



Use of Common Areas Can Be Cut, If You Don't Pay

HOA must be ruled by Chapter 720 to do so

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Q: In a recent column, you stated that the Florida Condominium Act does not permit "lock out" from recreational facilities under any circumstances. My question is whether the same law also applies to a single family, gated community operated by a homeowner's association. **L.E. (via e-mail)**

A: No.

Assuming that your HOA is governed by Chapter 720 of the Florida Statutes, suspension of common area use rights is permissible under certain circumstances. Section 720.305(5)2 of the Florida Homeowners' Association Act states that an association may suspend, for a reasonable period of time the rights of a member (or a member's tenants, guests, or invitees) to use the common areas and facilities. The remedy of suspension must be authorized by the governing documents. A suspension may not be imposed without notice of at least fourteen days to the person sought to be suspended, with an opportunity for a hearing. However, a hearing is not required if common area use rights are suspended for failure to pay assessments or other charges, which must also be authorized by the governing documents.

Further, the Homeowners' Association Act permits an association to suspend voting rights of a

member for the nonpayment of regular assessments that are at least ninety days delinquent, if authorized by the governing documents. Suspension of common area use rights may not impair the right of an owner or tenant to have vehicular and pedestrian ingress to and egress from the parcel, including but not limited to the right to park.

There is pending legislation for condominiums that would give condominium associations similar rights. At deadline time for the column, the Bill was reportedly in some trouble, and possibly not going to be passed. The results of the 2009 Regular Session of the Florida Legislature will be covered in a future column.

Q: In a recent column you mentioned that the Florida Condominium Act requires that twenty percent of the eligible voters cast a vote to elect directors. Is the law for homeowners' associations the same? **J.M. (via e-mail)**

A: No.

Section 720.306(9) of the Florida Homeowners' Association Act states that the election of directors must be conducted in accordance with the procedures set forth in the governing documents. Further, Section 720.306(2) of the Act states that

the election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting or as provided in the governing documents.

Accordingly, if the governing documents for the association so provide, it appears that the law would allow an HOA election to be held as a separate proceeding. Otherwise, the election must be held at the annual meeting, so a quorum must be obtained. Pursuant to Section 720.306(1)(a) of the Act, unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the HOA is thirty percent of the total voting interests.

Q: I live in a gated community which includes a governing association. One of our board members has violated the architectural review guidelines, and continues to ignore the rules. Yet, he sits on the board while ruling on other ARB issues. This does not seem right to me. A number of owners are interested in forcing this individual to resign from the board, or else be removed. What is your opinion on this? **J.F. (via e-mail)**

A: For one thing, there are usually two sides to a story. The individual in question may not feel that he is violating the association's restrictions. That being said, I have certainly seen cases where

a person seeks election to the board for the sole purpose of attempting to gain personal advantage. I cannot say that is the case in your situation, but where this happens, I believe it constitutes breach of fiduciary duty.

I assume that your community is operated by a homeowners' association governed by Chapter 720 of the Florida Statutes. Pursuant to Section 720.303(2)(d) of the Florida Homeowners' Association Act, if twenty percent of the total voting interests petition the board to address an item of business, the board shall, at its next regular board meeting (or at a special meeting not held later than sixty days after receipt of the petition) take the petitioned item up on an agenda. Therefore, if you can get twenty percent of the members of your association to sign a petition, you can force the board, as a whole, to address this issue.

You cannot force the director in question to resign. Any director of an HOA board may be recalled from the board, with or without cause, by majority vote of the entire voting interests. The procedure for recalling directors in a homeowner's association is found in Chapter 720.303(10) of the Florida Homeowners' Association Act.

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.