

Law Catches Up With Technology

Meeting Notices can be Posted by E-Mail, on TV

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Today is the seventh part of a series regarding 2003 community association legislation.

Past installments have looked at activities of the 2003 Florida Legislature involving community association manager licensing, the new condominium “flag law,” new disclosure obligations in homeowner associations (HOA’s), amendments to the HOA statute, amendments to the Florida Marketable Records Title Act, and amendments to the condominium statute regarding mortgagee questionnaires. Today, we will continue our review of the year’s major condo bill, Senate Bill 592, which became effective on May 21, 2003.

Today’s focus involves the initiative of the Community Associations Institute in the passage of legislation permitting the use of “electronic” notice in the affairs of community associations. The new law applies to all forms of community associations, condominiums, HOA’s, and cooperatives.

Obviously, the advent of e-mail, faxes, chat rooms, message boards, and interactive web-sites has forever changed the face of communication in our society. The law, a creature of custom and tradition, typically tends to lag behind the rest of society when dealing with matters of technological advancement. For example, you will not find a clear statement anywhere in the condominium statute that facsimile (fax) proxies are valid, although they are routinely accepted as such.

The benefits of electronic communication in community associations are self-evident. Some day, associations will collectively be able to save millions of dollars in paper and postage costs, using electronic media instead of “snail mail.”

However, the philosophy of the current legislation is that “baby steps” must be taken before more substan-

tial leaps are appropriate. Therefore, for example, the new law does not address more complex matters, such as “electronic voting,” which is now common in publicly traded corporations.

Rather, the new statute deals with “one-way” notice, that is notice from the association to its members (homeowners or unit owners). Electronic notice is defined as any form of communication not directly involving the physical transmission of paper, but which may be directly reproduced to paper, in a comprehensible and legible form. Facsimiles and e-mails are the most obvious examples of electronic notice.

In order for electronic notice from an association to its members to be permissible, the member must consent in writing to the receipt of electronic notice. Such consent may be revoked at the discretion of the member. Electronic notice is deemed delivered when actually transmitted. Electronic notice addresses must be maintained among the official records of the association, and are to be removed from the official records when permission to receive electronic notice is revoked by the member.

The new law applies to all members’ meetings, such as special meetings or annual meetings. Further, in situations where owners are entitled to be mailed notice of board meetings (in condominiums, special assessments and certain amendments to the rules), electronic notice may be used in lieu of mailing.

The second significant change to the community association statutes involves the use of electronic media for posting notice of board meetings. Although the laws are slightly different in each governing statute, every community association in Florida is generally required to post notice of board meetings on the property.

The new law permits the board to adopt a rule that would allow posting notice of board meetings on closed circuit television, rather than (or in addition to) the traditional paper notices posted on bulletin boards. Many community associations, as part of their cable television package, receive a dedicated "community channel" which could be used for this purpose.

The board's rule must provide for broadcasts of the notice and agenda at least four times every broadcast hour, in a manner that would enable the average reader to read and comprehend the documents. The same procedure can be used for notices of owners' meetings that are required to be posted.

It is important to note that the bylaws for the association must authorize the use of electronic notice. For most associations, this will require an amendment, which may be something to look at during the dog days of summer, while getting ready for the upcoming "season," and the plethora of meetings that go along with that time of year.

Now on to reader mail.

QUESTION: The president of our condominium association recently resigned from the board. A question has arisen as to whether the board can appoint this person as our association's treasurer, even

though he is not on the board. What is your opinion. O.B. (via e-mail)

ANSWER: There is no requirement that an association's officers also be directors, unless the bylaws require otherwise. In the absence of a bylaw restriction, there is no problem with having a non-board member serve as an officer. You should check to make sure he or she is added to the association's fidelity bond and all other applicable insurance policies.

QUESTION: Can a homeowner's association, through its board, violate the provisions of the HOA statute with impunity, or will courts enforce these provisions? I understand that there is no state agency that enforces HOA documents, as is the case with condominiums. R.K. (via e-mail)

ANSWER: You are correct, there is no enforcement agency that oversees HOA's. The pros and cons of an HOA enforcement agency have been debated for years. I personally doubt that it will ever come to pass.

In general, provisions of the governing statute for HOA's can be enforced through court action, and the winning party is entitled to recovery of their attorney's fees from the losing party. ⚖️

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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