

## Bill Would Limit Some Voting Rights

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By Joe Adams

[jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com)

TEL (239) 433-7707

FAX (239) 433-5933

As mentioned in last week's column (Rental Bill Creates Some Problems, March 4, 2004), House Bill 1223 takes aim at some weighty issues that go to the core of condominium governance. Today's topic, an exploration of the proposals in HB 1223 regarding proposed limitations on voting rights.

By way of update from last week's column, a Senate counterpart to HB 1223 has been filed, which is known as Senate Bill 2498. As also noted, all proposed legislation can be reviewed at the web-site of the Florida Legislature at [www.leg.state.fl.us](http://www.leg.state.fl.us).

Perhaps one of the most radical initiatives in HB 1223 is a clause that would prohibit a person or entity which owns multiple units from exercising more than one vote in condominium affairs. Under current condominium law, voting rights are allocated by the documents. In nearly every case, each unit is allocated one vote, and is likewise allocated the obligation to pay maintenance fees for each unit.

The new proposal is tantamount to taxation without representation, a battle that was fought and won well over two centuries ago.

The proposed law, as written, appears to apply to existing condominiums and associations. In my opinion, the application of this law to existing condominiums would be patently unconstitutional. In fact, for the 40 years Florida's condominium law has been in existence, voting rights assigned by the declaration of condominium have been considered a right which can only be changed by unanimous approval of all unit owners and mortgage holders.

Although I do not know for sure, it appears that the aim of the proposal is to discourage single investors

or investor-groups from buying up large blocks of units in a condominium, which often results in degradation of maintenance standards, falling property values, and in extreme cases, the creation of crime-ridden slum neighborhoods. Clearly, protecting unit owners in communities which are susceptible to those problems, which often involve a high percentage of fixed-income retirees, is a laudable goal.

Unfortunately, this proposal does not, in my opinion, accomplish the task.

I am aware of a number of condominium associations which have amended their governing documents to prohibit a single individual (or related individuals and investor groups) from owning more than a set number of units, often two or three. In my view, such an amendment to the documents would be valid and enforceable. If the Legislature wants to lend assistance in this area, and I think it should, a simple amendment to the statute stating that amendments limiting the number of units a person or entity can hold are a valid exercise of association authority is all that is needed.

Like the rental situation, most problems affecting particular condominium communities are unlikely to be solved by piling yet more statewide rules on how condos are operated. Enabling each community to take control of its own destiny seems far preferable.

Next week we will examine HB 1223/SB 2498 regarding a proposal to place two-year term limits on board members, and a proposed requirement that each board member be subjected to a criminal background check. ♪

# Condominium Owners Have to Accept “Turnover”

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**Question:** My question concerns the turnover of a condominium association from the developer. Do unit owners have to accept turnover by the developer at the time of the developer's choosing, or can we wait until a time of our choosing? L.D. via e-mail

**Answer:** Transition of control of operation of the association is commonly referred to as “turnover”. At turnover, the developer no longer has the right to appoint the association's board, the board is elected by unit owners other than the developer. The developer can still vote for, or appoint, a minority of seats on the board in some instances.

The timing of transition of control is governed by Florida Statute, Chapter 718. The law provides that the developer must turn over control of the association when certain “trigger events” occur. The most common event is when ninety percent of the units have been sold, and when that happens, the developer must call for transition within ninety days of the trigger event. Other trigger events include three years from the date of sale of fifty percent of the units, seven years from recording the declaration of condominium, and any point in time at which the developer stops offering units for sale in the ordinary course of business.

Since the time of transition is set by law, I believe that the unit owners must accept turnover when the transition meeting is called by the developer. In most cases, the condominium documents also give the developer the authority to select an earlier turnover date, and in my opinion, the owners must also accept control of the association under those conditions.

Contrary to the fears of some, accepting control of the association is not a waiver of rights of the unit owners or the association. In fact it is the period in time in which the association obtains “standing” to pursue matters of common interest.

The transition process is probably the most important time in the legal life of a condominium association, and experienced legal counsel should be consulted to provide advice on important items. These include warranty rights, the developer's obligation to provide a post-turnover audit, and the applicability of the statute of limitations to claims the association may have.

**Question:** I recently purchased a home in a very nice community, where I came to relax and be left alone. My home includes a two-car garage. However, because I have a large amount of person items stored in the garage, I can only fit one car in the garage. I park my second car in the driveway. It is a nice car, nearly new, and I park it a few feet from my garage. Recently, I received a letter from the association citing a provision in our “Declaration of Covenants and Restrictions” which states that motor vehicles must be parked inside the garage, and may be parked outside only temporarily. This documents was signed back in 1985 and seems ridiculous to me. What can I do about it? J.H. via e-mail.

**Answer:** Your situation involves a common source of tension in communities. Some people find cars parked in driveways high offensive. Others say that is what driveways are for.

In your case, if there is a recorded covenant, you are best advised to comply with it. You should clean out your garage and make room for your second car.

Even though the restriction is nearly twenty years old, most restrictive covenants run with title to the property, and were presumably part of the official land records when you bought your home. Therefore, you have “constructive notice” of the rule, and are bound to abide by it.

Failure to comply with a restrictive covenant in a homeowners' association can invoke potentially serious consequences. Sometimes, restrictions are enforced through court action, and the party who wins the suit is entitled to recover their lawyers fees from the losing party. As you might imagine, the attorney's fees can become quite stiff in hotly contested cases.

Your covenants probably contain an amendment procedure, as well as a method for petitioning for the consideration of a change. If you feel that the restriction no longer serves the needs of your community, you may wish to ask your neighbors to support a petition for a vote to change it.

**Question:** What recourse does a condominium association board have when its management company fails to perform contractual obligations in a diligent and timely manner? R.M. via e-mail

**Answer:** As with any contractual relationship, the association has the right to insist on performance, and seek money damages for breach of the agreement.

In my experience, unless money has been stolen, or significant financial damage inflicted upon the association, litigation between an association and a management company is rarely productive.

The best protection for the association is to have a written management contract that is terminable by either party, with or without cause, upon reasonable notice. I recommend thirty days, or sixty days at the most.

There are many management companies throughout Florida and many of them will work for your business. If you are unhappy with the current arrangement and cannot make it work through normal efforts, then a change may be in order.

**Question:** I am the president of a condominium association, and we have a personnel committee. The committee recently had a closed meeting regarding our employees, where wages, conditions of employment, and other sensitive information was discussed. Must this type of meeting be open to the membership. E.W. via e-mail

**Answer:** I would recommend that you go to my recent two-part series on “Sunshine Laws” (“Sunshine Law Raises Questions”, February 19, 2004; and

“Sunshine Restrictions Explained”, February 26, 2004) Past editions of this column may be viewed on my Firm’s website, [www.becker-poliakoff.com](http://www.becker-poliakoff.com).

The personnel committee is not a “statutory committee”. As such, its meetings are not required to be open to owners if the bylaws exempt non-statutory committees from the sunshine provisions of the Condominium law. If the bylaws do not contain such an exemption, the meetings must be open.

**Question:** Our condominium association is relatively new. Our first president worked very hard and helped us through some very difficult negotiations with the developer. He has sold his unit and the new board wants to give him a parting gift for his hard work. We were thinking about a plaque and a one hundred dollar gift certificate. Is the board allowed to do this under Florida law. B.R. via e-mail

**Answer:** While I am all for recognizing volunteer contributions, I do not think association treasury funds should be used for this purpose. Under Florida law, the association may only spend mandatory assessment income on “common expenses”, as defined in the law.

I think that a plaque and a gift are a wonderful idea, and would recommend that your board take up a voluntary collection from the neighbors, in recognition of your parting president’s hard work. ☺

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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.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto: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](http://www.becker-poliakoff.com).*