

## 2009 Caselaw Update

Note that the court's opinion in the following case has not been finalized and could be withdrawn or revised. But the issues decided are of sufficient importance that the opinion, in its current form, should be brought to the attention of associations and managing agents.

### Glickman vs. Teglia, 2009 WL 424756

This case involves the question of an Association's responsibility for personal injury to 3<sup>rd</sup> parties in the pre-turnover stage of an Association's life. It is a narrowing of the Appellate Court's ruling in the Metropolitan Condominium Association case (859 NE 2<sup>nd</sup> 271, 1<sup>st</sup> Dist 2006), which case is discussed on the Fischel & Kahn website ([www.fischelkahn.com](http://www.fischelkahn.com)) at the Legal News and Publications tab (upper right corner), Condominium Updates, 2006 Condominium Case Law Update. Interestingly, it is from the same division of the Appellate Court that decided the Metropolitan case (with 2 of the 3 judges being the same), and it actually rejects some of its own language from the Metropolitan case. The Glickman case is only binding in Cook County, although it is possible it may be followed by other courts around the state.

The court's ruling is that an association, regardless of whether its board of managers is the developer (pre-turnover) or unit owners (post-turnover) has a duty of care to 3<sup>rd</sup> parties (as well as other duties) and can be held liable, at the association level, for failure to meet those duties.

**IMPORTANCE TO ASSOCIATIONS AND MANAGING AGENTS:** The association is the relevant legal entity, regardless of who is acting as the board of managers. At least insofar as routine operational matters are concerned, it is not two legal entities: A pre-turnover association and a post-turnover association. The board of managers itself is NOT a legal entity, and the persons who serve on the board have no effect on whether or to what extent the association itself may be liable.

This may be a move away from some provisions of the Act and some of the caselaw which speaks of the Board as though it was, somehow, a separate legal entity from the Association. Treating the Board as a separate legal entity is, in my opinion, misguided (and a holdover from years ago when condominium associations were not allowed to be not-for-profit corporations, but were rather simply unincorporated associations. Then it was less clear who could act for the association and how it could act.)

#### Facts:

In this case, Glickman suffered a slip and fall injury on the steps of the association. She sued various persons, including the association. As it happened, at the time of the accident, the association was still under the control of the developer, who was acting as the board of managers (as required by statute). But by the time the lawsuit was filed, the association had been turned over to the unit owners.

The association filed a motion to dismiss the complaint as to it, claiming that, under the Metropolitan case, it did not owe a duty to Glickman, because the developer-run association is actually to be treated as a “separate entity” from the unit owner-run association because of the fundamental change in the association interests that occurs at turnover. Since the accident took place while the developer was in control of the association, the now-unit owner run association claimed it was not liable to 3<sup>rd</sup> parties (such as Glickman) for the alleged breach of a duty of care by the developer-run association.

The trial court agreed and granted the motion to dismiss. Glickman appealed.

The First District of the Appellate Court (which oversees Cook County) held as follows:

1. Despite its own language in the Metropolitan case, the court retracts the language of that case that states or implies that the developer–run and the unit–owner run associations are different entities with different interests. The association’s interests are, in fact, the same. In my opinion, the Metropolitan case now only stands for the proposition that in issues between the developer and the unit owners, after turnover the developer cannot use the association entity as a shield for refusing to perform its obligations to the unit owners with regard to turnover information.

2. That whoever is acting as the board of managers, whether developer or unit owners, it is the association which is responsible for the administration of the property. But those responsibilities are to be performed by the actions of the board (since the association is simply an entity and not an individual itself). So, for example, if the association, by the developer board, signs a contract for some services, that contract is binding on the unit-owner association (absent other statutory provisions like the 2 year limitation). And if the developer-run association incurs liabilities which exist at turnover, the unit owner-run association is still subject to those liabilities.

One implication is that the developer board must act as a unit owner board must act: It must hold meetings on proper notice, issue minutes, obtain votes of “unit owners” if needed, maintain proper insurance, and generally act as any other board is required to do under the Illinois Condominium Property Act. In our experience, most developers fail to bother with any of the formalities of association operation. This case may provide ammunition for claims of breach of fiduciary duty for such failures.