

Law Gives Members More Voice

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Last week, we looked at actions of the Governor's Task Force on Homeowners' Associations that were not passed into law. This week's column begins a review of legislation recommended by the Task Force which became law on June 23, 2004. Parts of the new legislation are effective immediately, while others are effective October 1, 2004. The following provisions all have an effective date of October 1, 2004.

Petition Rights, F.S. 720.303(2)(b), F.S. 720.303(d): This reform in the law is intended to provide members of homeowners' associations with the right to be heard on issues of concern. The law provides that if twenty percent of the total voting interests (there is usually one voting interest per lot or parcel) petition the board to address an item of business, the board must take the item up at a meeting of the board. The board is not obligated to act on the item, only consider it. For example, if twenty percent of the members want the board to consider hiring a management company, a decision typically within the prerogative of the board's discretion, the board would be obligated to call a meeting to at least debate the topic. The board is obligated to consider properly presented petitions either at its next regular board meeting, or at a special board meeting, but no later than sixty days after receipt of the petition. The law further requires the board to give all parcel owners notice of the meeting by mail or delivery, fourteen days in advance. The notice must also be posted in the manner prescribed by law. Each member of the association is granted the right to speak for at least three minutes on any matter placed on the agenda by this petition process. As noted above, the Task Force recommended that parcel owners be permitted to speak to any agenda item (whether placed on the agenda by petition or not), but the law as adopted limits a parcel owner's right to address the board to items brought to the board by the petition process. This is in contrast to the condomini-

um law, where unit owners are entitled to speak at any board meeting with respect to any designated agenda item. The new HOA law also provides that the board may require those desiring to speak to sign a sign-up sheet prior to the meeting.

Notice of Board Intention to Adopt Special Assessments or Enact Rules Regarding Parcel Use, F.S. 720.303(2)(c)2: The new law requires fourteen days notice be given to all parcel owners before the board considers the adoption of a special assessment, or rules regarding parcel use (parcels are the individually-owned property, such as lots). Of course, the authority for the adoption of rules and assessments must be granted in the governing documents, and the new law is procedural in nature. This procedure does not apply to the adoption of rules regarding use of common areas. The notice which must be given to each parcel owner is a fourteen day mailed, delivered, or electronically transmitted notice to members, which must also be posted conspicuously on the property by posting or closed circuit cable television fourteen days in advance. The right to use electronic transmission of notice to members and closed-circuit cable television in connection with association notices is based upon 2003 amendments to the Florida laws, which should also be reviewed in connection with use of those procedures.

Official Records, F.S. 720.303(4) and (5): Under prior law, "official records" in homeowners' associations were limited to those records specifically mentioned in the statute. Similar to the condominium law, the HOA statute now states that all written records of the association not specifically exempted are part of the official records. Therefore, items such as correspondence from a parcel owner to the board, not considered an "official record" under prior law, would now be considered an official record. The law exempts certain potentially

sensitive documents from the definition of “official records,” including: attorney-client and work-product privileged documents; information obtained by the association in connection with the approval of unit leases or transfers; disciplinary, health, insurance, and personnel records of association employees; and medical records of parcel owners or community residents. The law also requires that the association make photocopies for members who inspect the records if the association has a photocopy machine available, and if the member’s request is less than twenty-five pages. The association may charge up to fifty cents per page. For more voluminous requests, the association is entitled to send the project out for copying, and the owner is required to reimburse actual copy costs. The law permits the board to adopt reasonable written rules governing records inspection, provided that an association cannot limit a parcel owner’s rights to inspect records to less than one eight hour business day per month.

Year-End Financial Reporting Requirements, F.S. 720.303(7): The changes to the HOA law are very similar to the existing requirements for condominium associations. Homeowners associations will now be required to provide year-end financial reports in accordance with generally accepted accounting principles. The level of report is based upon the association’s annual receipts. Associations with revenues of less than \$100,000.00 may prepare a cash report of receipts and expenditures. Associations with annual revenues between \$100,000.00 and \$200,000.00 shall prepare

compiled statements. Revenues between \$200,000.00 and \$400,000.00 require a review. Associations with annual revenues in excess of \$400,000.00 must prepare an annual audit.

Associations of fewer than fifty parcels, regardless of the annual level of revenue, may prepare an annual report of cash receipts and expenditures in lieu of the more thorough financial statements, unless the governing documents provide otherwise.

As with condominiums, if approved by a majority of the voting interests present at a properly called meeting of the association, the association may waive the financial reporting requirements required by the law to any lower level of report, provided that a report of cash receipts and expenditures is required under any circumstances.

On the flip side, twenty percent of the parcel owners may petition the board to obtain a level of financial reporting higher than that required by the law. If the higher level report is approved by a majority of the total voting interests, the association has ninety days to prepare the expanded report. The board is also authorized to amend the budget or adopt a special assessment to pay for the costs affiliated with the more expansive financial report.

Next week, we will continue this review with a discussion on the new law’s requirements regarding the recall (removal) of directors, fining, competitive bidding, and HOA membership meetings. ♻️

Homeowner at Disadvantage in Dispute with Board

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Question: I live in a community governed by a homeowners’ association. We recently voted to change our declaration of covenants. The result of the vote, including how each member voted, was distributed to the entire community. Does the board have the right to publish how each member voted? L.J. (via e-mail)

Answer: Votes involving amendments to the governing documents are considered part of the association’s official records. While it is not customary for the association to publish voting results, there is nothing in the law which prevents the board from doing so.

Question: Could you explain what the difference between mediation and arbitration is for condominium problems. S.D. (via e-mail)

Answer: Most disputes involving issues between an association and one of its members must be heard in arbitration before it can be submitted to a court. Arbitration is managed by a state agency called the Department of Business and Professional Regulation, which employs a staff of attorney-arbitrators through its Division of Florida Land Sales, Condominiums and Mobile Homes.

Arbitration is similar to court proceedings. Evidence is submitted to the arbitrator, and one party is declared the winner. By law, any party wishing to be heard in court may appeal an arbitration decision, and is granted a new trial, called trial de novo. The losing party pays the winning party's costs and attorney's fees in arbitration and court proceedings.

Mediation, by contrast, does not result in one winner and one loser, but if successful, results in a settlement where each side gives something, and gets something in return. The mediator serves the role of a facilitator of the settlement. A good mediator will help each party to the dispute view their case more realistically than they otherwise might.

Mediation has become a preferred method of alternative dispute resolution in community association governance. In fact, the law now also mandates pre-suit mediation for homeowners' associations as well.

Question: I am trying to effect change within our community. One concern I have is that the board

can make any decision it likes, which may or may not be what the homeowners want. I think this is unfair. S.G. (via e-mail)

Answer: Your HOA is a democratic sub-society, and is governed by principles of both corporate law and municipal law. In either a corporate or municipal setting, the elected governing board is entrusted with substantial power, and only answers to the shareholders or voters at election time.

Change is often resisted in any institution, including community associations. Often those seeking change are unfairly labeled as troublemakers. Sometimes, however, those seeking change are more interested in addressing some personal or political agenda.

I would recommend that you run for your association's board. I think you will come to find that while the board serves the people, it is rarely practical or desirable to take a popular vote on every issue that requires a decision. ⚖️

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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