

Task Force Supports Mediation

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Last Friday (January 9, 2004), the Florida Governor's Task Force on Homeowners' Associations held the fifth of its six meetings in St. Augustine. Past editions of this column have looked at actions previously taken by the Task Force (see Task Force to Debate HOA Regulation, October 12, 2003; Task Force Still Has Work To Do, November 20, 2003; and Task Force Requests State Action, December 18, 2003).

The agenda for the meeting was the most ambitious so far. Surprisingly, and to the credit of Co-Chairman Professor William Sklar (University Miami School of Law), the group discussed and disposed of the following items:

Alternative Dispute Resolution for HOA's: In what will probably be the most significant recommendation issued by the Task Force, the members approved a recommendation to require use of alternative dispute resolution before going to court. Disputes involving elections and recalls would be handled through mandatory binding arbitration through the Department of Business and Professional Regulation (DBPR). Other HOA disputes, such as rule enforcement cases, would require pre-suit mediation through a program administered by the local courts, with DBPR providing assistance in training mediators to understand the unique aspects of community association law and disputes.

Warranty on New Homes: By a vote of seven to six, the Task Force defeated a motion which would have extended warranty rights to purchasers of new homes similar to the warranty of merchantability and fitness contained in the condominium statute.

Governmental Regulation of Homeowners' Associations: The Task Force was presented with a suggestion of creating an agency to enforce HOA regulations, similar to the program used for condominiums. Theoretically, the agency would intervene in disputes between associations and individual members and investigate

complaints by residents against their board. By a margin of three to one, this proposal failed.

Liens and Fines: A motion to prohibit the foreclosure of association liens for unpaid assessments died for lack of a second. A subsequent motion to prohibit HOA's from filing liens to collect fines was approved by the group.

Inspection of Records: A motion was unanimously approved to recommend that the law be amended to broaden owners' rights to inspect records. Under the new proposal, any record of the HOA that is not exempted, would be subject to inspection rights. The proposal further permits the board of the association to adopt reasonable regulations regarding the manner, frequency, and duration of members' inspections, and to impose a charge (not to exceed fifty cents per page) for copying of records.

Fiscal Responsibility: A motion proposal was approved to recommend legislation which would require homeowners' associations to engage in "competitive bidding" for contracts involving the expenditure of more than ten percent of the association's annual budget. The association would not be obligated to accept the lowest bid. The motion also included a recommendation to provide that any officer, director, or manager of an HOA that accepts bribes, kickbacks, or any item of value from a third party in connection with the governance of the association would be guilty of a felony of the third degree. Minor amenities (food at meetings, trinkets at trade shows, business lunches and the like) would be exempt.

Timely and Accurate Financial Information: The Task Force approved a recommendation to amend Chapter 720 of the Florida Statutes to require more substantial year-end financial reporting from HOA's. The level of required report would be tied to the association's annual income. For example, like condominiums, ho-

meowners' associations exceeding \$400,000.00 in annual revenues would be required to obtain an annual audit. Members would be entitled to vote to waive the increased financial reporting requirements. The proposal also includes a procedure for the members to petition the board to the audit of HOA finances, regardless of the statutory requirement.

Please keep in mind that these proposals are not "the law," rather recommendations that the Task Force will make to Governor Bush as part of the Governor's request to study problems and issues in homeowners' associations. The group holds its final meeting in Tallahassee on January 28, 2004. ⚖

Many Condos Prohibit Pickup Trucks, not SUVs

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QUESTION: My son has a pickup truck with a custom cap that resembles an SUV. After being parked in the driveway for the last eight months, I received a letter from my condominium association stating that its being parked in the driveway is a violation of the community rules (which prohibit pickup trucks). What is the law regarding this? D.F. (via e-mail)

ANSWER: Many communities have specific rules prohibiting pickup trucks from being parked in the neighborhood. With the recent popularity of SUVs and other hybrid-type vehicles, there has been some confusion as to what constitutes a "truck." Florida law defines a "truck" as any motor vehicle designed, used, or maintained primarily for the transportation of property. Most arbitration cases dealing with this issue have held that SUVs are not "trucks." However, despite how much a pickup truck with a custom cap may resemble an SUV, I believe that it would still be considered to be a "pickup truck." Accordingly, it appears that your son's vehicle would not be exempt from a properly enacted rule banning pickup trucks in your condominium community.

QUESTION: I have lived in my condominium for five years and have never received a copy of the minutes from any of the board meetings. Are residents supposed to receive them? D.W. (via e-mail)

ANSWER: The association is not required to send you copies of the minutes from every meeting. Nevertheless, these records must be made available to you pursuant to Florida Statute 718.111(12). This section of the Florida Condominium Act requires that all records of your condominium association must be made available to any unit owner within five working days after receipt of a written request. The association is not required to send the records to you, but may comply with the Florida Condominium Act by having a copy of the official records of the association available for inspection and/or copying.

QUESTION: I am a condo owner and recently my new neighbors have begun stomping, running, and jumping above us. They have hardwood floors and I heard that this was illegal. Is that true? C.C. (via e-mail)

ANSWER: There is no Florida law prohibiting hardwood floors in a condominium. That being said, many condominium associations have rules prohibiting or restricting the use of hard surface flooring in upper-floor units. You should examine your condominium documents to determine whether there is such a prohibition in your community. If there is such a prohibition, you may wish to bring this violation to the attention of your board of directors. Whether the board would be able to require a change in the flooring is a matter of some complex legal debate. It will depend largely upon whether approval was given for the hardwood flooring, how long it has been there, and what actions the board may have taken to lead the residents to believe they could install it. Even if you or the association are powerless to act under the flooring regulation, if your neighbor's actions rise to the level of a "nuisance" you may wish to consult an attorney to assist you with a cause of action against your neighbors without the involvement of the association.

QUESTION: The rules and regulations of our condominium states that unit owners can have one pet under a certain weight limit. The property and buildings in our community have not abided by those rules since they were first written. I heard that if the rule was not enforced, as in this case, for between eighteen to twenty-one years, the association cannot just tell people they have to get rid of their pets. Is this true? C.U. (via e-mail)

ANSWER: You generally have it right. If your association has a rule prohibiting pets of a certain size, but it has not been enforced for (as you say) eighteen to twenty-one years, the association may not begin

enforcing it now against unit owners who have maintained oversized pets during this period. The association does, however, have the option of enforcing its rules prospectively. My advice to associations

is that if they are going to have a rule on the books, the rule should be enforced consistently. Failure to do so may nullify the rule, at least for current violations. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

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