI notwithstanding, the above referenced provision of the Act does not allow payment of any personal expenses of any owner involving personal matters.

Since the December 26, 2014 incident was not related to an official business of the Association, association's funds should not have been expended for paying the legal expenses of an owner despite the fact that she is related to the President of the Association and irrespective of the reason why the altercation started in the first place. Even though Mr. and Mrs. Lopez were allegedly trespassing on the Association's property, Mrs. Peabody had the option of not getting involved in this altercation. Each owner is responsible for his or her own actions. The altercation between two owners on the association's property is a personal matter and all related costs including legal fees should be borne by the individual owners. Therefore, Mrs. Peabody will have to reimburse the Association the \$7,500 legal fees as the Act does not authorize such payments. The board cannot take any actions that are inconsistent with the law.

In your response you state that Mr. and Mrs. Lopez frequently visit the resort outside their use period and this matter is in litigation. This approach appears to be the correct solution to the chronic problem with respect to trespassing.

Since Mr. and Mrs. Lopez appear not to pay heed to the previous requests regarding the trespassing issue and have not followed the Association's rules, the Association may be able to recover Mrs. Peabody's legal fees and the Association's cost of litigating this matter through this litigation.

Please provide your response along with the supporting documents by June 26, 2015. Thank you for your assistance and cooperation regarding this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'AK', with a long horizontal line extending to the right.

Ahmed Y. Kassoo  
Investigation Specialist II  
BUREAU OF COMPLIANCE  
407-650-4075

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