

Task Force Proposes Changes

FORT MYERS THE NEWS-PRESS, FEBRUARY 5, 2004



By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

The Governor's Task Force on Homeowners' Associations held its sixth and final meeting on January 28, 2004. The Tallahassee meeting culminated several months of riding the circuit and listening to problems and concerns expressed by residents governed by homeowners' associations.

The Task Force adopted a 46-page recommendation, which will be issued as a report to Governor Jeb Bush. The recommendations include numerous proposed changes to the statute governing homeowners' associations (Chapter 720). Presumably, after the Governor's review, some or all of the proposals will be submitted to the Legislature for consideration in the 2004 session. Here's a look at the highlights of the group's recommendations to the Governor:

Election and Recall Disputes: Under the proposed plan, HOA election and recall disputes would be handled by the agency which currently administers condominium arbitration. Expedited binding arbitration would be the forum for resolving election and recall disputes.

Kickbacks: The acceptance of bribes or kickbacks in connection with association operations would be classified as a felony of the third degree. Any person adjudicated guilty of receiving bribes or kickbacks would be permanently disqualified from serving on the association's board.

Board Meetings: The Task Force's proposal would confer the right to speak at board meetings

regarding designated agenda items, a law that currently exists in condominiums. The board could limit speakers to three minutes per topic.

Petition Rights: The proposal calls for an amendment to the law that would allow twenty percent of the members of the HOA to petition the board to take up an action item. Although the board would not be mandated to vote on the item one way or the other, this proposal provides a method for concerned owners to bring issues of concern before the board for action.

Disclosure: In one of the more significant aspects of the group's recommendations, the new law would allow a three day "cooling off" period after signing a contract to purchase a home that is governed by a homeowner's association. Further, the new law would require substantial pre-sale disclosure, including providing a copy of the governing documents, the most recent budget, and a disclosure of whether the association is involved in litigation.

Official Records: The law would be broadened to include all written records of the association, which would be subject to inspect and copying at the request of the member, at a maximum cost of fifty cents per page. Legal records, health and insurance records, and personnel records would be exempt from inspection.

Financial Reporting: The Task Force's recommended legislation would require HOAs to obtain compiled, reviewed, or audited financial statements at the end of the

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.

fiscal year, depending upon the size of the organization and its annual receipts. The members could vote to waive the requirement.

Owner's Right to Petition for Audit: This proposal would permit twenty percent of the association members to call for a special meeting to decide whether an audit should be obtained, regardless of the association's size or income level. If approved by a majority vote, the audit would be due within ninety days.

Recall of Directors: In addition to the requirement for the arbitration of recall disputes mentioned earlier, Chapter 720 would contain detailed recall procedures similar to what is found in the governing statute for condominiums.

Fines: The proposal, if adopted, would prohibit homeowners' associations from filing liens against property to collect or secure fines levied by the HOA.

Competitive Bidding: If passed, the new law would require competitive bidding for any contract for

products or services which involves the expenditure of ten percent or more of the association's annual budget.

Pre-Suit Mediation: Routine disputes in homeowners' associations, such as architectural and rule-oriented disputes would be required to be addressed by a neutral mediator prior to the filing of a lawsuit. Theoretically, bringing the parties together at an early stage will facilitate resolution of disputes before the parties become entrenched.

Common Area Warranties: The Task Force's recommendation would obligate developers to grant a three-year warranty for common area improvements. A motion considered by the Task Force to also extend warranties to individual home purchases failed by one vote.

Jurisdiction: The proposed new law would grant county courts concurrent jurisdiction to hear HOA disputes. Because county court cases tend to move faster than those in the circuit court, this proposal would presumably provide for faster resolution of disputes that cannot be resolved in mediation. ⚖️

Law Allows Appointment of a New Board Member

THE NEWS-PRESS FEBRUARY 5, 2004

QUESTION: One of our condominium association board members has resigned. The remaining board has decided to appoint another member instead of holding an election. Is this allowed? L.H. (via e-mail)

ANSWER: The board's decision to appoint a board member to fill a vacancy rather than hold an election is appropriate under the Florida Condominium Act. This, of course, assumes that nothing in your association's bylaws requires otherwise.

QUESTION: I live on the sixth floor in a ten floor condo building. The owner of the unit on the ninth floor had a water leak and did damage to the units below his all the way down to mine on the sixth floor. I have no insurance. What should I do? G.L. (via e-mail)

ANSWER: First of all, you should purchase insurance. While the Florida Condominium Act requires certain elements to be insured by the association, it seems that many unit owners are under the impres-

sion that they do not need to insure their unit or own personal property. Nothing could be further from the truth. With respect to your specific problem, the unit owner on the ninth floor may be liable for damage to your property, if they are held to be negligent. Additionally, some of the damaged elements in your unit may be the responsibility of the association to replace and repair. The interplay between negligence, maintenance responsibility, and insurance responsibility in Florida condominiums is quite complicated. Without specifically examining your association's governing documents and knowing the full facts of the case, I cannot give you an evaluation of who is responsible for what. For this I recommend that you contact a member of the Florida Bar who is experienced in handling community association legal matters.

QUESTION: We live in a deed-restricted community that bans trucks. The spirit of the ban is for commercial vehicles and it was written probably twenty years ago. As you know, mini-vans, SUVs, etc. are hybrid trucks. Does this mean that they

are “trucks” for the purposes of the rule? For example, a Chevy Avalanche is advertised as an SUV, but some people think it is a truck. Many of the SUVs and expensive new “pickup trucks” are nicer and cost more than many of the cars in the neighborhood. I am favor of allowing them, as long as there is no commercial advertising on them. Because we have a board member that does not like trucks, many thousands of dollars are being wasted in enforcing this antiquated rule. What are our options? N.R. (via e-mail)

ANSWER: Without reading your rule, I cannot comment specifically upon it. Nevertheless, I can say that many communities have a rule banning “trucks.” Florida law defines a “truck” as any motor vehicle designed, used, or maintained primarily for the transportation of property. Most cases dealing with the issue have held that SUVs and minivans are not “trucks.” However, a new and “luxurious” pickup truck is still a “truck.” Despite what the spirit of your rule may have been twenty years ago, the plain language of the rule controls the current situation until you amend your rule to reflect how you wish for it to be enforced today. While I appreciate your sentiment that perhaps this rule is being enforced by a board member who does not like trucks, the board member is doing his job and doing it properly. If the association did not enforce this rule evenly, according to the plain language of the rule, and made exceptions for “nice trucks,” then the association would find itself in a position of having to allow all trucks.

QUESTION: Can you give me information on the process for recalling board members in my condominium community? C.T. (via e-mail)

ANSWER: The Florida Condominium Act and the Florida Administrative Code have detailed instructions regarding how to recall a board member or the entire board. Essentially you need to have fifty-one percent of the unit owners’ consent to recall a board member. This recall may be for cause or for no cause at all.

QUESTION: I am a first time home buyer, and I am considering buying a condominium. I was wondering if I should have an attorney look at my condominium documents before I purchase the unit. What do you think? J.D. (via e-mail)

ANSWER: I think that it would be a good idea for you to review your condominium documents carefully before you purchase a unit in a condominium association. If you do not think that you have the expertise to adequately understand them, or if you need some clarification, I would certainly advise you to consult an attorney experienced in these matters. Many associations wind up having an adversarial relationship with a new homeowner, because the homeowner claims that they did not understand the rules of the community. Condo living is not for everyone. It is very important to understand the rules and regulations of your community before deciding to purchase there. Remember, when you are buying a condominium, you are not just buying an apartment, but you are becoming a member of a community. ♪