

## HOA Law Changes Not Perfect

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By Joe Adams

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Today's column concludes a five-part review of 2004 amendments to Florida's law governing homeowners' associations found in Senate Bill 2984 and Senate Bill 1184. In general, these laws became effective June 23. The new law includes several amendments to Chapter 720 which were the product of efforts of parties other than the Governor's Task Force on Homeowners Associations. These amendments include the following:

- **Definition of "member" in Homeowners' Associations, F.S. 720.301(10):** The new law adds any person or entity obligated to pay an assessment or amenity fee as a "member" of a homeowners' association. It is reported that the intention of the change is to confer membership status in homeowners' associations on people (or associations) who are obligated by covenant to pay a homeowners' association for services, but are not members of the association due to charter restrictions or the jurisdictional boundaries of the homeowner's association.
- **Limitations on Enforcement of Amendments to Governing Documents for Associations of Fifteen or Fewer Units, F.S. 720.103(1):** This clause provides that an association of 15 or fewer parcel owners may enforce only the requirements of the original "deed restrictions" established prior to the purchase of each parcel. The intent of the law appears to limit an HOA consisting of 15

or fewer parcels from enforcing amendments to a declaration of covenants as to those who purchased prior to the amendment. Setting aside the absence of demonstrable public policy for this change, the law also appears to suffer significant constitutional infirmities as both a retroactive impairment of contract (for associations whose governing documents permit enforcement of future amendments) as well as the creation of a legislative rule in contravention of the authority of the Florida Supreme Court.

- **Ramps for the Disabled, F.S. 720.304(5)(a):** The statute applicable to homeowners' associations now provides that any parcel owner may construct an "access ramp" if a resident or occupant of the parcel has a medical necessity or disability that requires a ramp for ingress and egress. The law does not state whether the right to construct the ramp is limited to the parcel, or extends to common areas, certainly a drafting flaw. The law requires that the ramp be as "unobtrusive as possible" and that it also "blend in aesthetically as practicable." It must also be "reasonably sized to fit the intended use." Although the law appears to confer an absolute right to build a ramp, there is a procedure requiring submission of plans to the association before construction. Although the association apparently cannot deny approval, it can make "reasonable requests to modify the design to

achieve architectural consistency with surrounding structures.” It is unclear how this law will interplay with state and federal fair housing laws which generally permit reasonable modifications of premises for the benefit of disabled individuals. Prior to construction of a ramp, the owner must submit a physician’s affidavit to support the need for such alteration.

- Security Signs, F.S. 720.304(6): Any parcel owner may now display a sign of “reasonable size” provided by a contractor for security services, within 10 feet of any entrance to the home.
- Pre-sale Disclosure, F.S. 720.601: This change in the law basically removes existing pre-sale disclosure law from Section 689.26 of the Florida statutes and places it in Chapter 720, implying that the disclosure law does not apply in non-mandatory association settings, even if deed restrictions apply. The remaining changes to current law are largely grammatical. There is a new provision which states that if the required disclosure summary is not provided to a prospective purchaser “before” the purchaser executes a contract, there is a right of rescission for up to three days after receiving the disclosure summary. As a practical matter, if the prospective purchaser signs the disclosure summary minutes or even seconds before signing the purchase contract, there will be no right of rescission.
- Marketable Record Title Act, Revival of Covenants, F.S. 720.401-405: This change deals with revival of restrictive covenants extinguished by the Marketable Records Title Act (MRTA), or which have expired according to their own terms due to the lack of a provision for automatic renewal.

Senate Bill 1184/2984 also amended various other laws affecting community associations, including the condominium statute, most significantly involving the grandfathering of rental rights. Next week we will begin a look at the additional changes to the law adopted by the 2004 Legislature. ♪

## Questions and Answers

**Question:** In your July 1 column, you stated that the right to speak at board meetings of homeowners’ associations was “scrapped during the legislative committee process.” Senate Bill 2984, which was approved by the Florida Legislature, gives HOA members the right to “attend all meetings and to speak at any meeting with reference to all items open for discussion or included on the agenda.” I am confused. — J.M. (via e-mail)

**Answer:** The section you are quoting was added to Florida Statute 720.306(6). This part of the law deals with meetings of the membership of the association (parcel owners), not the board of directors. As you correctly note, parcel owners now have the right, by law, to attend all HOA membership meetings, and to speak at any meeting with reference to all items open for discussion or included on the agenda.

**Question:** Senate Bill 1184, which becomes effective on Oct. 1, 2004, states that any amendment to a declaration of condominium restricting unit owners’ rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of the amendment. Does this ruling apply to homeowners’ associations as well? — G.M. (via e-mail)

**Answer:** No. Having completed a five-part review of the new law applicable to HOAs in today’s column, next week I will begin a review of the new condominium laws, including the rental law. The so-called “rental grandfathering amendment” does not apply to homeowners’ associations, only condominiums.

**Question:** Does the provision regarding recall of directors and binding arbitration apply to the removal of a sitting board member that was discussed in your July 22 column apply to removal of a board member by the other members of the board. — P.A. (via e-mail)

**Answer:** The new law applies to homeowners’ associations, not condominiums. In condominiums, the law has for many years required binding arbitration of recall disputes.

Members of a board of directors do not have the right to remove or recall a fellow board member. This is a right that, by law, is placed solely in the hands of the association membership.

**Question:** I have a question regarding satellite dishes. Am I correct that the 1996 Telecommunications Act prohibits any restriction against satellite dishes? — B.R. (via e-mail)

**Answer:** While the law does give condominium owners the right to install certain Over-The-Air Reception Devices (commonly called OTARD's), the right is not unqualified. For example, with satellite dishes, the dish must be of one meter (39 inches) or less in diameter.

Further, the new law only applies to areas over which the unit owner has exclusive control, such as a limited common element patio area. For example, the law would not give a unit owner the right to install a dish on the roof of a high-rise condo building, even if that was the only way the owner could get reception.

**Question:** We live in a gated community of single-family homes that has just been turned over from the developer to the homeowners. The current declaration of covenants, created by the developer, states that two-thirds of all membership interests (there is one membership interest per home) must

approve changes to the covenants. We want to change that so any future changes require a majority vote. We were told that we must have two-thirds and not a majority, is this true? — P.Y. (via e-mail)

A I am aware of no law which would prohibit amending the amendment clause of your declaration to reduce the voting threshold to a majority. Of course, you would need the current requirement (two-thirds vote) to get there.

**Question:** Can an association borrow money from reserves to pay a front-loaded insurance policy premium? — J.W. (via e-mail)

**Answer:** It is not uncommon for association insurance policies to be payable on an annual basis, in advance. This often presents cash flow challenges to associations. For condominiums, the use of "reserves" is strictly regulated by state statute and administrative regulations. In general, an association's board may not use reserve funds for purposes other than that for which they have been set aside unless a vote of the owners has been taken, and a majority of the owners have given the board the permission to do so.

In homeowners' associations, the law is a bit looser. There is no legal restriction involving the use of reserves, although the governing documents and concepts of good accounting practices would come into play. ⚖️

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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).*