

MARK R. BENSON, COMMUNITY ASSOCIATION MANAGER

PRO SE ANSWER TO
THE FLORIDA BAR
STANDING COMMITTEE ON THE
UNLICENSED PRACTICE OF LAW
PROPOSED ADVISORY OPINION

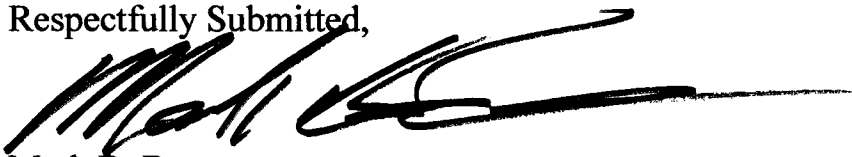
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FAO #2012-2, ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS

SC13-889

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Respectfully Submitted,



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INTRODUCTION

Community associations in Florida were statutorily created in the early 1970's and the statutes for condominiums morphed from 711 F.S. to 718 F.S. in 1976. Cooperative associations are governed by 720 F.S. Homeowner Associations were originally regulated by 617 F.S and amended and restated in 2000 as 720 F.S. Time share units were created in 1981 with adoption of 721 F.S.

Each of these entities is generally referred to as a community association and if managed by a paid manager the manager must hold a license as a Community Association Manager (CAM) pursuant to 468 Part VIII F.S.

Licensing of CAMs was not initiated nor required prior to 1988 when Florida Statutes 468 Part VIII was passed by the Florida Legislature in 1987.

It must be noted that "whole ownership" entities (Condominium, Homeowner or Cooperative Association) are NOT statutorily required to employ a CAM.

This opportunity to address the concerns of the Florida Bar is appreciated and any discussion that promotes the welfare and protection for the millions of community association members is admirable.

Especially noted is that neither we nor the Department of Business and Professional Regulation (See letter testimony of September 11, 2012 provided to the Committee by DBPR Counsel L. Layne Smith; "OGC cannot recall a CAM being disciplined or prosecuted for the unlicensed practice of law.") can find a case of Unlicensed Practice of Law against a CAM.

CAMs have the same liability as any professional or tradesman in that any party damaged by an error can be compensated by judicial recourse.

It is regrettable this effort appears adversarial when our efforts should be

geared to collegial cooperation and education for the benefit of community association residents.

This proffer is an endeavor to provide the Court with appreciation of professional community association managers and the value they bring to homeowners. It is also an opportunity for the Court to vacate the previous (No. 86.929, July 18, 1996) opinion and restore responsibility of management where it belongs.

This action and the 1996 action appear to be staking a claim to dissuade any CAM from exercising statutory required knowledge for licensure and continuing education required that includes annual law updates.

This respondent offers an apology for any lack of proper legal style or etiquette and appreciates the Court's patience. It is notable though that this respondent may be the only one offering alternatives that are not conflicted in that he is retired from day to day association management. With almost 40 years experience with community associations as a board member, unit owner, CAM and advocate the perspective offered is a convergence of perceived current system faults with mutually respectful solutions. My community association management company, Benson's, Inc. was sold in 2006 after over 20 years serving associations in Lee and Charlotte Counties.

As a licensed community association manager an apology is offered for any economic waste incurred by the Court, Bar, associations and CAMs to address issues that are logically addressed by CAMs fulfilling their responsibilities. There is no attempt by CAMs to practice law. If a CAM's client association board of directors makes a decision the CAM knows is wrong is it UPL to advise the board of such?

A CAM must not be shackled by implicit threats of UPL charges by

misfeasance for not advising an association client based on the training and experience of their profession.

A professional license in Florida does not create omnipotence and, for this discussion, is exemplified by the number of revocations, suspensions and disciplinary actions against attorneys and CAMs.

We are sensitive to the disciplining of the CAM profession as we are sure the BAR is also for attorneys. The DBPR report of discipline for CAMs in 2012 consisted of only 27 Final Orders against the over 15,000 Florida CAMs. Fines or costs were imposed against 22, 2 were reprimanded or placed on probation, 1 resulted in five year probation and restitution, 1 was suspended and 1 license relinquished. (.0018 % of the current number of licensees) (Exhibit 1)

We suggest the percentage of disciplinary actions is much lower in the CAM profession than others and filings in the Supreme Court and DBPR do not reflect any complaints against CAMs for UPL.

The UPL Committee must be recognized for the difficult task they are asked to address in so many specialties of law for which they do not individually espouse proficiency. Their efforts and conclusions are not to be impugned but we suggest they may be misdirected.

Personal experience exemplifies that anyone, even an attorney, can make a mistake. We experienced a case whereby a claim of lien filed by counsel was recorded in the wrong county. Another case involved an attorney preparing a strategy, risk and process report to the client prior to the initiation of litigation and mailing it to the opposing party. Several times we were served with summons to community associations with a similar name to one of our clients when the actual association defendant to the action was in a different county. No one was disciplined for these mistakes and they were given opportunities to correct. None

of the actions claimed herein as UPL are fatal and can be corrected if an error is detected. This is not an effort to authorize CAMs to perform “legal” services. But it is an attempt to provide information for understanding of responsibilities and duties contractually incurred by and accepted by CAMs.

RESPONSE TO REQUEST RE: 1996 OPINION CONFIRMATION

The petitioner requests confirmation of a previous (1996) opinion that fortuitously provides this respondent an opportunity to readdress those issues as a whole and pray the Court dismiss the issue in its entirety and reverse the previous opinion.

The 1996 Opinion provided these actions are UPL:

- A. drafting of a claim of lien and satisfaction of claim of lien;

Response: While agreeing that the computation of legal expenses recoverable from an offending party must be determined by counsel, any loss resulting from a CAM undertaking this task would be actionable against the CAM for damages. Again, there is no prohibition of a principal (association board member) undertaking this action without advice of counsel.

- B. preparing a notice of commencement;

Response: Regular forms for a Notice of Commencement are available in office supply stores and are so simple to fill out any responsible person can fill in the blanks. Again, there is no prohibition of a principal (unit owner or board member) undertaking this action and any loss resulting from a CAM undertaking this task would be actionable against the CAM for damages.

- C. determining the timing, method, and form of giving notices of meetings;

Response: The various statutes dealing with this issue are so obvious as to slight the comprehension capacity of CAMs, unit owners, board members and the public. Learning this task is a required portion of the requirements for licensure of CAMs as outlined in the Florida Administrative Code.

61E14-1.001 Prelicensure Education Requirements.

(2) The 18 hours of prelicensure education shall be comprised of courses in the following areas:

(b) Procedure for noticing and conducting community association meetings.

The various community association statutes are also obvious as shown below.

For condominium board meetings:

718.112(2)(c) 1. 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.

For cooperative board meetings:

719.106(1)(c) Board of administration meetings.—Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. . . . Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed,

delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association.

For homeowner association board meetings:

720.303(2)(c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to provide the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required.

For condominium owner meetings;

718.112(2)(d) 3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an

agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting.

For cooperative owner meetings:

719.106(1) (d) Shareholder meetings. — . . . The bylaws must provide the method for calling meetings, including annual meetings. Written notice, which must incorporate an identification of agenda items, shall be given to each unit owner at least 14 days before the annual meeting and posted in a conspicuous place on the cooperative property at least 14 continuous days preceding the annual meeting.

For homeowner association owner meetings:

720.306(5) NOTICE OF MEETINGS.—The bylaws shall provide for giving notice to members of all member meetings, and if they do not do so shall be deemed to provide the following: The association shall give all parcel owners and members actual notice of all membership meetings, which shall be mailed, delivered, or electronically transmitted to the members not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed upon execution among the official records of the association.

D. determining the votes necessary for certain actions by community associations;

Response: This assertion is so broad so as to make any decision and administration by a community association board and its CAM impossible. In the community association environment there are few specific issues that trump majority rule. We can again look to the Florida Administrative Code

for direction that states in relevant part:

61E14-1.001 Prelicensure Education Requirements.

(2) The 18 hours of prelicensure education shall be comprised of courses in the following areas:

(a) State and federal laws relating to the operation of all types of community associations, governing documents, and state laws relating to corporations and nonprofit corporations.

**E. addressing questions asking for the application of a statute or rule;
and**

Response: To quote Secretary of Defense Donald Rumsfeld: “There are known knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don't know. But there are also unknown unknowns. There are things we don't know we don't know.”

The Florida Administrative Code, 61E14-2.001, establishes Standards of Professional Conduct for CAMs that demand proficiency in areas the Bar would prohibit. (Exhibit 2)

Any CAM or, for that matter, board member that asserts an inaccurate opinion is and must be responsible for any consequences.

Every CAM educational experience demands that they only undertake association administration that they are competent to address.

The Florida Administrative Code 61-20.010 (Exhibit 3) (Excerpt below) provides specific penalties for violations of professional competence without having to be addressed as UPL. Below is a sample of possible violations and penalties that may be assessed against a CAM by the DBPR Division of Professions. In the real world additional penalties are more appropriate in

that a CAM that exceeds actual capabilities can be fired and sued for damages.

(i) Subsection 61E14-2.001(3), F.A.C.

A licensee or registrant shall perform only those services which he or she can reasonably expect to complete with professional competence.

First Offense	Reprimand	\$1000 fine; costs
Second Offense	One year probation; \$500 fine; costs	One year suspension; two years probation; \$5000 fine; costs
Third Offense	Two years suspension; \$2500 fine; costs	Revocation; \$5000 fine; costs

(j) Paragraph 61E14-2.001(4)(a), F.A.C.

A licensee or registrant shall exercise due professional care.

First Offense	Reprimand	\$1000 fine; costs
Second Offense	One year probation; \$500 fine	One year suspension; two years probation; \$5000 fine; costs
Third Offense	Two years suspension; \$2500 fine; costs	Revocation; \$5000 fine; costs

F. advising community associations whether a course of action is authorized by statute or rule.

Response: This assertion is so overly broad and grossly inclusive that no one can address even general business actions by a reasonable person. The general rule for consideration is usually: unless an action is prohibited by law it is authorized. Again the Florida Administrative code (Sample below) applied to CAMs provides protection for the public even though the market is even more effective than any protestations by the BAR.

(dd) Section 455.227(1)(k), F.S.

Failing to perform any statutory or legal obligation placed on a licensee or registrant, if the obligation is not otherwise covered by this rule.

First Offense	Reprimand	One year suspension; two years probation; \$3000 fine; costs
Second Offense	Reprimand	Two year suspension; two years probation; \$5000 fine; costs
Third Offense	Reprimand; \$500 fine; costs	Revocation; \$5000 fine; costs

From the BAR request: “Although the request for opinion addresses CAMS specifically, the Standing Committee's opinion would apply to the activities of any

nonlawyer.”

Response: There is nothing except common sense that can legislate or regulate the actions of a principal of a community association. As comedian Ron White stated; “You can’t fix stupid.”

Activities of a principal (board member) are not prohibited nor considered UPL.

2012 REQUEST FOR UPL OPINION

The petitioner asks for corroboration that it is the unlicensed practice of law for a CAM to engage in any of the following activities (hereinafter "2012 request"):

1. Preparation of a Certificate of assessments due once the delinquent account is turned over to the association's lawyer;

Response: The monthly (or quarterly) maintenance fee amount (assessment) doesn’t change once an account is turned over for collection. It is still the simple monthly accounting of amounts due that is the CAM’s responsibility to continue to accrue on the account. It is the responsibility of counsel to advise the CAM what additional charges they have incurred to be added to the account. Ergo, this is accounts receivable accounting and the late fee and interest can be computed by anyone that knows how it is computed on their own credit card account.

2. Preparation of a Certificate of assessments due once a foreclosure against the unit has commenced;

Response: This is a redundant assertion from number 1 above.

3. Preparation of Certificate of assessments due once a member

disputes in writing to the association the amount alleged as owed;

Response: This is a redundant assertion from number 1 above.

4. Drafting of amendments (and certificates of amendment that are recorded in the official records) to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;

Response: The myriad of possible amendments is so broad as to make this assertion punitive. Again, any board member can undertake this without counsel. I.e. change the date of the annual meeting, correct errors in the original documents (respondent had attorney prepared documents that provided for lake restrictions when the association had no water access) and other simple clarifications and corrections.

5. Determination of number of days to be provided for statutory notice;

Response: This is redundant and a restatement of item "C" above.

6. Modification of limited proxy forms promulgated by the State;

Response: This is redundant since and was addressed in the 1996 opinion of the Court. To wit, "The Court found the following activities to be dependent on the specific circumstances: . . . modification of limited proxy forms promulgated by the state"

7. Preparation of documents concerning the right of the association to approve *new* prospective owners;

Response: The right of an association to approve new prospective owners must be included in the declaration and simply requires the association to provide a yes or no response to the application if even required.

8. Determination of affirmative votes needed to *pass* a proposition or amendment to recorded documents;

Response: Again this is following the law and the documents. It is not practicing law.

For condominiums:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—(1)(a) If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owners of not less than two-thirds of the units. Except as to those matters described in subsection (4) or subsection (8), no declaration recorded after April 1, 1992, shall require that amendments be approved by more than four-fifths of the voting interests.

718.112(2)(h) Amendment of bylaws.—

1. The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by the owners of not less than two-thirds of the voting interests.

For Cooperatives:

719.1055 Amendment of cooperative documents; alteration and acquisition of property.—

(1) Unless otherwise provided in the original cooperative documents, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units

approve the amendment. Cooperative documents in cooperatives created after July 1, 1994, may not require less than a majority of total voting interests for amendments under this section, unless required by any governmental entity.

For Homeowner Associations:

720.306(1)(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association.

9. Determination of owners' votes needed to establish a quorum;

Response: Again the public and especially CAMs are disparaged by alleging comprehension is interpretation. As examples from statutes:

For Condominiums:

718.112(2)(b) Quorum; voting requirements; proxies.—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

For Cooperatives:

719.106(1)(b) Quorum; voting requirements; proxies.—

1. Unless otherwise provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of voting interests, and decisions shall be made by owners of a majority of the voting interests. Unless otherwise provided in this chapter, or in the articles of incorporation, bylaws, or other cooperative documents, and

except as provided in subparagraph (d)1., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

For Homeowner Associations:

720.306(1)(a) Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests. Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

10. Drafting of pre-arbitration demand letters required by 718.1255, Fla Stat.;

Response: In 718.1255 there is no definition of a “pre-arbitration demand letter.” The reference believed to be referred to is:

718.1255(4)(a) Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of \$50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

- 1.** Advance written notice of the specific nature of the dispute;
- 2.** A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

11. Preparation of construction lien documents (e.g. notice of commencement, and lien waivers, etc.);

Response: See "B" above.

12. Preparation, review, drafting and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;

Response: It is superfluous to assert CAMs should recommend contract review by counsel. But at the same time there is nothing that requires a board of directors to follow advice of the CAM either.

13. Identifying, through review of title instruments, the owners to receive pre-lien letters; and

Response: The County Property Appraiser's office web site is the place every attorney we ever dealt with gets the ownership information. Several times this respondent was served with summons and complaints by attorneys that neglected to find the correct name of an association that was close to a similar name of another association but not related or even in the same county.

14. Any activity that requires statutory or case law analysis to reach a legal conclusion.

Response: This is really just a definition of the service provided by counsel. On the other hand, in litigation, it seems 50% of the attorneys representing adverse parties are wrong.

Pursuant to Rule 10-9.1(f) of the Rules Regulating The Florida Bar,

public notice of the hearing was provided on The Florida Bar's website, in The Florida Bar *News*, and in the *Orlando Sentinel*. The Standing Committee held a public hearing on June 22, 2012.

Response: It is not reasonable to assert this was sufficiently advertised when it was advertised only in the *Orlando Sentinel*, The Florida Bar's website and The Florida Bar *News*.

In addition to the testimony presented at the hearing, the Standing Committee received written testimony which has been filed with this Court. Included in the written testimony was a form petition that was submitted by hundreds of homeowner and condominium associations. As the petitions are substantially the same, only one has been filed with the Court as part of the written testimony. By and large the testimony reflects the belief that the previous guidance provided by the Court in its *1996 opinion* provides adequate guidance in this area and another opinion is not necessary. The testimony also reflected their concerns that too much regulation in this area will raise the cost of living in these communities and could potentially have a serious financial impact on community associations, property owners, and CAMS.

Response: The exhibits do not reflect the BAR's assertion "submitted by hundreds of homeowner and condominium associations." The testimony at the hearing was from 12 attorneys (6 pro and 6 con), 3 CAMs (3 con), and 1 unit owner (1 con). (Exhibit 4)

Written submissions provided reflect responses from 11 attorneys (2 pro and 9 con), 12 CAMs (1 pro and 11 con), and 18 Owners (18 con).

Comment: The BAR's Real Property, Probate and Trust Law Section followed up their original letter to the BAR UPL Committee of March 28, 2012 with a letter to the UPL Committee dated September 19, 2012 addressing

objections without providing an opportunity for public comment or rebuttal, to wit:

1. None of the manager or owner communications which we have seen recognize the fiduciary duty which the law places on directors of community associations.

Response: The questions addressed were concerning CAMs and UPL. There is no question concerning board members fiduciary duty. That is addressed in Florida Statutes: 718.111 The association.—(1) CORPORATE ENTITY.—
(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners.

Most, if not all, of the manager and director communications express concern about increased costs. To the extent that there is an increase, it must be considered as a necessary expense of protecting the homes and property rights of the members in the exercise of the directors' fiduciary responsibilities. No evidence has been presented to support a conclusion that the cost will be so large as to penalize a community, especially considering the cost of correcting problems resulting from the unauthorized practice of law. The converse may even be true because a reduction in unauthorized practice will reduce costly mistakes. If there will be any financial impact from this type of decision, it should have been seen in 1996, following the first ruling of the Florida Supreme Court on this issue. No one has provided any evidence of a negative financial impact from that decision.

Response: This again exemplifies that there really is no issue. If there are damages from a CAM doing something wrong associations have civil remedies available.

In response to the argument raised by some that the Section's request is designed to increase our attorney revenues, one might just as easily say that Licensed Community Association Managers' comments are motivated by their own financial interests. In our experience, a significant portion of the litigation involving community associations is caused by incomplete or inaccurate interpretations of the governing documents or statutes. Litigation costs are enormous and rules that are designed to ensure that community associations get the proper legal advice will go a long way toward decreasing their expenses.

Response: Another generality proffered by supposition that litigation is caused by the inaccurate advice from a CAM. If so the association would have a civil cause of action against the CAM. Interpretations of some provisions of the documents are so obvious as to belie UPL. For instance, many association documents provide that no pets are allowed. Others may state no pets over 25 pounds are allowed. If someone applies for occupancy or moves in with a prohibited pet, for instance a Great Dane, the irrationality of a prohibition against interpretation of the provision of the documents is exemplified.

To blame CAMs because "Litigation costs are enormous" seems inappropriate. Community association litigation costs are generally recoverable by the prevailing party. 718.1255(4)(h) states in part "... The parties may seek to recover any costs and attorneys' fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation."

Some communications indicate that attorneys are consulted appropriately while others state that all tasks outlined in the March letter are performed by licensed community association managers, which demonstrates the confusion that currently exists among licensed community association managers and directors.

Response: The evidence doesn't support this in that CAMs are more often encouraging issues be submitted to counsel as protection for their client, license, employment and is reflective of their education.

Simply knowing what is stated in chapters 718, 719 and 720 of the Florida Statutes and the community association documents, without also having training and understanding of real property law, contract law, corporate law, administrative law, construction law, foreclosure law, bankruptcy law, and other fields which are utilized by the community association attorney, does not qualify someone to give legal advice to community associations.

Response: CAMs are required to have continuing education that is not limited to the community association statutes. Here is what is required:

Continuing Education Requirement

Completion of 20 hours during each biennium prior to the license renewal date. The courses required are in the following areas: 4 hours of legal update seminars; 4 hours on insurance and financial management topics relating to community association management; 4 hours on the operation of the association's physical property; 4 hours on human resources topics relating to community association management - topics may include, but are not limited to, disaster preparedness, employee relations, and communications skills for effectively dealing with residents and vendors; and 4 hours of additional instruction in any area described in Rule 61-20.508(3)(b), (c) or (d) Florida

Administrative Code or any course or courses directly related to the management or administration of community associations.

Any assertion that CAMs are not aware of the limits of their professional practice is illogical and begging the question that they will try to provide answers to legal questions without advice of counsel.

The majority of Florida attorneys do not practice in the area of community association law and any assertion that every attorney can provide better advice than a CAM seems demonstrably inaccurate.

The State of Florida, Department of Business and Professional Regulation, provides on-line information for anyone interested in community association issues. They are organized in such a way as to make them available and understood by any reasonable person. There is also a Call Center available at 800-226-9101 to get live assistance and direction for questions dealing with community association managers and community associations. (Exhibit 5)

It has been stated that the DBPR has not received any complaints against licensed community association managers for UPL. This is due to the fact that the DBPR does not regulate UPL. The Florida Bar has reported that it did receive numerous complaints of UPL by licensed community association managers in 2011.

Response: The 2011 and 2012 Case Disposition Orders of the Supreme Court do not reflect any CAM UPL cases but do reflect hundreds of attorney disciplinary actions.

None of the communications which we have seen address the fact that contracts with Licensed Community Association managers routinely contain indemnification and "hold harmless" provisions, which leave associations and their members without recourse and without a remedy when errors are made by

managers. The public is better protected when the listed tasks are performed by attorneys who have been educated, trained and authorized to practice law and who are held accountable for their work. To keep this submission short, the manager indemnification provisions have been transmitted by a separate email.

Response: Even an indemnification inclusion in a management contract does not indemnify against nonfeasance, malfeasance, misfeasance or illegality. It is included to provide coverage by the association's insurance carrier if an association is sued since the management company is usually included in claims against an association.

CONCLUSION

The whole of the evidence, testimony and resultant decision is so obviously biased as to make the request by the BAR suspect. The lack of any empirical examination begs the question of UPL. The reference below is submitted as part of the consideration required to determine disposition:

Excerpt from "How We Learn" Course Guidebook, Professor Monisha Pasupathi, The Great Courses (2012).

Credit to Dr. Deanna Kuhn, Professor of Psychology and Education, Teachers College, Columbia University. "Children and Adults as Intuitive Scientists" *Psychological Review* 96 (1989): 674-689

- Kuhn suggests that the cost of failing to distinguish theory and evidence is that our learning is dominated by one or the other and although sometimes people are overly data driven, it may be more often the case that they are overly theory driven.
- In other words, this is an area of learning where prior knowledge and belief doesn't simply help us learn new information; it distorts that learning toward

maintaining our existing beliefs. Often, we cannot even imagine the evidence that would contradict our beliefs.

Confirmation Biases

- Kuhn's findings and concerns point to a phenomenon called confirmation bias which is the tendency for prior knowledge, beliefs, or theories to be maintained in the face of contradictory evidence.
- Considering the different type of learning discussed thus far, confirmation biases are relevant primarily to learning information and updating models of the world that are not purely linked to our direct experience, perhaps especially in various areas of science. Self-explanations can certainly function to support or maintain our theories.
- In the 1970s, Charles Lord, Lee Ross, and Mark Lepper found that exposing people of different initial beliefs to the same body of mixed evidence leads them to become more polarized in their opinions. Later work suggests that this is because people selectively apply their reasoning capabilities to evidence against their preferred theories.
- Confirmation biases are also evident in the arena of learning about ourselves, which is often explicitly modeled as a process of theory development and revision.
- Broadly speaking, we develop theories about what we are like and about what others are like during adolescence, although these initial theories draw on experiences from infancy through childhood as well.
- Thereafter, new experiences offer us evidence that either confirms or contradicts those theories based on the information offered by those new experiences. That is, new experiences offer us an opportunity to either learn that our existing views of ourselves are correct or that those views need revision.

- However, we are anything but objective and dispassionate about ourselves and our self-beliefs. One general bias is that we all like to think well of ourselves and often have a self-enhancing bias in the way we interpret evidence from our experiences. Thus, researchers note that we explain bad things by appealing to circumstances or other factors and gladly take credit for good things ourselves.
- The analogous bias to confirmation biases has been examined more extensively by Bill Swann, who correctly points out that the most compelling evidence for confirmation biases about oneself is found in people who view themselves negatively.
- In various studies, Swann has shown that people with negative self-views engage in a wide variety of strategies to ensure that their negative beliefs about themselves are confirmed by the available evidence. Swann points out that for self-views, it is easy to become trapped in the negative image of self that some people have.
- There are many studies that look at problems with people's ability to modify theories in response to evidence, and they are overwhelmingly conclusive: We maintain our strongly held beliefs in spite of contradictory evidence, and we are not highly aware of how we are doing this. Worse yet, we tend to view others with contradictory opinions as wrong.
- Where things are particularly fraught are the arenas where public decision making and science intersect, such as climate change and health care policies. These are arenas where at least some aspects of our decision making should be informed by scientific evidence, which means that the public and their elected officials need to be able to coordinate theories and evidence.
- Beyond those issues are the intergroup conflicts that are exacerbated by both sides believing that they are right and that the other side is deluded. Naive realism

is the tendency we have to see our own theories and beliefs as corresponding to reality—that is, not as theories but simply as facts.

- Naive realism is in accordance with Kuhn's findings that people don't distinguish very well between theories and evidence because they view their theories as facts, and facts are, after all, a form of evidence. Furthermore, if your theories aren't theories, but are actually facts, then it doesn't make sense to change your theory in response to conflicting facts.
- Bias blind spot, on the other hand, is the tendency we have to see others as biased. (Based on naive realism, we are completely unbiased.) In fact, we are rather good at spotting other people's mistakes in reasoning and biases in interpreting evidence.

The gist of the Bar's assertions assumes deliberate UPL by CAMs when respondent's 30+ years of experience directly contradicts this. In actual practice CAMs demand referral to counsel when liability for a bad decision can lead to penalties that include losing a client, one's license and livelihood.

Community Association Management is defined by statute: "468.431(2) "Community association management" means any of the following practices **requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration** and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: 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." (Emphasis added)

Please remember that a community association is NOT required to have a CAM.

Several law firms use myriad opportunities to provide free legal advice to community association members without ever identifying if the information is being understood or properly applied (Exhibit 6). Associations with professional community association managers are well served by having a threshold of education and experience to temper actions by boards that may be misapplied.

Any effort to circumvent legislation, demonize or punish one profession by another is the antithesis of good government. We must strive for cooperation and education of the issues that provide the greatest advantage to the common weal. We beg the Court to recognize changes in the current environment that will benefit millions of Florida's community association members by recommending the following:

Recommend reorganization of the Regulatory Council of Community Association Managers as a Board with disciplinary and legislative authority.

Request the Bar appoint a committee to work with the Division of Professions of the DBPR, Regulatory Council of Community Association Managers, community association owner representatives and other interest groups to assist in setting forth specific activities a licensed community association manager may perform, draft legislation to remove ambiguities, set bright lines of responsibility, authority and educational initiatives.

Attached are exhibits to provide information and references.

1. Report of the number and distribution of Florida Community Associations, number of CAMs and additional information (w/o Homeowner associations since the State does not yet track HOAs).

2. Florida Administrative Code Section 61E14-2.00, Standards of Professional Conduct.
3. Florida Administrative Code 61-20.010, Disciplinary Guidelines.
4. Recap of testimony and submittals at UPL hearing June 22, 2012 in Kissimmee, Florida.
5. Educational resources available from State of Florida, Department of Business and Professional Regulation.
6. Partial list of Florida Law firms offering in person education for CAMs and links to free on-line legal opinions and advice.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Benson', with a long horizontal flourish extending to the right.

Mark R. Benson
Community Association Manager
4711 Harbortown Lane
Fort Myers, FL 33919
239-489-0584
CAM License No. 2153
Email: mark@markRbenson.com

Exhibit 1

FLORIDA COMMUNITY ASSOCIATIONS w/o HOAs. Compiled from information available May 16, 2013 from on-line records of the Florida Department of Business and Professional Regulation. For real world comparison these numbers may be more than doubled if we include HOA's.

Location/Category	# Units	# Assoc's	Average # Units Per Association
Multi Time Share	2,651	30	88
Time Share	34,465	527	65
Mobile Home Parks	292,938	2,377	123
CO-OP Associations	87,476	824	106
Condos-Broward/Palm Beach	435,338	7,198	60
Condos Dade/Monroe	308,879	5,481	56
Condos Central West	438,881	8,895	49
Condos Central East	204,515	3,253	63
Condos North Central	115,718	2,056	56
TOTAL	1,920,861	30,641	63

Est. # of Residents 2.5 each 4,802,153

FLORIDA COMMUNITY ASSOCIATION MANAGERS, FIRMS AND EDUCATION PROVIDERS

CAMs	15,048	CAM's
CAB's	1,707	Firms
PROV	205	Providers
Pre Licensure	17	Education
CRSE	2,917	CEU Courses
CRSE	257	Providers

Associations per CAM	2.04
Average Units per CAM	128

Unit Value @ \$100,000 each	\$	192,086,100,000
Average Ass'n Value	\$	6,268,924
Average CAM portfolio Value	\$	12,764,892.34

FLORIDA POPULATION

In 2012 the United States Census Bureau estimated the state's population at 19,317,568

Exhibit 2

Florida Administrative Code Re: Community Association Managers Standards of Professional Conduct

61E14-2.001 Standards of Professional Conduct.

Licensees shall adhere to the following provisions, standards of professional conduct, and such provisions and standards shall be deemed automatically incorporated, as duties of all licensees, into any written or oral agreement for the rendition of community association management services, the violation of which shall constitute gross misconduct or gross negligence:

(1) Definitions. As used in this rule, the following definitions apply:

(a) The word "control" means the authority to direct or prevent the actions of another person or entity pursuant to law, contract, subcontract or employment relationship, but shall specifically exclude a licensee's relationship with a community association, its board of directors, any committee thereof or any member of any board or committee.

(b) "Licensee" means a person licensed pursuant to Sections 468.432(1) and (2), F.S.

(c) The word "funds" as used in this rule includes money and negotiable instruments including checks, notes and securities.

(2) Honesty. During the performance of management services, a licensee shall not knowingly make an untrue statement of a material fact or knowingly fail to state a material fact.

(3) Professional Competence. A licensee shall undertake to perform only those community association management services which he or it can reasonably expect to complete with professional competence.

(4) Due Professional Care.

(a) A licensee shall exercise due professional care in the performance of community association management services.

(b) A licensee shall not knowingly fail to comply with the requirements of the documents by which the association is created or operated so long as such documents comply with the requirements of law.

(5) Control of Others. A licensee shall not permit others under his or the management firm's control to commit on his or the firm's behalf, acts or omissions which, if made by either licensee, would place that licensee in violation of Chapter 455, 468, Part VIII, F.S., or Chapter 61-20, F.A.C. or other applicable statutes or rules. A licensee shall be deemed responsible by the department for the actions of all persons who perform community association management related functions under his or its supervision or control.

(6) Records.

(a) A licensee shall not withhold possession of any original books, records, accounts, funds, or other property of a community association when requested by the community association to deliver the same to the association upon reasonable notice. Reasonable notice shall extend no later than 10 business days after termination of any management or employment agreement and receipt of a written request from the association. The manager may retain those records

necessary for up to 20 days to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve the manager of any further responsibility or liability for preparation of the statement or report. The provisions of this rule apply regardless of any contractual or other dispute between the licensee and the community association. It shall be considered gross misconduct, as provided by Section 468.436(2), F.S., for a licensee to violate the provisions of this subsection.

(b) A licensee shall not deny access to association records, for the purpose of inspecting or photocopying the same, to a person entitled to such by law, to the extent and under the procedures set forth in the applicable law.

(c) A licensee shall not create false records or alter records of a community association or of the licensee except in such cases where an alteration is permitted by law (e.g., the correction of minutes per direction given at a meeting at which the minutes are submitted for approval).

(d) A licensee shall not, to the extent charged with the responsibility of maintaining records, fail to maintain his or its records, and the records of any applicable community association, in accordance with the laws and documents requiring or governing the records.

(7) Financial Matters. A licensee shall use funds received by him or it on the account of any community association or its members only for the specific purpose or purposes for which the funds were remitted.

(8) Other Licenses.

(a) A licensee shall not commit acts of gross negligence or gross misconduct in the pursuit of community association management or any other profession for which a state or federal license is required or permitted. It shall be presumed that gross negligence or gross misconduct has been committed where a licensee's other professional license has been suspended or revoked for reasons other than non-payment of fees or noncompliance with applicable continuing education requirements.

(b) A licensee shall not perform, agree to perform or hold himself or itself out as being qualified to perform any services which, under the laws of the State of Florida or of the United States, are to be performed only by a person or entity holding the requisite license for same, unless the licensee also holds such license or registration; provided, however, that no violation hereof shall be deemed to have occurred unless and until the authority administering the license or registration in question makes a final determination that the licensee or registrant has failed to obtain a license or registration in violation of the law requiring same.

(c) A licensee shall reveal all other licenses or registrations held by him or it under the laws of the State of Florida or the United States, if, as a result of such license or registration, a licensee receives any payment for services or goods from the community association or its board.

(d) Violation of any provision of Section 455.227(1), F.S., or of any part of this rule shall subject the licensee to disciplinary measures as set out in Section 468.436, F.S.

Rulemaking Authority 468.4315(2) FS. Law Implemented 468.433, 468.436 FS. History—New 5-5-88, Amended 2-5-91, Formerly 7D-55.007, 61B-55.007, Amended 1-8-98, 5-31-99, Formerly 61-20.503, Amended 4-21-10

Exhibit 3

Florida Administrative Code Disciplinary Guidelines for Community Association Managers

61-20.010 Disciplinary Guidelines.

(1) **PURPOSE.** Pursuant to Section 455.2273, F.S., the department provides within this rule disciplinary guidelines which shall be imposed upon applicants, registrants, or licensees whom it regulates under Chapter 468, Part VIII, F.S. The purpose of this rule is to notify applicants, registrants, and licensees of the ranges of penalties which will routinely be imposed unless the department finds it necessary to deviate from the guidelines for the stated reasons given in subsection (2). The ranges of penalties provided in this rule are based upon a single count violation of each provision listed. Multiple counts of the violated provisions or a combination of the violation may result in a higher penalty than that for a single, isolated violation. Each range includes the lowest and highest penalty and all penalties falling between. The purposes of the imposition of discipline are to punish the applicants, registrants, or licensees for violations and to deter them from future violations; to offer opportunities for rehabilitation, when appropriate; and to deter other applicants, registrants, or licensees from violations.

(2) **AGGRAVATING AND MITIGATING CIRCUMSTANCES.** The department shall be entitled to deviate from the disciplinary guidelines provided by this rule upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the department prior to the imposition of a final penalty. The department must make a specific finding of mitigating or aggravating guidelines. Based upon consideration of the facts present in an individual case, the department shall consider the following factors in aggravation and mitigation when deviating from the disciplinary guidelines set forth in this rule:

- (a) Danger to the public;
- (b) Physical or financial harm resulting from the violation;
- (c) Prior violations committed by the subject;
- (d) Length of time the registrant or licensee has practiced;
- (e) Deterrent effect of the penalty;
- (f) Correction or attempted correction of the violation;
- (g) Effect on the registrant's or licensee's livelihood;
- (h) Any efforts toward rehabilitation;
- (i) Any other aggravating or mitigating factor which is directly relevant under the circumstances.

(3) **PENALTIES CUMULATIVE AND CONSECUTIVE.** Where several violations occur in one or several cases being considered together, the penalties shall normally be cumulative and consecutive.

(4) **STIPULATION OR SETTLEMENT.** The provisions of this part are not intended and shall not be construed to limit the ability of the department to dispose disciplinary actions by stipulation, agreed settlement, or consent order pursuant to Section 120.57(4), F.S.

(5) **VIOLATIONS AND RANGE OF PENALTIES.** In imposing discipline upon applicants, registrants, and licensees in proceedings pursuant to Sections 120.569, 120.57(1) and (2), F.S., the department shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations as set forth in this subsection. The verbal identification of offenses is descriptive only. The full language of each statutory provision cited must be consulted in order to determine the conduct included.

VIOLATION	PENALTY RANGE	
	MINIMUM	MAXIMUM
(a) Section 468.436(1)(b)1., F.S. Violating any provision of this part, if not otherwise delineated in this rule.		
First Offense	Reprimand	\$1000 fine; costs
Second Offense	\$500 fine	Probation; \$2500 fine; costs
Third Offense	Probation; \$2500 fine	One year suspension; \$5000 fine; costs
(b) Section 468.436(1)(b)2., F.S. Violating any lawful order or rule, if not otherwise delineated in this rule.		

First Offense	Reprimand	\$1000 fine; costs
Second Offense	\$500 fine	Probation; \$2500 fine; costs
Third Offense	Probation; \$2500 fine	One year suspension; \$5000 fine; costs

(c) Section 468.436(1)(b)3., F.S.
Being convicted of or pleading
nolo contendere to a felony.

First Offense	Reprimand; \$500 fine	Revocation; \$5000 fine; costs
Second Offense	One year suspension; \$1000 fine; costs	Revocation; \$5000 fine; costs
Third Offense	Two years suspension; \$1000 fine	Revocation; \$5000 fine; costs

(d) Section 468.436(1)(b)4., F.S.
Obtaining a license or
certification or any other order,
ruling, or authorization by means
of fraud, misrepresentation, or
concealment of material facts.

First Offense	\$1000 fine; costs	Revocation; \$5000 fine; costs
Second Offense	One year suspension; \$1000 fine; costs	Revocation; \$5000 fine; costs
Third Offense	Revocation	Revocation; \$5000 fine; costs

(e) Section 468.436(1)(b)5., F.S.
Committing acts of gross
misconduct or gross negligence in
connection with the profession.

First Offense	\$500 fine	Revocation; \$5000 fine; costs
Second Offense	\$2500 fine; costs	Revocation; \$5000 fine; costs
Third Offense	One year suspension; one year probation; \$2500 fine	Revocation; \$5000 fine; costs

(f) Subsection 61-20.002(1), F.A.C.
Change of address, notification,
license renewal.

First Offense	Reprimand	\$500 fine; costs
Second Offense	Reprimand	\$1000 fine; costs
Third Offense	Reprimand	\$2000 fine; costs

(g) Paragraph 61-20.002(3)(c), F.A.C.
Legal name change, notification.

First Offense	Reprimand	\$500 fine; costs
Second Offense	Reprimand	\$1000 fine; costs
Third Offense	Reprimand	\$2000 fine; costs

(h) Subsection 61E14-2.001(2), F.A.C.
A licensee or registrant shall not
make an untrue statement of a

material fact or fail to state a material fact.

First Offense
Second Offense

Third Offense

Reprimand
One year probation; \$500 fine; costs
Two years suspension; \$2500 fine; costs

One year suspension; \$1000 fine; costs
One year suspension; two years probation; \$5000 fine; costs
Revocation; \$5000 fine; costs

(i) Subsection 61E14-2.001(3), F.A.C.
A licensee or registrant shall perform only those services which he or she can reasonably expect to complete with professional competence.

First Offense
Second Offense

Third Offense

Reprimand
One year probation; \$500 fine; costs
Two years suspension; \$2500 fine; costs

\$1000 fine; costs
One year suspension; two years probation; \$5000 fine; costs
Revocation; \$5000 fine; costs

(j) Paragraph 61E14-2.001(4)(a), F.A.C.
A licensee or registrant shall exercise due professional care.

First Offense
Second Offense

Third Offense

Reprimand
One year probation; \$500 fine
Two years suspension; \$2500 fine; costs

\$1000 fine; costs
One year suspension; two years probation; \$5000 fine; costs
Revocation; \$5000 fine; costs

(k) Paragraph 61E14-2.001(4)(b), F.A.C.
A licensee or registrant shall not knowingly fail to comply with the requirements of the documents by which the association is created or operated.

First Offense
Second Offense

Third Offense

Reprimand
One year probation; \$1000 fine; costs
\$2500 fine; costs

One year suspension; \$2500 fine; costs
One year suspension; two years probation; \$5000 fine; costs
Revocation; \$5000 fine; costs

(l) Subsection 61E14-2.001(5), F.A.C.
A licensee or registrant shall not permit others to commit certain acts or omissions.

First Offense
Second Offense

Third Offense

Reprimand
One year probation; \$500 fine; costs
Two years suspension; \$2500 fine; costs

One year suspension; \$1000 fine; costs
Two years suspension; two years probation; \$5000 fine; costs
Revocation; \$5000 fine; costs

(m) Paragraph 61E14-2.001(6)(a), F.A.C.
A licensee or registrant shall not

withhold possession of records.

First Offense	Reprimand	\$2500 fine; one year suspension; costs
Second Offense	\$500 fine	\$2500 fine; Revocation; costs
Third Offense	\$1000 fine	Revocation; \$5000 fine; costs

(n) Paragraph 61E14-2.001(6)(b), F.A.C.

A licensee or registrant shall not deny access to association records.

First Offense	Reprimand	\$1000 fine; costs
Second Offense	\$500 fine; costs	\$2500 fine; one year suspension; one year probation; costs
Third Offense	One year probation; \$3000 fine; costs	One year suspension; two years probation; \$5000 fine; costs

(o) Paragraph 61E14-2.001(6)(c), F.A.C.

A licensee or registrant shall not create false records.

First Offense	Reprimand; \$1000 fine; costs	One year suspension; two years probation; \$1000 fine; costs
Second Offense	One year suspension; two years probation; \$2500 fine; costs	Revocation; \$5000 fine; costs
Third Offense	Two years suspension; two years probation; \$5000 fine; costs	Revocation; \$5000 fine; costs

(p) Paragraph 61E14-2.001(6)(d), F.A.C.

A licensee or registrant shall not fail to maintain records.

First Offense	Reprimand	One year suspension; \$1000 fine; costs
Second Offense	\$500 fine; costs	Two years suspension; \$2500 fine; two years probation; costs
Third Offense	One year suspension; two years probation	Revocation; \$5000 fine; costs

(q) Subsection 61E14-2.001(7), F.A.C.

Use funds for intended purpose.

First Offense	\$1000 fine; costs	Revocation; \$5000 fine; costs
Second Offense	\$2500; two years probation; costs	Revocation; \$5000 fine; costs
Third Offense	One year suspension; two years probation; \$5000 fine; costs	Revocation; \$5000 fine; costs

(r) Paragraph 61E14-2.001(8)(a), F.A.C.

Other license suspended, revoked, misconduct.

First Offense	Two years probation	Revocation; \$5000 fine; costs
Second Offense	\$1000 fine; costs	Revocation; \$5000 fine; costs
Third Offense	\$2500 fine; costs	Revocation; \$5000 fine; costs

(s) Paragraph 61E14-2.001(8)(b), F.A.C.
Perform services requiring
licensure without requisite
licensure.

First Offense	Reprimand	\$2500 fine; costs
Second Offense	\$1000 fine; costs	\$5000 fine; one year suspension; two years probation; costs
Third Offense	\$2500 fine; costs	Revocation; \$5000 fine; costs

(t) Paragraph 61E14-2.001(8)(c), F.A.C.
Other licenses, reveal.

First Offense	Reprimand	Reprimand; \$1000 fine; costs
Second Offense	\$500 fine; costs	One year suspension; two years probation; \$3000 fine; costs
Third Offense	\$1000 fine; costs	Revocation; \$5000 fine; costs

(u) Subsection 61E14-4.001(1), F.A.C.
Continuing Education.

First Offense	Reprimand	One year probation; \$1000 fine; compliance; costs
Second Offense	\$250 fine; compliance within 60 days	Suspension until compliance; \$2500 fine; costs
Third Offense	\$1000 fine; compliance within 60 days	One year suspension or until compliance, whichever is greater; \$5000 fine; compliance; costs

(v) Subsection 61-20.5083(5), F.A.C.
Continuing education audit, failure
to respond.

First Offense	Reprimand	\$500 fine; costs
Second Offense	\$500 fine	\$2500 fine; costs
Third Offense	One year probation; \$2500 fine; costs	One year suspension; \$2500 fine; costs

(w) Subsection 61E14-2.001(2), F.A.C.
Practice through unregistered
entity 3 months or less.

First Offense	Reprimand	\$500 fine; costs
Second Offense	\$500 fine; costs	\$2500 fine; costs
Third Offense	One year probation; \$1000 fine; costs	One year suspension; \$5000 fine; costs

(x) Section 455.271(1), F.S.
Practice on delinquent, inactive
license.

First Offense	Reprimand	\$100 per month fine
Second Offense	\$100 per month fine	\$2500 fine; costs

Third Offense	\$1000 fine; costs	Revocation; \$5000 fine; costs
(y) Section 455.227(1)(c), F.S. Being convicted or found guilty of a crime related to the practice of a licensee's or registrant's profession.		
First Offense	One year suspension; \$1000 fine; costs	Revocation; \$5000 fine; costs
Second Offense	One year suspension; \$1500 fine; costs	Revocation; \$5000 fine; costs
Third Offense	Two years suspension; \$3000 fine; costs	Revocation; \$5000 fine; costs
(z) Section 455.227(1)(g), F.S. Filing a false report or complaint with the department.		
First Offense	\$500 fine	One year suspension; \$3000 fine; costs
Second Offense	Two years probation; \$1000 fine; costs	Revocation; \$5000 fine; costs
Third Offense	One year suspension; \$2500 fine; costs	Revocation; \$5000 fine; costs
(aa) Section 455.227(1)(h), F.S. Attempting, obtaining, or renewing a license by bribery or fraud.		
First Offense	\$1000 fine; costs	Revocation; \$5000 fine; costs
Second Offense	One year suspension; \$3000 fine; costs	Revocation; \$5000 fine; costs
Third Offense	Two years suspension; \$5000 fine; costs	Revocation; \$5000 fine; costs
(bb) Section 455.227(1)(i), F.S. Failing to report any person in violation of this part or the chapter regulating the alleged violator.		
First Offense	Reprimand	One year suspension; \$3000 fine; costs
Second Offense	Reprimand; one year probation	Two years suspension; \$5000 fine; costs
Third Offense	Reprimand; two years probation; costs	Revocation; \$5000 fine; costs
(cc) Section 455.227(1)(j), F.S. Aiding, assisting, unlicensed persons or entity.		
First Offense	Reprimand	One year suspension; \$3000 fine; costs
Second Offense	\$1000 fine; costs	Two years suspension; two years probation; \$5000 fine;

Third Offense	One year suspension; one year probation; costs	costs Revocation; \$5000 fine; costs
(dd) Section 455.227(1)(k), F.S. Failing to perform any statutory or legal obligation placed on a licensee or registrant, if the obligation is not otherwise covered by this rule.		
First Offense	Reprimand	One year suspension; two years probation; \$3000 fine; costs
Second Offense	Reprimand	Two year suspension; two years probation; \$5000 fine; costs
Third Offense	Reprimand; \$500 fine; costs	Revocation; \$5000 fine; costs
(ee) Section 455.227(1)(l), F.S. Making a report that the licensee or registrant knows to be false, failing to file a required report.		
First Offense	\$500 fine; costs	Revocation; \$5000 fine; costs
Second Offense	\$1000 fine; costs	Revocation; \$5000 fine; costs
Third Offense	\$2500 fine; costs	Revocation; \$5000 fine; costs
(ff) Section 455.227(1)(m), F.S. Making deceptive, untrue, or fraudulent misrepresentations, trick or scheme, related to the practice or profession.		
First Offense	Reprimand; \$500 fine	Revocation; \$5000 fine; costs
Second Offense	One year probation; \$1000 fine; costs	Revocation; \$5000 fine; costs
Third Offense	One year suspension; two years probation; \$2500 fine; costs	Revocation; \$5000 fine; costs
(gg) Section 455.227(1)(p), F.S. Knowingly delegating or contracting for the performance of professional responsibilities.		
First Offense	Reprimand; costs	One year suspension; \$3000 fine; costs
Second Offense	Two years probation; \$500 fine; costs	Two years suspension; two years probation; \$5000 fine; costs
Third Offense	One year suspension; two years probation; \$2500 fine; costs	Revocation; \$5000 fine; costs
(hh) Section 455.227(1)(r), F.S. Improperly interfering with an investigation or inspection		

authorized by statute, or within any disciplinary proceedings.

First Offense	\$1000 fine	Revocation; \$5000 fine; costs
Second Offense	One year suspension; \$2500 fine; costs	Revocation; \$5000 fine; costs
Third Offense	Two years suspension; \$5000 fine; costs	Revocation; \$5000 fine; costs

Specific Authority 455.2273(1) FS. Law Implemented 455.2273 FS. History—New 6-2-03.

Exhibit 4

Recap of Pro/Con submittals to UPL hearing June 22, 2012 Kissimmee, Florida

Witness	Transcript	Pro UPL	Con UPL	Submitter	Date	Pro UPL	Con UPL
Mezer	Attorney Page 11	X		Unknown	CAM	9/26/2002	X
Petersen	Attorney Page 27	X		Perrine	Attorney	5/16/2012	X
Dimmer	CAM Page 45		X	May	CAM	5/30/2012	X
Oshinsky	Attorney Page 56		X	Sausaman	CAM	6/7/2012	X
Fortin	Attorney Page 66		X	Pellascce	CAM	6/7/2012	X
Moran	CAM Page 79		X	Thyne	Owner	6/7/2012	X
Freedman	Attorney Page 83	X		Peters	Attorney	6/8/2012	X
White	Attorney Page 89		X	Zensen	Owner	6/10/2012	X
Cornett	Attorney Page 95	X		Tankel	Attorney	6/10/2012	X
Kalliche	Attorney Page 99		X	Lisboa	Owner	6/14/2012	X
Felice	Attorney Page 102		X	Brocco	Owner	6/14/2012	X
Davies	Attorney Page 110	X		Hector	Owner	6/14/2012	X
VanRooyen	CAM Page 114		X	Oshinsky	Attorney	6/14/2012	X
Laney	Owner Page 120		X	Benson	CAM	6/15/2012	X
Garfinkel	Attorney Page 126		X	Friese	Owner	6/18/2012	X
Gelfand	Attorney Page 134	X		Bomwell	Owner	6/18/2012	X
Totals		6	10	Kalliche	Attorney	6/15/2012	X
				Byron	Owner	6/18/2012	X
				Tranquilla	Owner	6/18/2012	X
				Carpenter	CAM	6/18/2012	X
				Van Rooyen	CAM	6/18/2012	X
				Fortin	Attorney	6/18/2012	X
				Bennett	Owner	6/19/2012	X
				Reimer	CAM	6/19/2012	X
				Associa	CAM	6/22/2012	X
				Simmons	Owner	6/22/2012	X
				Berger	Attorney	6/22/2012	X
				Scheuerman	Attorney	6/25/2012	X
				DBPR Spivey	Director	7/31/2012	X
				Reid	Owner	9/6/2012	X
				VanderLaan	Owner	9/7/2012	X
				Skiba	CAI-CEO	9/7/2012	X
				Fetter	Owner	9/8/2012	X
				DBPR Smith	Attorney	9/11/2012	X
				Stephens	Owner	9/11/2012	X
				Smith DBPR	Attorney	9/11/2012	X
				Gomber	Owner	9/14/2012	X
				Caballero	CAM	9/14/2012	X
				Meier	Owner	9/19/2012	X
				KrausKeenan	Owner	9/19/2012	X
				Lang	Attorney	9/19/2012	X
				Totals		4	37
				Attorney		9	14
				CAM		1	13
				Owner		0	20
				Totals		10	47

Exhibit 5

The State of Florida Department of Business and Professional Regulation publish on-line information for anyone interested in community association issues. They are organized in such a way as to make them available and understood by any reasonable person. There is also a Call Center available at 800-226-9101 to provide assistance and direction for questions dealing with community association managers and community associations.

Regulatory Council of Community Association Managers

<http://www.myfloridalicense.com/dbpr/pro/cam/index.html>

COMMUNITY ASSOCIATION MANAGERS FAQ's

http://www.myfloridalicense.com/dbpr/pro/cam/documents/cam_faq.pdf

COMMUNITY ASSOCIATION MANAGEMENT FIRM FAQ's

http://www.myfloridalicense.com/dbpr/pro/cam/documents/cam_firm_faq.pdf

Division of Florida Condominiums, Timeshares, and Mobile Homes

<http://www.myfloridalicense.com/dbpr/lsc/index.html>

What is a declaratory statement and how do I request one?

Declaratory Statements Issued in 2012

Notice: Previously issued declaratory statements can be found on the Division Archives page.

Division of Florida Condominiums, Timeshares, and Mobile Homes

<http://www.myfloridalicense.com/dbpr/lsc/ARB/LSCMHArbitrationResearch.html>

Online Databases

All condominium, cooperative and homeowner's association arbitration orders are combined into two separated databases: 1. Orders involving general, election and recall disputes, and, 2. Attorney's fees and costs orders. Each database may be separately searched by word or phrase. New orders will be added on a weekly basis.

Online Search for General Orders

Search tip: Use the subject matter headings in the subject matter indexes below as topics to search.

Exhibit 6

According to the Community Associations Institute web site there are 81 Law firm members listed for Florida.

Some of these provide on-line advice in the form of newsletters and legal opinions. Several of the firms also participate in live seminars and promotional advice programs.

Below is a short list example of some that are available.

Backer Law Firm, P.A <http://archive.constantcontact.com/fs076/1011169581090/archive/1102050444813.html>

Becker & Poliakoff <http://www.becker-poliakoff.com/publications.aspx>

Burr & Forman LLP http://www.burr.com/News-,a-,Resources/Resources.aspx#.Uay9tInD8_4

Cole, Scott & Kissane, P.A <http://www.csklegal.com/publications/>

Community Association Law Group <http://www.thehoalawyer.com/category/articles/>

Conroy, Simberg, Ganon, Krevans, Abel, Lurvey, Morrow & Schefer, P.A.
<http://www.conroysimberg.com/newsletters.php>

Florida HOA & Condo Blog <http://www.hoa-condoblog.com/>

Florida Rural Legal Services http://www.frls.org/Self_Help_Booklets.php

Fowler White Boggs <http://www.fowlerwhite.com/when-publications-archive.html>

Goede & Adamczyk, PLLC <http://www.floridacommunitylaw.com/lawyer-attorney-1640147.html>

Gunster Law Firm <http://www.gunster.com/news-room/newsletters-alerts/>

Pavese Law Firm <http://paveselaw.com/newsletters2>

Roby Law Firm <http://www.robylawfirm.com/roby-law-post/>

Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A. <http://www.floridahoalawyerblog.com/>

Taylor & Carls, P.A. <http://taylor-carls.com/category/blog/>

The Tannenbaum Scro Law Firm <http://www.flcommunityassociationlaw.com/>