

Amendments Clear Up Condo Statute “Glitches”

Issue-Specific Sections Clarify Ambiguous Laws

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Today is the tenth 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, insurance, and fire sprinkler retrofitting.

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 several “miscellaneous” sections of the condominium statute. These amendments are fairly issue-specific and address certain “glitches” in the condominium statute:

- **Waiver of Financial Reporting Requirements:** Depending upon the level of annual income, most condominium associations are required by law to have a year-end financial report which is either compiled, reviewed, or audited. This year-end financial report can be waived (excused) by a majority vote of the members (although some minimal level of year-end financial report must be produced under any circumstances). Due to a technical error, a 2000 “Reviser’s Bill” eliminated the provision in the law that said that financial reporting requirement waiver votes could be conducted by use of a limited (sometimes called directed) proxy. The amendment made it unclear whether only owners attending meetings in person could vote on financial

report waivers, or if general proxies could be used. The 2003 amendment restored the inadvertently stricken language, and clarified that financial reporting waivers must be conducted by votes made either in person, or through the use of a limited proxy.

- **Charges for Estoppel Certificates:** The condominium law provides that there can be no charge in connection with the sale or transfer of a unit, except when a transfer approval fee is authorized by the governing documents, and then the fee is limited to \$100.00. A standing question has been whether this limitation on transfer fees applies to charges by associations (or their management companies) in issuing so-called “estoppel certificates.” An estoppel certificate is basically a statement of the unit’s financial account status, and must be produced by an association within fifteen days of a written request. Typically, estoppel certificates are used when units are sold, for pro-rating assessments on the closing statement. Many associations and management companies have routinely charged an administrative fee for preparing estoppel certificates. The 2003 amendment to the condo statute clarifies that an association may charge a “reasonable” fee for the preparation of such a certificate. Obviously, what is “reasonable” is in the eyes of the beholder, although it seems that charges in the one hundred dollar range are the industry custom in many areas of the state.
- **Statute of Limitations:** There has always been a debate as to the applicable statute of limitations for enforcing the provisions of condominium documents (declaration of condominium, by-laws, or rules and regulations). Some courts have ruled that enforcing documents is the

legal equivalent of “specific performance of contract,” which carries a one-year statute of limitations. Other courts have ruled that most association actions are subject to the general five-year statute of limitations for actions based upon a written contract. This amendment to the condominium statute specifically states that actions to enforce condominium documents are not actions for “specific performance” and therefore do not carry a one-year statute of limitations. It is important to note that an association’s time limit to act in a particular situation may be shorter than the applicable statute of limitations, and that different statutes of limitations apply to different types of disputes.

These amendments, while a mixed-bag, are all helpful changes from the perspective of associations, their managers, and their boards.

Now on to reader mail.

QUESTION: I am the president of a thirty-three unit condominium. One of our owners recently purchased three units, bringing his total ownership to eight. Are there any laws limiting this owner’s voting power, or how many units he can purchase?

Many members and our board have become concerned about this issue.

ANSWER: In most condominiums, each unit is allocated one vote, and this owner would be entitled to cast eight votes. These voting rights could not be diluted without the affected owner’s consent (which is obviously unlikely), plus the consent of all other unit owners (and their mortgage holders).

There is no law that I am aware of which limits how many units any particular person may own.

If concentrated ownership has become a matter of concern, your board should consult with your legal counsel about an amendment to the condominium documents. In my opinion, as long as this owner’s right to maintain ownership of his current eight units is “grandfathered,” a prospective limit on the number of units any one person (or entity) can own is enforceable. This would have the effect of prohibiting this particular owner from buying any more units, and also prevent similar situations in the future. As there are many potential loopholes in such an amendment, it should be drawn by qualified legal counsel, who should also guide your association through the adoption process. ⚖

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.