

Bill Enforces Disclosure of Deed Restrictions

Law Would add Penalty for Failure To Comply

FORT MYERS NEWS-PRESS MAY 11, 2003



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Today is the third part of a series regarding the 2003 Florida legislative session. In our first installment, we looked at the defeat of efforts to eliminate licensure of community association managers. Last week's column involved a discussion of the new "flag law" for condominiums. Today, we will take a look at disclosure laws applicable to homeowners associations.

CS/HB 1551/CS/SB 1220 has been approved by the legislature and will amend Section 689 of the Florida Statutes. Like last week's "flag bill," all new community association laws are still awaiting action by the Governor, and are subject to veto. Like the "flag bill," this one is not likely to be vetoed.

The new law would become effective July 1, 2003, and is intended to increase a prospective purchaser's knowledge that he or she may be buying into a deed restricted community.

For more than ten years, the Florida condominium law has contained substantial pre-sale disclosure obligations. The condo law includes a three day "cooling off period," which begins to run after signing a contract for purchase of a unit, and the delivery of certain documentation to the prospective purchaser. (Interestingly, that is the same cooling off period for buying a handgun, perhaps recognizing that a condominium unit can be a dangerous instrumentality if it falls into the wrong hands.)

For non-condo communities encumbered by covenants (usually generically referred to as homeowner associations, or HOA's), disclosure laws have been much less meaningful. Although Chapter 689 was amended a number of years ago to require purchase agreements to disclose the existence of restrictive covenants, there has never been a penalty in the law for failure to comply with it.

The new statute, paralleling the condominium counterpart, requires all agreements for the sale of property encumbered by covenants to contain a clause, in conspicuous type, indicating that if the disclosure summary required by the law has not been provided to the prospective purchaser before executing the contract for sale, the contract is voidable by the buyer by delivering to the seller notice of intent to cancel within three days after receipt of the disclosure summary, or prior to closing, whichever occurs first. Closing the deal waives any objection by the buyer, although any other purported waiver of voidability rights is ineffective, under the law.

If you listen to association boards, one of their biggest gripes is that owners never read the governing documents to educate themselves about what is permitted and prohibited in the community. Homeowners in disputes with their associations often lament that no one ever told them there were so many rules. Perhaps this law will serve as an ounce of prevention in a case or two, and unlike some of the laws foisted on associations, prevent more problems than it creates.

Now on to reader mail.

QUESTION: My husband and I recently moved into a condominium consisting of eight units, only three of which are occupied by full-time residents. My husband and I reluctantly agreed to serve on the board and have learned that every owner seems to have a different opinion on every issue. We want to know how to learn the proper procedures and the best source for information. Any advice would be greatly appreciated. C.G. (via e-mail)

ANSWER: This column runs every week, and covers a variety of issues that are of interest to association directors. Past editions of the column, archived for

the past two years, are available on the Internet, as noted below.

The best primer on condo board service is a book called *The Condominium Concept*, written by Attorney Peter Dunbar. It is available at major book stores and on line book-sellers for about \$20.00.

Even a small association can establish a relationship with a law firm which handles community association law. There are several such firms in this area, and most of them provide their clients with a monthly newsletter, seminars, and other opportunities to keep up-to-date with the laws.

Another good source of information is the local chapter of Community Associations Institute. The local chapter's information, including membership information, can be obtained from its web-site at www.southgulfcoastchaptercai.com.

The local CAI chapter, local law firms, and the state's regulatory agency sponsored numerous workshops on various association issues (law, accounting, insurance, maintenance, management, etc.). Most of these are publicized in business announcements in the local newspaper. Good luck. ⚖️

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.