



Condo Act Reformed in '91, '92

Fort Myers The News-Press, August 24, 2006

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Today's column is the third installment of a comparative look at the laws which govern Florida's community associations and consideration of the question of whether a single law should govern all associations in Florida, or whether the current system works better.

The primary emphasis of this discussion involves the differences between the laws applicable to condominium associations and homeowners' associations, the two most common types of community association organizations in Florida. So far, we have looked at the original purposes of the condominium laws in the 1960's, the consumer protection reforms for condominium owners that were enacted during the 1970's, and the development of the laws for both condominiums and homeowners' associations during the 1980's.

Today, we will continue with our history lesson, looking at the 1990's arguably the most significant decade in the evolution of community association laws, as well as relevant legal developments during the first half-decade of the new millennium.

Undoubtedly, the most significant reforms to the Florida Condominium Act took place in 1991 and 1992, as the result of a two-year process of study and debate. At about the same time that the internet was becoming part of America's communication landscape, grass roots organizations began to mold, and got the attention of the Florida Legislature. In 1990, the

Legislature empanelled a Study Commission, which toured around the State, taking public testimony about needed reforms in the condominium laws.

As is often the case, people happy with condo living stayed home, and those with a beef showed up, in some areas in droves. The Study Commission issued a lengthy report, recommending some radical changes to the law, some of which were ultimately adopted, some of which were not.

In general, the 1991-92 amendments constituted a radical shift in the philosophy of condominium governance. Previously, condominium associations operated under more of a corporate law model, whereby the elected board was granted nearly unlimited power. The 1991-92 amendments shifted the concept of association operations to what I would liken to a more municipal form of government. While the elected board still was granted broad powers, there was more emphasis on owner rights and participation, as well as disclosure and fair dealing in associations. For example, these were the laws that required condominium associations to obtain competitive bids for many contracts, provided for secret election of directors, and precluded condominium associations from banning hurricane shutters.

While the early 1990's saw whirlwind activity in the condominium setting, homeowners' associations, the forgotten step-child, also came into their own. In 1992, homeowners' associations saw the first law applicable only to HOAs, by the enactment of

a new Part III of Chapter 617, the Not For Profit Corporation Act. This law, as some put it at the time, got the camel's nose in the tent for the regulation of HOAs. The organic HOA law was only a couple of pages long and only applied to associations serving fifty parcels or more.

In 1994, the Division of Florida Land Sales, Condominiums and Mobile Homes was ordered by the Legislature to conduct a study concerning laws governing mandatory homeowners' associations and residential subdivisions, and whether further legislative regulation was in order. The Division issued its report in December of 1994, recommending that issues which had plagued condominiums for decades also be addressed by the Legislature, including transfer of operational control from the developer, the timely resolution of association disputes, and disclosure to prospective purchasers.

In 1995, like a creeping vine, the homeowners' association segment of Chapter 617 began to grow, in the eyes of many becoming more condo-like. Records inspection, attendance at board meetings, and regulation of developer turnovers were engrafted onto the law.

The latter half of the 1990's saw annual amendments to the laws for both condominiums and homeowners' associations, including the deletion of the 50 parcel jurisdictional limit for the application of the homeowners' association statute. In 2001, Part III

of Chapter 617 was renumbered to Chapter 720, and homeowners' associations in Florida now had a statute all to themselves.

Perhaps the most significant development of the new century was Governor Jeb Bush's creation of a Homeowners' Association Task Force in 2003. Like the Condominium Study Commission of more than a decade earlier, the Task Force toured the State and listened to concerns from those affected by the homeowners' association laws. Perhaps with history repeating itself, the Task Force's recommendations resulted in the adoption of significant changes to Chapter 720 in 2004. To the joy of some, and the dismay of others, Chapter 720 was again amended to set forth detailed-oriented procedures applicable to the operation of homeowners' associations, much of which was taken directly from the condominium law, although modified to some extent. Year-end audits, stream-lined recall procedures, and detailed records inspection rights were all added to the HOA law. Regrettably, while the Task Force's recommendations also included disclosure obligations and developer warranties, these were stripped out of the Bill by special interests during the legislative process.

As things stand now, the two laws have many things in common, but many important differences. Next week, we will get into the meat and potatoes, by starting with a look at some of the procedural differences between the two laws. ■

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.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.

Board Members Can Meet by Telephone

Question: I recently attended a board meeting where several heavily contested topics were discussed and voted on. A large group of owners opposed some of the actions taken by the board that will affect our condominium association. I heard a few complaining that the votes were no good because some of the board members were only on the phone and not actually at the meeting. I believe several of them are still gone for the summer so they call in for the board meetings. Do you think the items they voted on are valid? C.O.

Answer: Florida law allows board and committee members to meet by telephone conference. Such members attending by telephone conference are able to be counted towards obtaining a quorum, and they may also vote by telephone. The law provides that a telephone speaker must be used at the official site of the meeting so that those attending by telephone may be heard by the other board and committee members attending in person as well as by any unit owners present at the meeting.

If your board complied with the above requirements for telephone attendance at a board meeting, then any action taken at the board meeting is valid, presuming all other statutory requirements (i.e., proper notice, etc.) were also met.

Question: I used to be on my condominium association's board of directors. As I recall, whenever we held a meeting there was a requirement that we put up a notice on our bulletin board. Now, we are being told that notice of the meeting does not have to be put up on the bulletin board because it is on the association's TV channel instead. I always thought the notice had to be put up somewhere in the building. I'm afraid I'll miss important information if the notice is only on TV because I do not watch it much. Isn't there a requirement to put the notice up in the building? H.E.

Answer: The most common way board meetings are noticed is by physically posting a notice in a conspicuous location on the condominium property, specified by board rule. For most meetings, this must be done at least 48 continuous hours prior to the meeting. However, for meetings at which non-emergency special assessments, or amendments to rules regarding unit use will be considered, the notice must be both posted and mailed, delivered, or electronically transmitted to owners not less than 14 days prior to the meeting. There are, however, some exceptions to the posting requirement.

The Condominium Act provides that if there is no condominium property or association property that notices can be posted on, notices of board meetings are to be mailed, delivered, or electronically transmitted at least fourteen days before the meeting to the owner of each unit.

The scenario you describe is another possible exemption to physically posting the notice. The Condominium Act indicates that in lieu of, or in addition to, physically posting notice of a board meeting on the condominium property, the association can pass a reasonable rule adopting a procedure for conspicuously posting and repeatedly broadcasting the notice and the meeting agenda on a closed-circuit cable television system serving the condominium association. If, however, such broadcast notice is used in lieu of physically posting notice on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. Also, when broadcast notice is used, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

If your association has passed a rule adopting the broadcast notice alone is sufficient, and no physical procedure set forth in the Condominium Act, then posting on the bulletin board would be required. ■

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