

Law Calls for Binding Arbitration

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Introducing CALLBP.COM, the Community Association Legislative Lobby Website. CALL is the comprehensive source for legislative information that impacts HOAs, condominium owners, and other common ownership residents. Visit www.callbp.com today.

Today's column is the fourth part of a series reviewing Governor Bush's Task Force on Homeowners Associations and the 2004 amendments to Florida law that affect HOA's (see [*HOA Reform Proves To Be A Tough Nut, Law Gives Members More Voice and Law Denies Developer Fund Access*](#)).

Mandatory Binding Arbitration of Election Recall Disputes, F.S. 720.306(9): The Division of Florida Land Sales, Condominiums, and Mobile Homes ("Division") has been empowered to intervene in certain controversies within homeowners' associations, including election and recall disputes. The new law requires all disputes involving election challenges or recalls to be submitted to binding arbitration with the Division.

"SLAPP" Suits, F.S. 720.304(4): This change to the law, which is likely to have little effect on operation of homeowners' associations in the real-world, prohibits so-called "SLAPP" suits, which is an acronym for Strategic Loss Against Public Participation. The new law would prohibit a homeowner's association from suing a parcel owner solely because the parcel owner sought redress of his grievances before a governmental agency. The law provides various penalties, including triple damages.

Alternative Dispute Resolution, F.S. 720.311(1): Typical disputes between homeowners' associations and parcel owners must now be submitted to

mediation prior to the dispute being filed in court. Included within the definition of controversies requiring pre-suit mediation are:

- Disputes between an association and a parcel owner regarding use or changes to the parcel or common areas;
- Disputes regarding amendments to association documents;
- Disputes regarding meetings of the board and committees appointed by the board;
- Disputes regarding membership meetings, not including election meetings; and
- Disputes regarding access to official records.

The law also requires "other covenant enforcement disputes" to be submitted to pre-suit mediation, which would presumably address typical controversies in associations such as pets, vehicle parking, and similar matters. Some have speculated whether the reference to "covenant enforcement" is so broad so as to encompass assessment collection disputes, although this was not the focus of any Task Force debate, and presumably not the in-

tent of the Legislature. The cost of mediation is to be shared equally by the parties. Mediators may either be employed by the Division or be private mediators. Mediation conferences attended by a quorum of the board are not “meetings” of the board and are not subject to the “sunshine” requirements of the law. If mediation is not successful in resolving all disputes before the parties, the parties are free to file in a court of competent jurisdiction or avail themselves to either binding or non-binding arbitration with the Division. Unless the parties mutually agree to Division arbitration, unsuccessful mediations must be resolved in court. The Division is obligated to develop a certification and training program for private mediators and private arbitrators. The Division may only certify those mediators also certified by the Florida Supreme Court. Pre-suit mediation is also available for non-mandatory associations with the right to enforce restrictive covenants, although mediation for non-mandatory associations is optional.

Remedies for False and Misleading Information by a Developer, F.S. 720.602: The law now provides remedies to purchasers in HOA communities similar to those granted to condominium purchasers who are the victims of false or misleading statements or information published by, or under the

authority of, a developer. If false or misleading information is published in promotional materials, including but not limited to contracts, governing documents, brochures or newspaper advertising, a purchaser may rescind his contract or collect damages prior to closing. After closing, the purchaser has the right to collect damages for a period of one year after the later of several triggering events, the most common of which will be the closing date. Like its condominium counterpart, this law entitles the prevailing party to recover his attorney’s fees from the non-prevailing party.

Jurisdiction of County Courts, F.S. 34.01(1)(d): Although not an amendment to Chapter 720, this change addresses the jurisdiction of the county and circuit courts. The new law provides a county court with jurisdiction in homeowners’ disputes, which is concurrent with jurisdiction of the circuit court. This would permit a plaintiff in the typical HOA dispute to choose county court as the desired forum for resolution, even where only injunctive relief is being sought.

Next week we will finish up this series with a look at other changes to homeowners’ association laws, and then move on to new laws affecting condominiums including grandfathering of rental rights and the purchase of defibrillators. ☺

Questions Arise Over Condo’s “55 and Over” Rules

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Question: I have two questions about “55 and over” rules. We own a condo in an age restricted building. If we are away from our condo for a few months and we wanted to let our children (forty years old) stay there for a couple of weeks while we are gone, would this be allowed under the 55 and over rules? We consider ourselves to be the “permanent occupants,” although we would not be there while our children are visiting. My next question has to do with the sale of the condo unit. Right now all of the units are occupied by at least one person age 55 or over. The use restriction in our condominium documents states that the board shall establish policies for the purpose of ensur-

ing that the required percentages of occupancy by persons over age 55 is maintained at all times. My question is because we have one hundred percent occupancy of persons over age 55, can I sell my unit to someone who is under age 55, since a sale would not take the building below the eighty percent threshold required by law. W.T. (via e-mail)

Answer: The answer to your first question is, to my knowledge, an open issue in the law. Federal regulations regarding the required census for persons aged 55 and over deals with occupancy of the units. While I believe that an association can make the argument that a visiting child is a “guest,” they

would clearly be “occupying” the unit in the absence of the age-qualified resident. I do not believe that any of the enforcement agencies with jurisdiction over “55 and over” housing have adopted a position on this issue. Of course, use of the unit by guests other than the unit owner may also be regulated by the condominium documents, irrespective of the age restriction issue.

Your second question involves an interpretation of your declaration of condominium. Most declarations of condominium that impose a “55 and over” restriction are written to strive toward one hundred percent occupancy of units including at least one person age 55 or over. The twenty percent is usually a “cushion” for hardship situations, including the death of an age-qualifying spouse, or an inheritance situation. If your declaration of condominium is written in this manner, the board could properly prevent the sale of the unit to a person under age 55 (unless the new owner intended to use the unit for occupancy by a person over age 55, such as a rental).

Question: Is it legal for the president of a condominium association board to spend association money to purchase gifts for individual board members without collective board approval? L.P. (via e-mail)

Answer: I do not believe, as a strict technical matter of law, that it is appropriate for an association to spend common expense monies for gifts.

Although I certainly feel that it is appropriate to give tokens of appreciation to directors in limited circumstances (such as a plague for a retiring

member of the board), I recommend that the funds toward these acknowledgements be raised through voluntary contributions.

Question: Is it appropriate for a condominium association board to appoint one of its board members to serve on an association committee? L.P. (via e-mail)

Answer: There is no prohibition in the law against board members also serving on committees, and in fact that is quite common.

Question: Our ocean-front condominium rules state that all windows and doors must be kept closed. Is that legal? I am told that it is to preserve the air-conditioned common areas and prevent mildew. Can I be forced to use my air conditioning year-round? C.C. (via e-mail)

Answer: In order for an association’s rule to be valid, it must be reasonable. Reasonableness is obviously in the eyes of the beholder, and is ultimately for an arbitrator, judge, or jury to decide.

I can think of several situations where a rule requiring apartment doors to be kept closed would seem reasonable. One involves buildings configured so that noise would travel easily between the homes. Another situation where the rule would be reasonable is the case where the fire suppression design of the building necessitates the doors being kept closed. Your board’s rule is apparently based on prevention of mold and mildew, which has become a topic of frequent litigation as of late. If your board’s rule is predicated on some reasonable level of evidence, I think the rule would be upheld. ⚖️

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