

Fire Safety Law a Study in Compromise

Association under no Legal Obligation

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Today is the ninth 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, electronic notice of association meetings, and condominium insurance. 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 amendments to the “fire safety” clause of the condominium statute, Chapter 718 of the Florida Statutes.

As part of the sweeping changes to Florida building codes which were enacted by the Legislature in 1998 (and deferred until 2000), National Protection Fire Association (NFPA) 101 Life Safety Code was adopted as the law of Florida. NFPA’s Life Safety Code requires high-rise buildings (defined as buildings exceeding seventy-five feet in height) subject to limited exemptions, to retrofit fire sprinklers throughout the building, no later than the year 2014.

During the past couple of years, fire districts across the State began applying the new law to condominium buildings, requiring associations to sign letters committing to the retrofitting within the statutorily prescribed deadline.

As associations began to realize the significant costs affiliated with retrofitting fire sprinklers in condominium buildings, as well as potential disruption of residents’

living quarters, a movement to seek relief from the law was hatched. Suffice it to say that the so-called “fire safety issue” became one of the hottest topics (pun intended) during the 2003 Legislative Session. Television news stations across the State reported on the issue with regularity, as did many major newspapers.

Condominium owners sought the right to “opt out” of the law by taking a vote. Firefighters’ unions, plumbers’ and pipe-fitters’ unions, and the State’s Fire Marshalls Association fought any effort at change.

Several versions of proposed laws wound through legislative committees, each with numerous amendments and rancorous hearings. To put it mildly, it was something of a circus. Finally, a “compromise bill” was passed.

As the old saw goes, fanciers of the law and sausage should watch neither being made. The final version of the fire safety bill is definitely an interesting piece of sausage, the highlights of which are:

Opt-Out Vote: Retaining the original concept of the proposed law, unit owners may vote, by a two-thirds vote, to “opt out” of the retrofitting law. The vote is based upon all voting interests in the affected condominium (for multi-condominiums) not just those who vote.

Common Area Retrofitting: Notwithstanding the right to opt-out of retrofitting fire sprinklers in units (apartments), associations cannot opt out of retrofitting in “common areas,” which are defined as any enclosed hallway, corridor, lobby, stairwell, or entryway.

Voting Procedures: A vote to forego retrofitting may not be obtained by proxy, but must be ob-

tained by votes personally cast a meeting or by execution of a written consent of the member.

Recording Notice of Opt Out: If an association opts out of the fire safety laws, it must record, in sixteen point type, a notice to that effect in the local public records, within twenty days after the vote.

Disclosure to New Owners and Tenants: The sixteen point type notice referenced above must be provided to a new owner prior to closing, and must also be provided by a unit owner to a renter prior to signing a lease.

There are many idiosyncrasies in the final version of the law both technical and practical. In litigation, they say a good settlement is one where neither side is happy. Using this standard, the new fire safety law is definitely a good piece of legislation.

Now on to reader mail.

QUESTION: When a person rents out his condominium unit, does he or she give up their rights to use the common element facilities, like the swimming pool? Can the board permit use of such amenities simultaneously by the unit owner and the tenant? I thought there was a rule that once you rent out your property, you give up your right to use the common facilities. M.L. (via e-mail)

ANSWER: This issue is addressed by the condominium law at Section 718.106(4) of the Florida Statutes. The law provides that when a unit is leased, a tenant shall have all use rights in the association property and those common elements otherwise readily available for use generally by the unit owners, and the unit owners shall have no rights, except as a guest, unless such rights are waived in writing by the tenant. The law goes on to provide that the association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of association property or common elements.

There are a couple of loopholes in the law, as written. First, the tenant can presumably invite the unit owner to use the common facilities as the tenant's guest, subject only to whatever rules generally apply to residents having guests, and guest usage of common amenities.

The second loophole is the provision which states that if the tenant waives the right to use a particular common area, then the unit owner retains the right of use. Thus, you could have a situation where a tenant can swim but not use the tennis court, and the owner can play tennis but not swim. Try policing that.

The law clearly evidences an intent to prohibit dual usage, presumably to avoid over-taxing the facilities, including potential parking problems. ⚖️

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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