



Recently Passed Bills to Become Law July 1

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

On May 4, the Florida Legislature adjourned its annual session.

Four bills made it through the process, and absent veto by the Governor, will become law on July 1, 2007 (except House Bill 7031/Senate Bill 0396, which will become effective upon the Governor's signature).

House Bill 7031/Senate Bill 0396

- **Condominium Self-Insurance:** This change addresses a perceived "glitch" in the legislation adopted during the January, 2007 Special Session of the Legislature. This change clarifies that common expenses of the Association include participation in self-insurance funds which are created and operated pursuant to the applicable statute.
- **Condominium Conversions:** As a consequence of some perceived problems arising from the "conversion craze" of a couple of years ago, the law has been beefed up regarding a developer's obligations when converting existing improvements (such as an apartment building) into a condominium. The required "conversion report" that the developer must provide

about the physical condition of the property must now be more thorough than under previous law. If there is more than a year lag time between the report and the creation of the condominium, the conversion report must be updated.

- **Developer Budget Amendments:** Florida law provides that when a purchaser buys a condominium unit from a developer, there is a right of "rescission" (a right to back out of a contract) for 15 days after the initial purchase contract is signed. This is often called a cooling off period. The law also restarts the cooling off period if a developer files changes to its offering materials that are considered "material and adverse". There has been some concern by developers, particularly in times of escalating insurance costs, that significant budget amendments could be deemed "material and adverse". This change to the law states that budget changes are not "material and adverse".

House Bill 0433/Senate Bill 0902

- **Marketable Record Title Act Procedures:** Florida's Marketable Record Title Act has

been amended to permit non-mandatory homeowners associations, which have covenant enforcement rights, to use the procedures set forth in the law to revive covenants that have lapsed.

- **Lender Consent to Condominium Document Amendments:** This provision is intended to address a problem faced by many condominium associations whose documents require lender consent for amendments to the condominium documents. The new law will provide that any mortgage holder who does not consent to an amendment within 60 days of a request is deemed to have consented to the amendment. The law also states that the only party with the right to challenge the lack of mortgagee approval in contesting amendments is the mortgagee itself (not the unit owner). Unfortunately, these clauses appear to only apply to mortgages recorded on or after October 1, 2007.
- **Homeowners' Association Mediation:** The pre-suit mediation procedures in Chapter 720 have been streamlined. Rather than the state acting as the clearinghouse for mediation of HOA disputes, the "aggrieved party" (usually an association seeking to enforce a covenant) must provide the opposing party with a list, containing the name of five acceptable mediators. If the opposing party does not accept one of the mediators within 20 days, or if a mediation is not concluded within 90 days, further mediation proceedings are not required, and the parties may proceed to court.
- **Homeowners' Association Reserves:** The law for homeowners associations now contains a rather elaborate scheme, somewhat similar to the condominium laws, regarding reserve accounts for capital expenditures and deferred maintenance.

Associations which do not keep reserves must make bold-faced disclosures in their budget about potential special assessments. Reserve funding is not mandatory unless it was instituted by the developer, or a majority of the members "opt-in" to the reserve laws. Homeowners' association boards will need to take a careful look at these changes.

- **HOA Year End Reporting:** The year-end reporting deadlines for homeowners associations have been liberalized by extending the 60 day due date to 120 days (measured from the end of the fiscal year).
- **Architectural Control Limitations:** Detailed study of these changes will also be appropriate for a future edition of this column. The changes, primarily applicable to homeowners associations, appear designed to favor (perhaps require) written architectural standards, and prohibit the enforcement of restrictions inconsistent with the written governing documents.

Senate Bill 0314/House Bill 0407

- **Termination After Catastrophic Events:** Notwithstanding any provision to the contrary in an existing declaration of condominium, a condominium can be terminated under this law by the vote generally required for amending the declaration (as opposed to the unanimous approval requirement usually contained in declarations of condominium). Termination by this vote is limited to circumstances where the cost of rebuilding exceeds the fair market value of the units, or where it is impossible to reconstruct due to changes in zoning or land use laws.
- **Voluntary Termination:** The law also permits an 80% vote for "voluntary

termination”, regardless of catastrophic events or economic waste.

- **Procedural Changes Involving Terminations of Condominiums:** The new law requires a plan of termination, which must include individual unit values, and the basis upon which the proceeds from the sale of the property will be distributed. The association acts as a “termination trustee”, and is given general authority to handle the disposition of the property and allocation of the sale proceeds.

“jointly and severally” liable with their predecessor for unpaid assessments.

- **45 Day Cooling Off Period Prior to Filing for Foreclosure Actions:** Prior to filing a foreclosure lawsuit for unpaid assessments, a homeowners association must give the owner written notice of their delinquency, including all amounts due (which may include attorney’s fees associated with the preparation of the demand). The delinquency notice must be sent by certified or registered mail, and provide the owners with 45 days to pay. After the 45 days lapses, the HOA can start a foreclosure proceeding.

Senate Bill 1844/House Bill 1465

- **Joint and Several Liability:** The Homeowners Association Act now contains a provision similar to the Condominium Act, which provides that the purchaser of a parcel that has delinquent assessments is

Many of the laws which were passed (assuming they are not vetoed by the Governor) will have significant impact on the day-to-day operation of associations, and will be examined in greater detail in future editions of this column.

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.



Act Requires Notice of Meetings

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Q: My question involves board of administration meetings. I have heard that the Condominium Act requires that written notice of meetings must be mailed to unit owners, and be posted, at least 14 days in advance of the meeting. Our board held a meeting and the unit owners were mailed notice 14 days prior to the meeting, but the notice was not posted in the same 14 day period. During the meeting, a unit owner stated that we were meeting illegally as we did not post the notice within the 14 day time frame. Are the actions taken by the Board at the meeting valid? R.J. (via e-mail)

A: The Florida Condominium Act provides that adequate notice of all board meetings (which must include an agenda of the items to be discussed at the meeting) must be posted conspicuously on the condominium property at least 48 continuous hours in advance of the meeting, except in an emergency. The condominium documents may, however, make this requirement more stringent, in which case the more stringent requirement must be followed.

The 48 hour notice requirement does not apply to all types of board meetings. The Condominium Act requires that written notice of any meeting at which non-emergency special assessments, or amendments to the rules regarding unit use, are

considered must be mailed, delivered or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than 14 days in advance of the meeting. The person providing the 14 day notice must execute an affidavit (which should be maintained with the association's official records) evidencing compliance with the 14 day notice requirement.

In addition to the more traditional forms of notice, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. If broadcast notice is used in lieu of physically posting notice, the notice and agenda must be broadcast at least 4 times every broadcast hour of each day that posted notice is otherwise required.

The specific notice required for the board meeting you reference will depend upon the actions taken at the meeting. If the meeting was not properly noticed, the board can fix that problem by properly noticing a new meeting and either vote again on any action taken at the improperly noticed meeting, or to simply ratify the past action taken.

Q. I received a notice in the mail from my condominium association announcing the upcoming election for a vacancy on the board of directors. The notice advised that I must complete the form declaring my candidacy and send it to the secretary of the association 40 days before the date of the scheduled election. I deposited my candidacy form in the mail before the deadline, but it was not received in the mail by the secretary until after the deadline. I was told that I cannot be a candidate because the form was not received by the association before the deadline. This seems unfair to me. What is the law on this subject? J.T. (via e-mail)

A: The Florida Condominium Act requires that a unit owner or other eligible person desiring to be a candidate for the board of directors give written notice to the association not less than 40 days before a scheduled election. The Division of Florida Land Sales, Condominiums, and Mobile Homes has promulgated an administrative rule implementing this statute. The administrative rule states that notice is effective when it is actually received by the association. Unfortunately, there is no provision in the law or rules to suggest that this deadline can be extended to allow the association

to accept candidacy forms that were postmarked before the deadline, but actually received after the deadline expires.

Q: Our condominium association does not post “unapproved” minutes immediately after our monthly meetings. Rather, the board waits until the minutes are approved at the next meeting prior to posting them. I understand that several associations post the minutes within a few days of the meeting, but mark them “unapproved”. Is this a good practice? J.O.C. (via e-mail)

A: I assume by “posting”, you mean that the minutes are posted on a community bulletin board. While the board is free to post unapproved minutes, there is no requirement to do so. In fact, there is no legal requirement that minutes (whether approved or unapproved) be posted at all.

If the unapproved minutes are posted, it is a good idea to mark them as “unapproved” to avoid any confusion. Obviously, once the minutes are approved (or corrected) at the next board meeting, the “official” minutes should be included amongst the official records of the association.

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