



Pending bills would affect community associations

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The Florida Legislature is about half way through its annual 60 day session. As has become the custom in Tallahassee, a half dozen or so bills affecting community associations have been filed.

As usual, some of the proposals are extreme, loved by some, hated by others.

Aficionados of condo politics and legislative matters can keep track of proposed legislation, on a daily basis, through various internet-available tools. The most commonly used tool appears to be On-Line Sunshine (www.leg.state.fl.us), where you can navigate to the respective chambers (Florida House and Florida Senate) to keep track of the status of Bills you are interested in, including committee hearing dates, amendments to the Bills, and staff reports.

Here's a look at what is currently in play in Tallahassee (references to S.B. stand for Senate Bill; H.B. stands for House Bill):

- S.B. 396/H.B. 7031 – This bill has passed in both the House and the Senate. It addresses the self-insurance issues addressed by the Legislature in its January special session, stating that the costs of self-insurance are a proper common expense. Developers also can take some comfort

from this law, which would clarify that amendments to a budget do not constitute a material change to the developer's offering, which trigger contract rescission rights. Good news for developers in a slow real estate market. This proposed law will also beef up the required inspection reports involved in conversion of apartment buildings to condominiums, and provides greater remedies with respect to the engineer who prepares the conversion report. This Bill will need the Governor's signature (or failure to veto) to become law, and looks like it is on its way.

- S.B. 314/H.B. 0407 – This is essentially the same Bill passed by the Legislature in 2006, and vetoed by former Governor Bush, regarding the termination of condominiums due to catastrophes and economic circumstances. The provision from last year's Bill, which would allow non-catastrophe terminations to be approved by less than unanimous approval, and which would have applied retroactively, has been removed from the proposed new law. Both the House and Senate versions seem to be moving through the process.

- S.B. 348/H.B. 671 – This law would prohibit condominium associations from requiring prospective purchasers to provide financial information, and would also preclude the posting of monetary deposits in connection with the purchase of a condominium unit. Neither the House nor Senate version appear to have been heard by any committees yet.
- S.B. 902/H.B. 433 – These Bills are also very similar to legislation adopted in 2006, also vetoed by former Governor Bush. These proposals, which seem to be winding through a maze of committee assignments, would permit voluntary homeowners associations to take advantage of revitalization provisions regarding the Marketable Records Title Act, would ease the process of obtaining mortgagee consent to amendments for condominiums, and would institute a reserve law for homeowners associations. The proposed new law would also liberalize HOA year-end financial reporting requirements in terms of the deadline, making it similar to the condominium law. This Bill also places restrictions on the authority of HOA architectural committees, and attempts to streamline the pre-suit mediation process for homeowners association disputes. The hot buttons which triggered the former Governor’s veto, dealing with fire sprinkler retrofitting and mediator qualifications, have been removed from this year’s version.
- S.B. 2816/H.B. 1373 – These Bills started out as a 200-page proposal with substantial changes to various common interest housing laws. Among the major changes was an effort to bring homeowners

associations under the auspices of a state agency for regulation. The HOA-regulation proposal has apparently been removed from the House version after the committee review process. The Senate version is still in its original state, has been assigned to various committees, and has not yet been heard. The Bill also focuses on numerous aspects of the day-to-day operation of condominium associations. For example, the Bill proposes that an association could not enter an owner’s unit for association-related purposes without giving 24-hour advance notice, having two people enter on behalf of the association, with one of them being a board member. The Bill would require most association documents and notices to be sent by certified mail, and would eliminate a homeowners association’s ability to levy fines. The amended House version of the Bill also would permit unit owners to keep “emotional support animals.”

- S.B. 1844/H.B. 1465 – These Bills would require associations to notify delinquent owners of the filing of a lien by certified mail, and would provide delinquent owners with ninety days to pay off any attorney’s fees added to the account. These Bills do not appear to have made much progress through the committee system.

Love ‘em or hate ‘em, stand up and be heard. Find out what your Legislature is planning for you, and contact your local Senator and Representative.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, cooperative, 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 Can Execute Costly Roofing Contract at Next

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Q: My condominium board held a meeting with no stated agenda and did not properly post notice of the meeting. During the meeting, the board entered into a contract with a roofing company that could potentially cost our association a lot of money. My question is whether the association's failure to provide an agenda or proper notice would invalidate the meeting. If the meeting was not proper, can the contract still be enforced? C.M. (via e-mail)

A: Pursuant to the Florida Condominium Act, except in cases of emergency, adequate notice of all board meetings must specifically include an identification of agenda items and the notice must be posted conspicuously on the condominium property at least 48 hours preceding the meeting, except in an emergency. If the board will be considering non-emergency special assessments, or rules regarding unit use, then the notice must be mailed, delivered or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting.

The Florida Condominium Act also provides that the board of directors can only take up items on its posted agenda at meetings of the board. There is an exception for "emergencies." In an emergency scenario, a majority of the board plus one can

authorize taking up a matter on an emergency basis. The emergency action must then be ratified at the next regularly noticed meeting of the board, with notice of the action being included on the posted agenda. Unless the roof was damaged by a calamitous event (such as a hurricane), it is doubtful that entering into a roof contract would qualify as an "emergency" and the issue should be subject to consideration by the board at a duly noticed meeting.

With regard to your association's board meeting where the contract was entered into, the board can fix the meeting notice issue by properly noticing another board meeting where the execution of the contract can be ratified by the board. Your board presumably has the authority to enter into such a contract, and if the meeting notice issue is corrected it should not be a grounds to invalidate the contract. However, the association may be subject to a fine, or at least a warning, from the State if a complaint as filed against it.

There may be other issues not raised in your question to be looked at, such as whether the board can unilaterally authorize the expenditure of funds over a certain amount, whether the work involved involves a material alteration or necessary repair, whether special assessments will be necessary, whether competitive bidding requirements were

followed, etc., which issues are typically looked at on a case by case basis and in conjunction with an association's condominium documents.

Q: How do you get a condominium board of directors to follow the bylaws and the Condominium Act? The board of directors in my condominium is constantly taking actions contrary to the bylaws and the Condominium Act and I do not feel I should be responsible, as I am not a board member, to constantly bring to the attention of the manager that the board is acting in violation. I would appreciate your advice as I am really frustrated as to the constant violations. F.L. (via e-mail)

A: There are three general methods that I have identified that a member can use to ensure that the board meets its obligations under the governing documents of the condominium and applicable statutes.

First, the best solution to this problem is for all members of the community to take an active role in association matters and to elect only directors who understand their obligations and will follow the requirements set forth in the documents and statutes. Despite the active involvement of the members in the election process, directors are elected who do not comply with the requirements of operating the association, the Florida Condominium Act provides for a recall procedure in which the members can vote to remove any or all directors. It is also important to remember that the directors of a condominium association are volunteers, and every member, with very rare exception, is eligible to be a candidate for the board of directors. I would urge you to consider participating as a director and encouraging your like-minded neighbors to join you.

A second method of ensuring compliance with the Florida Condominium Act and related rules developed under the Florida Administrative Code is found in the complaint process with the Division of Florida Land Sales, Condominiums and Mobile

Homes. The Division's jurisdiction is limited to enforcement of the statute and related rules under the administrative code, and the Division does not have the authority to enforce your governing documents. However, as you may know, many of the requirements imposed on an association, including meeting notice requirements and access to records, are established by statute, and are within the jurisdiction of the Division. The Division has several remedies available to cure violations of the statute and the rules, including writing a formal letter of censure or warning to the association or board members, issuing a cease and desist order, filing an action in Circuit Court seeking an order to clarify obligations, to require a party to cease certain actions, or seeking restitution in appropriate cases. In addition, the Division has the authority to impose a civil penalty of up to \$5,000.00 against any person for a willful and knowing violation of the statute or related rule. I have found that when a unit owner files complaints with the State against the association, it is usually the unit owner who is held out as a trouble-maker, costing the association money, etc. I normally strongly recommend that unit owners who are dissatisfied with the governance of their condominium first attempt to resolve the matter internally, before going to the State.

The third method available to an owner to enforce compliance with the governing documents and the Condominium Act is to bring an action for damages or injunctive relief, or both, against the association or any director who willfully and knowingly fails to comply with the documents and the statute. Every member of a condominium association has legal standing to bring such an action. In many cases, such a claim would constitute a "dispute", and would first be required to be brought as a mandatory, non-binding arbitration proceeding, filed with the Division, before the matter could proceed to Circuit Court. Again, this is certainly not a first step that should be considered and in my opinion, should be the last resort.

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