**LICENSED CAMs AND THE UNLICENSED PRACTICE OF LAW**

CAMs frequently are asked to take action by a Board of Directors that may constitute unlicensed practice of law. In 1996, licensed CAMs petitioned the Florida Supreme Court for an advisory opinion as to whether certain aspects of community association management would constitute unlicensed practice of law. The Supreme Court issued an advisory opinion in the case of the *Florida Bar Re: Advisory Opinion – Activities of Community Association Managers,* 681 So. 2d 1119 (Fla. 1996), in which it ruled that ministerial actions do not constitute the practice of law. The Court ruled unlicensed practice of law is when CAMs provide legal advice or counsel their associations as to rights and obligations under the law or prepare legal documents by which legal rights are either obtained, secured or given away, even if such matters are not subject of court action.

The 1996 decision confirmed that the following actions are not unlicensed practice of law:

1. Completing and filing form to change registered agent or office for the association with Secretary of State.
2. Completing and filing Annual Corporation Report with Secretary of State.
3. Drafting certificate of assessment.
4. Drafting first and second notices of date of election, ballots, written notices of annual meeting, annual meeting or board meeting agendas and affidavits of mailing.
5. Filling in name and address of an owner on a limited proxy form is not unlicensed practice of law, but drafting the actual limited proxy form or questions in addition to those on the pre-printed form available from the Division of Condominiums does require an attorney. Modifications which can be made by a CAM include name of the community association, phrasing a yes or no vote on waiving reserves or audit; phrasing a yes or no voting question concerning carryover of excess membership expenses; and phrasing a yes or no voting concerning the adoption of amendments.
6. Drafting an approval or refusal of a sale or lease, unless the CAM advises the association of legal consequences of taking a certain course of action.

The 1996 decision confirmed that a CAM taking any of the following actions would be engaged in the unlicensed practice of law:

1. Drafting a claim of lien or satisfaction of claim of lien, as that requires a legal description of the property and establishes rights.
2. Drafting a notice of commencement for work or construction activity on association property.
3. Determining timing, method and form of giving notices of meetings if it requires interpretation of statutes, administrative rules and governing documents (and the interpretation constitute the practice of law).
4. Determining votes necessary to take certain actions where determination would require the interpretation and application of both the Condominium Act and the association’s governing documents.
5. Responding to an association question concerning the application of law to specific matters or advising an association that a course of action may not be authorized by law or rule.
6. Drafting a limited proxy form if beyond matters which are administerial in nature.
7. Providing advice concerning effect of approval or refusal of a sale or lease.

In 2012, the Florida Bar requested the Supreme Court revisit this area. The Florida Supreme Court issued an updated decision in the *Florida Bar Re: Advisory Opinion – Activities of Community Association Managers, (\_\_\_\_\_\_So. 3d \_\_\_\_\_\_ 2015),* which was issued on May 14, 2015. The Court was asked to address fourteen (14) activities, with the result as set forth below.

Actions by CAMs which would not constitute unlicensed practice of law:

1. Preparation of a certificate of assessments due once a delinquent account is turned over to the association’s lawyer.
2. Preparation of a certificate of assessments due once a foreclosure against the unit is commenced.
3. Preparation of a certificate of assessments due once a member disputes in writing the amount allegedly owed.
4. Drafting of pre-arbitration demand letter required by *Section 718.1255 Fla. Stat.*

The Following might be the unlicensed practice of law, depending upon circumstances:

1. Determining number of days to be provided for statutory notice if it requires interpretation of statutes, administrative rules, governing documents or rules of court.
2. Modification of limited proxy forms promulgated by the State for non-ministerial matters. Ministerial matters include modifying a form to include name of the association; phrasing a yes or no question concerning waiving reserves or financial statement requirements; phrasing a yes or no voting question concerning carryover of excess assessments; and phrasing a yes or no concerning adoption of amendments to the Articles of Incorporation, bylaws or association documents.
3. Preparation of documents concerning approval or disapproval of sale or lease if preparation of the document requires interpretation of statutes, rules or association’s document.
4. Determination of owners’ vote needed to establish a quorum if it requires interpretation and application of statute and the association’s governing documents.
5. Identifying owners to receive pre-lien letters if it requires more than simple review of the Public Records to determine an owner. If a CAM uses a list prepared from the Public Records to determine who should get a pre-lien letter, that constitutes the unlicensed practice of law as it goes beyond merely identifying the owners and requires legal analysis of who must receive pre-lien letters.

The Court confirmed that the following activities would be unlicensed practice of law under any circumstances:

1. Preparation of construction lien documents such as a notice of commencement or lien waiver.
2. Preparation, review, drafting or substantial involvement in the preparation or execution of contracts, including construction contracts, management contracts, cable television contracts, etc.
3. Any activity requiring statutory or case law analysis to reach a legal conclusion.

We have prepared the above summary of the two Florida Supreme Court advisory opinions concerning the unlicensed practice of law by CAMs to assist CAMs and condominiums in the day to day management of their associations. If there are questions concerning content or whether an activity is the unlicensed practice of law, please contact our firm.