

Sunshine Laws Put to the Test

FORT MYERS THE NEWS-PRESS, MARCH 3, 2005



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Florida's courts have referred to community associations as "democratic subsidiaries." At least in theory, American democracy requires the governmental decision-making process to be conducted in the open. Not surprisingly, Florida's "sunshine" laws have imposed open-government requirements on association boards.

Today's column is the seventh and final installment of a primer on sunshine laws which I have dubbed "*Community Association Sunshine Law, Course 101*" (See *Time to let in a little sunshine*, January 20, 2005; *Shedding more light on laws of sunshine*, January 27, 2005; *Sunshine laws apply to condo boards*, February 3, 2005; *Minutes bring order to conduct of board*, February 10, 2005); *Committees sometimes in sunshine* (February 17, 2005); and *Sunshine rules also have some exceptions* (February 24, 2005) Today, the final exam.

Question #1: Your association's board consists of five directors. Which of the following events constitutes a "meeting" of the board?

- A. Three members of the board holding a planning session in order to set the agenda for the next board meeting.
- B. Two members of the board meeting with an employee to discuss performance problems.
- C. Four members of the board attending an educational seminar regarding association law.
- D. All of the above.
- E. None of the above.

Question #2: Notice of board meetings is to be posted in a conspicuous location:

- A. 48 hours in advance of the meeting.
- B. 14 days in advance of the meeting.
- C. 72 hours in advance of the meeting.
- D. Both A and B.
- E. All of the above.

Question #3: A board meeting may be closed to unit or parcel owners when:

- A. The board is going to be discussing controversial topics.
- B. The board is going to discuss an opinion letter it received from the association's attorney.
- C. The board is going to meet with legal counsel to discuss pending or proposed litigation.
- D. In an emergency.
- E. All of the above.

Question #4: Members of the association can audiotape (tape record) or videotape which of the following meetings:

- A. Board meetings for homeowners' associations.
- B. Board meetings for condominium associations.
- C. Only meetings where the owner's direct interests are involved.
- D. A and B.
- E. None of the above.

Question #5: The sunshine laws for associations applies to which of the following committees:

- A. Any committee of a homeowners' association that can approve architectural requests or authorize the expenditure of association funds.
- B. A condominium association's budget committee and any committee of the condominium association that is empowered to take final action on behalf of the board.
- C. Every committee of a condominium association unless the association has exempted "nonstatutory committees" from the sunshine requirements through its bylaws.
- D. All of the above.
- E. None of the above.

Question #6: Owners have the right to address the board in regard to any designated agenda item at which of the following meetings:

- A. Any meeting of a condominium association board.
- B. Any meeting of a homeowner's association board.
- C. A meeting of a homeowner's association board called by petition of twenty percent of the voting interests.
- D. A and C only.
- E. All of the above.

Question #7: In addition to notice of the date, time, and place of the meeting, postings must also include an agenda for which of the following meetings:

- A. Condominium association boards.
- B. Homeowners' association boards.
- C. The board members' weekly poker game.
- D. All of the above.
- E. None of the above.

To make sure all students pass the course, here are the answers:

Answer #1: The correct answer is A. The setting of the agenda for a future board meeting is "conducting" association business. Attendance by a quorum of the board at a seminar does not involve the conduct of business for the association. Although a meeting with an employee involves the conduct of association business, this is not a "meeting" in our example since a quorum of the board is not in attendance.

Answer #2: The correct answer is D, both A and B. Notice of all board meetings must be posted at least 48 hours in advance. For both condominium and homeowners' associations, notice of meetings where assessments will be considered, or notice of meetings where rules concerning the use of the units or parcels will be considered, must also be posted 14 days in advance, and also mailed or delivered to the owners 14 days in advance.

Answer #3: The correct answer is C, only meetings between the board and legal counsel are exempt from the sunshine re-

quirements. The meeting must be for the purpose of discussing pending or proposed litigation, and for homeowners' associations, may also include discussion of personnel matters, but legal counsel must still be present. Although notice provisions can be suspended in the event of an emergency, this does not suspend unit owners' or parcel owners' right of attendance.

Answer #4: The correct answer is D, both A and B. Both the condominium and HOA laws permit unit owners or parcel owners to record meetings of the board. The board may adopt reasonable rules regarding how such recording is done, but may not otherwise limit that right, nor require demonstration of any particular reason why the owner wishes to record the meeting.

Answer #5: The correct answer is D, all of the above. Certain enumerated committees of both condominium and homeowners' associations are always open to owners. For condominiums, all committee meetings are likewise open to owner attendance unless the bylaws have exempted them.

Answer #6: The correct answer is D, both A and C. This is one area where the condominium law and the law for homeowners' associations differs substantially. Condominium unit owners have the right to address the board with respect to any designated agenda item. Conversely, there is no similar right in HOA's. HOA parcel owners are only granted the right to address the board if the board's meeting is called by petition of the members. The bylaws of a homeowners' association may also confer participation rights greater than the statute, and of course the board can (and should) permit input from owners in an appropriate fashion.

Answer #7: The correct answer is A. Only the condominium law requires the posting of an agenda with notice of a board meeting. However, for homeowners' associations, if an assessment is to be considered at the board meeting, notice that an assessment will be considered and the nature of the proposed assessment must also be included with the notice. ⚖️



Question: I live in a two-story condominium, with no elevator. My wife is having physical problems which make it difficult for her to go up and down the stairs. There has been some discussion about installing a lift.

My question is who should have to pay for this? G.K. (via e-mail)

Answer: The Fair Housing Amendments Act of 1988 requires housing providers, including condominium associations, to make reasonable accommodations for the disabled.

One required accommodation is that the association must permit handicapped individuals, at the expense of the handicapped individual, to make reasonable modifications to the premises

so as to permit the disabled individual to enjoy the property as fully as a non-disabled person, to the extent practicable.

Assuming that your wife suffers from a handicap, which the law defines as a mental or physical condition which impairs a major life activity, you would be entitled to have the lift installed, at your expense. The association could establish reasonable conditions as to the type of installation, its maintenance, protection against liability issues, and the like.

Question: Our condominium association is also governed by what we call a “master association.” It is combined with single family homes and condos. The master association wants to collect a processing fee for rentals. My question is whether they can do this, or if only condominium associations can collect. D.B. (via e-mail)

Answer: The Florida Condominium Act specifically permits the collection of processing fees if the association has the right to approve rentals, and the fee is specified in the documents. The fee for condominiums cannot exceed \$100.00 per application.

The law for homeowners’ associations is silent on the topic. In my opinion, if the governing documents (declaration of covenants or bylaws) as originally recorded, or as amended, authorize the fee, then it is valid.

Question: Is there any state law requiring a homeowners’ association to have an annual audit? Our budget exceeds \$100,000.00 annually. L.B. (via e-mail)

Answer: Florida’s law was amended in 2004 to impose heightened financial reporting requirements on homeowners’ associations. The law is now similar to the condominium law.

First, it is important to understand that the association’s governing documents may impose more stringent requirements than that found in the law.

For HOAs with annual receipts over \$400,000.00, a certified annual audit is required. If the receipts fall between \$200,000.00 and \$400,000.00, a review is required. A compilation is the required level of report for associations with receipts between \$100,000.00 and \$200,000.00.

Associations with annual receipts of \$100,000.00 or less must provide an annual report of cash receipts and expenditures. HOAs operating less than 50 parcels, regardless of annual

receipts, may also provide a year-end cash receipt and expenditure statement.

The law, as it does for condominiums, also permits waiver of these requirements by a majority vote.

Question: I am a real estate agent in Fort Myers. I have been told by lenders in deals I am working on that the condominium association or management company refuses to fill out the lender questionnaire. Would a seller or buyer have legal recourse against the association for refusing to provide the lender with this information? J.H. (via e-mail)

Answer: Under Florida law, the potential buyer has no legal relationship with the association and has no “standing” to pursue claims against the association.

A seller (a unit owner) does have standing to pursue legal claims against the association. However, Florida law is very clear on this topic. Specifically, the Florida Condominium Act provides that associations (and accordingly, their managers) are not obligated to respond to project information requests from lenders.

However, the law was amended in 2003, and again in 2004, to try to create greater incentives for associations to cooperate with respect to lender questionnaires. Specifically, the law now provides that an association may charge up to \$150.00 for responding to these questionnaires (plus any attorney’s fees the association incurs). The law also confers immunity on the association if it responds to these requests in good faith in using certain “magic words” in a response.

Accordingly, the impediments faced by many associations in responding to these requests in the past have been removed by the law. However, the association is still under no affirmative obligation to respond.

Question: When is the next educational program being held in the Fort Myers area. L. J. (via e-mail)

Answer: A free course on conflict resolution for Florida condominium and cooperative board members and unit owners will be held on Wednesday, March 23, 2005 from 9:00 am to 12:00 noon at the Seven Lakes Condominium Association, 1965 Seven Lakes Blvd., in Fort Myers. The course will be presented by Community Associations Institute (CAI), the designated condominium and cooperative educational provider of the State of Florida’s Department of Professional and Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes. I am the course instructor.

The course will explore the role of the board of directors in creating and enforcing rules as well as how those rules ultimately impact unit owners. It will also review basic principles of group interaction, conflict management and communications and describe constructive steps that unit owners can take to prevent conflict from escalating into costly and damaging disputes. Finally, participants will leave with

a basic understanding of alternatives to litigation in resolving disputes. Please note that this course does not count for manager CEUs for community association managers.

Registration is not required, but space is limited. To reserve a space, please call Laura Hagan at 727-525-0962 or e-mail FLeducation@caionline.org. ☎

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.