



More on SB 714, Which Affects Condominium Laws

Unless vetoed, law takes effect on July 1

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Today's column continues our review of Senate Bill 714, the only significant piece of legislation affecting condominium associations which passed out of the 2009 session of the Florida Legislature. No laws were passed affecting the statutes applicable to cooperatives or homeowners' associations.

Last week, we looked at the death of mandatory HO-6 insurance for unit owners, changes regarding the master policy deductibles, board elections, and the question of co-owners serving on the board.

Here's a look at the remaining provisions of S.B. 714:

- **Fire Sprinkler Retrofit:** The new law pushes back the fire sprinkler retrofitting requirement applicable to certain highrise buildings from 2014 to 2025.
- **Director Delinquencies:** The 2008 change to the statute provided that if a director was delinquent by more than 90 days in the payment of regular assessments, they were disqualified from further board service. The new law also states that a director is disqualified from continuing on the board if they are more than 90 days delinquent in the payment of a fine, fee, or any type of assessment, whether regular or special.

- **Director Certification:** The law will no longer require that the association's first notice of annual meeting include a form signed by candidates which certify that the candidates have read and will enforce the provisions of the condominium documents and Florida law. However, under the new law, directors who are elected will be required to certify in writing that they have read the condominium documents and will uphold them to the best of their ability. This certification must be made to the board's secretary within 90 days of election. Alternatively, a newly elected director may submit a certificate of completion of an educational program administered by the State. Failure to timely file the written certification or educational certificate automatically disqualifies the director from service on the board.
- **Time-Shares:** S.B. 714 provides that the 2008 law which prohibits multi-year terms, except for two-year staggered terms where a ratification vote is taken, does not apply to timeshare condominiums. The law regulating co-owners from simultaneously serving on the board will also not apply to time-shares.

- **Fire Prevention:** A condominium that is one or two stories in height and which has an exterior means of egress corridor is exempt from installing manual fire alarm systems as required by Section 9.6 of the most recent edition of the Life Safety Code, which has been incorporated in the Florida Fire Prevention Code.
- **Elevator Safety:** S.B. 714 repeals Section 553.509(2) of the Florida Statutes. This law, adopted in 2006, required buildings of at least 75 feet in height to have at least one public elevator capable of operating on an alternate power source for emergency purposes.

Please keep in mind that S.B. 714 has not yet been presented to the Governor for signature. Assuming that the Governor does not veto the law, it will become effective July 1, 2009. We will keep you posted on the fate of S.B. 714.

Q: Section 720.303(2)(d) of the Florida Homeowners' Act states that twenty percent of the voting interests may require the board to call a special board meeting to consider a particular item of business. In a previous column, you stated that other than addressing the petitioned item at the meeting, the board is not obligated to take any other action requested by the petition. What do you mean by this statement? **E.B. (via e-mail)**

A: The petition process in the law applicable to HOAs is intended to provide members the ability to "force" the board to at least take up items within the board's province. It is perhaps easiest to illustrate the application of the law through a hypothetical example.

Let us say that you live in a community operated by a homeowner's association that contains 100 homes. The community and association are self-managed, meaning that the association does not employ a manager or a management company.

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Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for

The board does not seem inclined to change the status quo.

There are a number of homeowners in the community who think that professional management would be a great benefit, but they "just can't get the board to listen." The association's bylaws clearly provide that the selection of management, if any, is a board prerogative. What are the owners to do?

One option is to recall the board and populate it with people who would hire a management company. A recall would require a fifty-one percent vote and adherence to specific statutory procedures. Recalls are usually divisive, and most people do not see that process as the first matter of choice in being heard on an issue.

An alternative to recall would be for 20 homeowners to sign a petition requiring the board to consider whether a manager or management company should be hired. If such a petition is served on the board, the board would be obligated to take up the item at a regular board meeting or at a special board meeting. In either case, the board meeting needs to be called within 60 days of the date of service of the petition.

Under Chapter 720, every homeowner would be given the right to speak to the issue, for at least three minutes. Interestingly, and in contrast to condominiums, Chapter 720 does not otherwise provide a general right by members to speak at board meetings.

So your meeting is held, and the "pro management forces" have their say. The board is not obligated to vote to hire a management company, nor even put a motion on the table to consider the issue. Rather, the board has discharged its statutory obligation by listening to what the petitioning owners have to say about the issue and deciding what action, if any, would be taken as a result of the petition.

consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.