

MRTA Changes Await Bush's Signature

Simplifies Steps to Keep Deed Restrictions Intact

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Today is the fifth 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. The following week's column involved a discussion of the new "flag law" for condominiums. In the third week, we took a look at disclosure laws applicable to homeowners associations. Last week's column contained a discussion of amendments to the homeowners association statute. Today, we will examine amendments to the Florida Marketable Records Title Act, commonly called MRTA.

MRTA is a law that is designed to facilitate real estate transactions, by eliminating old claims or defects in a land owner's title.

One way that MRTA eliminates claims against a property's title is by extinguishing subdivision restrictions after thirty years from a property owner's "root of title." MRTA has caught a number of deed restricted communities by surprise, serving to extinguish their covenants and restrictions, including assessment rights. It is frequently incorrectly assumed that the fact that covenants and restrictions may have an automatic renewal clause, or amendment clause, cuts off MRTA extinguishment.

As MRTA became an increasing problem for homeowners associations in the 1990's, the Florida Legislature amended the statute in 1997, providing that a homeowners association could take a membership vote and prevent extinguishment of covenants and restrictions by operation of MRTA. The Association would then file certain paperwork in the local land records which would protect against MRTA's extinguishment of the covenants and restrictions for another thirty years.

In last week's column, we looked at amendments to the homeowners associations statute (Chapter 720

of the Florida Statute) conferring "standing" (right to sue) on HOA's and also new procedures involving to covenants and deed restrictions. During this Bill's last committee stop, amendments to MRTA (Chapter 712 of the Florida Statutes) were tacked on, with little fanfare or debate, as is prone to happen in the frenetic days marking the close of Florida's legislative session.

The amendments to MRTA, found at CS/SB 1410/CS/HB 861, like the rest of the law, are still pending before the Governor at press time, and are subject to veto, although veto is unlikely.

Among the more substantial changes to the MRTA statute are:

Vote to Preserve Covenants: Under current law, the vote to preserve the covenants must be taken at a membership meeting, and approved by a majority of the members at a meeting at which a quorum is present. The new law would permit two-thirds of the Board to conduct the MRTA preservation vote, although homeowners in the community are entitled to certain notice.

Recording Information: Under current law, copies of covenants or restrictions that are to be preserved must be recorded in the land records of the county where the community is located. The new law provide a simplified term, and if nothing else, should save a few bucks in filing fees.

Now on to reader mail.

QUESTION: Recently, three members of our four person board resigned, leaving me board as its sole member. Neither or covenants or bylaws provide any

guidance, and I could not find any help in Chapter 720 either. What is required? -P.B. (via e-mail)

ANSWER: The answer to your question lies in the Florida Not-For-Profit Corporation Act (Chapter 617) of the Florida Statutes.

Pursuant to section 617.0809 of that law, the remaining members of the board (even if less than a quorum) can fill vacancies created by resignation or otherwise.

But another way, you have the right to choose the three people that will fill the vacancies and appoint them for the unexpired term of their predecessor in office, assuming you can find three volunteers willing to serve. Good Luck.

QUESTION: Could you please tell me the citation for the Florida law which requires a condo-

minium association to have a paid manager. - F.D. (via e-mail)

ANSWER: There is no such law.

Chapter 468 of the Florida Statutes regulates the licensure of community association managers. Subject to minor exceptions, if your association employs a manager, that person must be licensed. However, that does not mean that the association is legally obligated to employ a manager.

While “self-management” works for some associations, board service is intended primarily for the elected officials to set the policies for their community, not necessarily do all the day-to-day work. A professional manager provides a good “buffer” between the members of the association and the “board,” which of course is nothing more than a group of volunteers who been elected to help look after the community’s interests. ⚖️

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.