



Repair Cost Prohibitive at Old Condo

Resident wants to know how to invoke "Teardown Act"

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Q: What is the Florida Condominium Teardown Law/Act and where can I find more information on this? We live in a 34 year-old 36-unit condominium complex on the ocean. The cost of repairs and renovations has become prohibitive. Taxes, insurance and general maintenance are escalating. It may be time to find a developer/investor to purchase the whole complex. How can we invoke the Teardown Act to override the minority votes for the sale of the complex? F.D. (via e-mail)

A: The law that you are probably referring to is a new law adopted during the 2007 Legislative Session, which became effective on July 1, 2007. The official name is not the "Teardown Act", although some people may be calling it that. The new law amends the Condominium Act to provide a method for terminating condominiums in the event of economic waste or when it becomes impossible to operate or reconstruct a condominium because of land use laws or regulations. It also provides a method for optional termination.

In the event of economic waste or impossibility, the percentage needed to terminate is the lesser of the lowest percentage of voting interests needed to amend the declaration or as provided in the

declaration for termination of condominiums. Therefore, if, for example, the Declaration can be amended by two-thirds of the voting interests, but the Declaration also requires the unanimous approval of the owners to terminate the condominium, the lower number (two-thirds of the voting interests) is all that is needed to approve termination because of economic waste or impossibility. In order to terminate because of economic waste, the total estimated cost of repairs necessary to restore the improvements to their former condition to bring them into compliance with applicable laws or regulations must exceed the combined fair market value of all units in the condominium after the completion of repairs. In order to terminate because of impossibility, it must be impossible to operate or reconstruct the condominium in its prior physical configuration because of land use laws or regulations.

If the criteria for economic waste or impossibility are not met, the condominium can still be terminated by means of "optional termination." Optional termination can be effectuated by eighty percent of the unit owners if not more than ten percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections to the plan of termination.

Therefore, you need at least eighty percent approval as long as not more than ten percent of the voting interests object to the plan of termination.

The new law is intended to apply to pre-existing condominiums, regardless of provisions to the contrary in existing condominium documents. This retroactive application raises some constitutional questions, which may have to be tested in the courts to determine whether the law can be properly applied retroactively.

You can find a copy of the new law by visiting www.leg.state.fl.us. That page will let you view the Florida statutes and the applicable law is Section 718.117, Florida Statutes.

Q: Several months ago, I asked the board of my homeowner's association a question during a meeting. After waiting a month for a reply and not receiving one, I forwarded my question to the association in writing, via certified mail. It has now been close to two months since I sent the board my question and I have not received a response. What can I do about the board's failure to answer my question? **I.E. (via e-mail)**

A: This is a topic where the law governing condominium associations is sometimes confused with the law governing homeowners' associations. In a condominium setting, the board is required to respond to a written inquiry that is sent by certified mail within 30 days. The board's response must either substantively answer the question, notify the unit owner that a legal opinion has been requested, or that advice from the Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes has been sought.

Where the board has requested the advice of the association's attorney in answering the inquiry, a substantive written response must be provided to the unit owner within 60 days after receipt of the inquiry. If advice is sought from the Division, the board must respond to the inquiry within 10 days of its receipt of the advice.

If a condominium association's board fails to provide a response to such a written inquiry, the board is precluded from recovering attorney's fees and costs if the matter is subsequently litigated, results in an administrative proceeding, or any arbitration arising out of the inquiry. Condominium association boards of directors are permitted to adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries.

The law governing homeowners' associations does not have a similar requirement regarding a board's obligation to respond to a homeowner's inquiries, even if submitted by certified mail. Accordingly, while a response from your board would be preferred, they are not required by statute to answer your question.

Q: I live in a homeowners' association. The board constantly makes decisions using email. Half of the decisions for our association are never brought up at the board meeting. Is this legal? What can we, as residents, do to have more knowledge about what gets voted on in our association? **V.P. (via e-mail)**

A: As you may know, every association that operates a community governed by the Florida Homeowners' Association Act must be Florida corporation. Most often, an association is established as a Florida Not-for-Profit Corporation that is governed by Chapter 617, Florida Statutes. Chapter 617 clearly establishes that all corporate powers are to be exercised by, or under the authority of, the board of directors, subject to any limitations set forth in the articles of incorporation. Moreover, the bylaws of a corporation may, and often do, contain provisions for the regulation and management of the affairs of the corporation. Typically, the articles of incorporation and bylaws provide the board of directors with very broad and ample authority to operate the association. However, the board and officers must comply with specific article and bylaw provisions and respect the limitations on their authority.

It is certainly possible for the articles or the bylaws to confer authority upon any one officer of the association. If the articles, bylaws or a resolution of a majority of a quorum of the board empowers any one officer to take action and to use his/her discretion in making decisions, then it is appropriate for an officer or director to make certain decisions outside of a board meeting. However, directors and officers are well advised to have all such actions later ratified by the full board at a duly noticed board meeting.

Notwithstanding the potential for individual directors and officers to be empowered to make decisions independent of the full board, it is always critical to remember that the association acts

through its board of directors, and important decisions must be made, or at least ratified, by a majority of a quorum of the board. The Homeowners' Association Act recognizes that the levy of a special assessment or the amendment to rules regarding parcel use are two such important matters, and decisions concerning those issues may only be made at a board meeting where notice of the meeting has been mailed, delivered, or electronically transmitted to the members and posted conspicuously on the property at least fourteen (14) days in advance of the meeting. Failure to comply with these specific notice requirements would invalidate any asserted special assessment or rule regarding parcel use.

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.