



Community Life: Condo Act to Affect Turnover, Religious Symbols, Alterations

Fort Myers The News-Press, July 20, 2008

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Today's column is the fourth installment of our annual review of new laws affecting community associations. Today we will continue reviewing House Bill 995, which primarily impacts condominium associations, and which has an effective date of October 1, 2008.

Today's column emphasizes the sections of HB 995 which address physical issues related to the operation, management, and maintenance of condominium property:

- **Developer Turnover** Inspection Reports: The section of the Condominium Act regarding transition of control from the developer to unit owners other than the developer (commonly referred to as "turnover"), has been substantially amended. The new law will require the developer to provide, at the turnover meeting, a report sealed by an architect or engineer authorized to practice in Florida. The report must attest to required maintenance, useful life, and replacement costs of various common element components. Included within the list of required items are roofs, structures, fireproofing, elevators, heating/cooling systems, and plumbing. Further, the law will require similar attestations for the buildings' electrical systems, swimming

pool or spa equipment, seawalls, pavement and parking areas, drainage systems, painting, and irrigation systems.

- **Material Alterations of Common Elements:** A potential "glitch" in the section of the Florida Condominium Act dealing with "material alterations or substantial additions" of common elements or association property has been addressed. A number of years ago, a Florida court held that the law which existed when a particular condominium was created governed the issue of "material alterations or substantial additions", and that later laws on material alterations or substantial additions, which are more liberal, did not apply. The Legislature essentially overturned that ruling a few years ago for multicondominium associations, but apparently forgot to include similar language for associations which operate a single condominium. That oversight has been addressed, and the law is now clear that the current material alteration clause in the statute applies to existing associations.
- **Religious Symbols:** Apparently as a result of a somewhat well publicized dispute that arose last year, the Florida Condominium Act will now provide that an association

may not refuse the request of a unit owner to attach a religious object on the mantle or frame of the door of the unit. The law requires that such objects cannot exceed three inches wide, six inches high, and 1.5 inches deep.

- **Building Inspections:** A significant new provision has been added to the Condominium Act regarding mandatory building inspections. The new law provides that for condominiums greater than three stories in height, at least every five years, the board shall have the building inspected by an architect or engineer licensed to practice in Florida. The inspection report must attest to the required maintenance, useful life, and replacement costs of the common elements. However, the law does permit associations to “opt out” of the inspection requirement, if approved by a majority of the voting interests present at a properly called meeting of the association. The meeting and approval must occur prior to the end of the five-year period and is effective only for that five-year period.

- **Hurricane Protection:** The Florida Condominium Act was amended a number of years ago to allow associations, after receiving approval of a majority of all unit owners, to

install hurricane shutters on the condominium buildings, and issue credit to those who had previously installed shutters. The new law expands this concept, perhaps substantially, by adding the term “other hurricane protection” to the law. The new law is presumably aimed at hurricane glass. The law provides that a unit owner vote to install hurricane glass is not required if the maintenance, repair, and replacement of the glass is the responsibility of the association, pursuant to the declaration. The law further provides that while a vote is required for the installation of hurricane shutters or other hurricane protection (such as glass) which is the responsibility of the unit owner, after such approval and installation, the responsibility of maintenance, repair, and replacement of such items shall remain the responsibility of the unit owner.

Next week, we will continue our review of HB 995 with a review of a new law granting “emergency powers” to condominium association boards of directors following catastrophic events, such as hurricanes.

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.