

## Don't Fill Out Lender

*Association Under no Legal Obligation*

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Today is the sixth 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. The next week's column contained a discussion of amendments to the homeowners association statute. Last week we examined amendments to the Florida Marketable Records Title Act. Today we will start delving into the 2003 amendments to the condominium statute, Chapter 718 of the Florida Statutes.

Senate Bill 592 was signed by the Governor on May 21, 2003, and became law on that date. The bill started as the legislative initiative of Community Associations Institute, Florida Legislative Alliance (FLA) a group which has been active over the years in community association legislation. FLA is a committee of volunteers including homeowners, board members, property managers, community association attorneys, insurance agents, and accountants. The group tries to advance legislation which benefits all segments of the industry.

This year's bill from FLA started as an initiative addressing miscellaneous "glitches" in the condominium law, and eventually became the "vehicle" for community association legislation in the 2003 legislature, attracting numerous amendments from other industry groups.

Today, we will focus on the "lender questionnaire" aspect of the 2003 amendments to the condominium act law. There has been some ongoing debate as to whether a condominium association is responsible to fill out the ubiquitous "lender questionnaires"

that associations receive almost daily. There is also a question as to whether an association is liable for errors or omissions made if it elects to fill out the questionnaires.

Most attorneys conversant in community association law typically recommend that associations do not complete these questions due to liability concerns. A unit owner can always inspect the official records and obtain the information themselves. Further, many questions asked in typical questionnaires are either unknown to the association (for example, how many units are second homes) or require legal conclusions (for example, whether the community is a "phase" condominium).

The 2003 legislation lays to rest the issue of an association's obligation to complete these forms by definitively stating that an association is under no legal obligation to fill out lender questionnaires. The law goes on to provide that if an association does choose to fill out the questionnaire, it can charge an administrative fee of up to \$150.00, plus any attorney's fees incurred by the association. The law is not clear as to how payment arrangements are to be handled, I would imagine that most associations will not release the form until the administrative fee, plus attorney's fees incurred (if any) are pre-paid.

The original version of the bill provided that if an association provided answers to these questionnaires in good faith, the association would be immune from liability arising out of errors or omissions. Unfortunately, at the insistence of one Senator, those protections were stripped away during committee hearings, and the final Bill does not contain the immunity language. Therefore, I think it is reasonably clear that if an association fills out one of these forms, there could be liability exposure, although perhaps remote.

Many associations struggle with the question of whether or not these documents should be completed. Associations typically want to help their members sell or refinance, but do not wish to take on liability. Unfortunately, the 2003 legislation did not accomplish its intended objective in this regard. However, the new law does provide some solace to associations by providing them with a clear source of authority if the association declines to process such forms. Additionally, if the association chooses to accommodate the request, at least it can now be compensated for its time and trouble.

*Now on to reader mail.*

**QUESTION:** I am the president of a condominium association which operates twenty-four units. About a quarter of our units are rented out. We would like to control the number of units that can be rented. I would assume we would have to grandfather in those that have been renting. We do not have money to change the bylaws as we have to hook up to the County sewer this year. Are there any web-sites or other resources you could direct me to? D.W. (via e-mail)

**ANSWER:** I am aware of no web-sites or other similar resources that would be of assistance. With do-it-yourself legal forms, you usually get what you pay for.

A qualified community association attorney should be able to assist with the appropriate amendments in a few hours time. Your board needs to consider whether it is important enough to justify the investment.

I do not agree that current rental owners need to be “grandfathered,” the Florida Supreme Court has recently ruled specifically to the contrary.

You will most likely need to amend the declaration of condominium to accomplish your goal. The process includes notice of a member’s meeting, a vote, and recording the amendments if they are approved. The required vote will depend upon the current provisos of your documents, it is usually two-thirds or seventy-five percent. Legal counsel can point you in the right direction on all of these issues.

Spending a few dollars on competent legal help now could save thousands in the event someone tried to challenge the amendment. Good luck. ⚖️

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*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.*

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