Crist's Veto of Senate Bill 714 Comes as a Surprise

Proposal Addressed Insurance Rules

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In a move that surprised most observers, Governor Charlie Crist vetoed Senate Bill 714 on June 1, 2009. The provisions of S.B. 714 were discussed in this column on May 10, 2009 and May 17, 2009. Although passed in the Senate by a vote of 38 to 0, and passed in the House of Representatives by a vote of 114 to 2, the bill will not become law in light of the veto.

As mentioned in the previous columns, S.B. 714 addressed mandatory unit owner insurance requirements, procedures for the board regarding setting insurance deductibles, co-owners of units serving on the board, extension of fire sprinkler retrofitting requirements, the repeal of certain elevator generator requirements, and several other "glitches" in the current laws.

In his Veto Message, Governor Crist said: "This bill, similar to House Bill 391 passed during the 2006 Session and vetoed by Governor Bush, extends the date after which local authorities may require the retrofit of applicable residential common areas with a fire sprinkler from 2014 to 2025. I share Governor Bush's concerns that this delay presents an unacceptable safety risk, especially to Florida's elderly condominium residents."

The Veto Message goes on to state that the Governor is sensitive to the costs associated with fire sprinkler retrofitting "especially in these challenging economic times." The Governor also directed the Department of Business and Professional Regulation to initiate a comprehensive review of actual retrofit costs and the impact that retrofitting may have on insurance premiums. The Department is required to submit a report of findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2009.

While there may be room for reasonable disagreement on the fire sprinkler retrofitting issue, it is certainly a shame that several other needed changes to the law that were part and parcel of S.B. 714, especially in the insurance area, were the proverbial baby that was thrown out with the bath water.

Theoretically, the Legislature could override the Governor's veto, although that seems unlikely. Better luck next year.

Q: In 2005, our association added a new reserve item to replace a fence. Once that project is complete, if there is a balance of money in the reserve account, can it be put into the general

operating fund? One of our owners says that the money needs to be refunded. **D.R. (via e-mail)**

A: If the fence is the association's maintenance responsibility (and I assume it is since you are reserving for it), it will need to be replaced again in the future. Accordingly, you should keep the fencing reserve account in tact and can use any left over money as the initial fund balance for the fencing reserve account. If the board wishes to move the money out of that fund, I believe a unit owner vote is required. If a unit owner vote is taken, the owners can vote to do whatever they want with the money, including putting it in another reserve fund, applying it to operating needs, or having the money refunded to the owners.

The board will be in a position to make a recommendation on which option should be voted upon, if a vote is to be taken, or the unit owners could also submit a petition for a vote on the item. In general, there is no legal obligation to refund the money to the unit owners, unless the issue is put to a membership vote and that is what the owners approve.

Q: I have a question regarding mandatory unit owner insurance and the requirement that the association be named as a loss payee. We have already requested proof of insurance from our owners. From what I read in your column, the law has changed so that unit owners no longer have to show proof of insurance on their condominium units. Is that correct? **D.R. (via e-mail)**

A: No. As noted above, Senate Bill 714 would have repealed the requirement that associations ask for proof of insurance from the unit owners. It seems to be a law that few associations find helpful. Regardless, the bill which would have changed the law was vetoed by the Governor.

Q: I am on the board of my homeowner's association. We have a number of board members who are seasonal residents and cannot attend meetings over the summer. Can board members attend board meetings and vote by speaker phone? **J.B. (via e-mail)**

A: Yes. Section 617.0820(4) of Florida's Not For Profit Corporation Act addresses this issue. The law states that unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by any means of communication by which all directors participating simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Accordingly, unless prohibited by your articles of incorporation or bylaws, board members may participate in board meetings by telephone. There should be a speaker phone at the official location of the meeting so all of the directors (as well as owners in attendance) can hear what is being said by the director on the telephone, and the director who is on the telephone can likewise hear what is being said in the room where the meeting is being held.

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.