

## New Condo Watchdog Supports Term Limits

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By Joe Adams

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Today's column concludes our interview with Virgil Rizzo, the newly appointed "Condominium Ombudsman" for the State of Florida. (See Condo ombudsman outlines his vision for job, March 10, 2005 and New condo office stresses education, March 17, 2005).

**Adams:** How do you feel about fines against volunteer board members who make errors or violate the laws?

**Rizzo:** I think that would be the more appropriate of enforcing the law. However, I would not support fining a board member who was not first given a warning about what they were doing wrong, and an opportunity to correct it.

**Adams:** For the past several years, there has been talk of changing the law to impose term limits on board members. Do you have an opinion on term limits?

**Rizzo:** I think there should be term limits. Certain people get elected and refuse to give up. I think it is as important, if not more important, for there to be limits on the terms of officers. Someone should not serve as an association's president for fifteen years.

**Adams:** The law permits associations, through their own bylaws to establish term limits. When someone is continuously elected, they are obviously supported by their neighbors for the post.

**Rizzo:** I understand. Many people who might want to run for the board choose not to do so as they do not wish to challenge the incumbents. I support term limits for both board members and officers, and think it should be contained in the statute. Documents are difficult to amend, and the statute should override association documents.

**Adams:** Since your position was created, how many calls and e-mails, on average, does the Ombudsman receive each week?

**Rizzo:** I am working on that report right now. We think it is running at somewhere around 300 inquiries per week, and growing.

**Adams:** There is a Bill pending that would regulate homeowners' associations, bringing them under the Division's jurisdiction for enforcement and fines, and which would give the Ombudsman jurisdiction over HOAs. Do you support that?

**Rizzo:** I have not really looked at that issue in detail. There are some major differences between the two statutes. Regulation of HOAs is a question for the Legislature. Right now, I am focusing on condominiums.

### Legislature Looking at Association Assessment Collection

The regular session of the Florida Legislature convened on March 8, 2005. Already, a half-dozen Bills affecting condominium and homeowners' associations have been filed. Some of the proposed legislation would have a significant effect on the operation and management of community associations. The next several editions of this column will provide a heads-up on what's cooking in Tallahassee.

Today, Senate Bill 2632 is at center stage. S.B. 2632 can be viewed on the Internet at the website of the Florida Legislature at [www.leg.state.fl.us](http://www.leg.state.fl.us), where links to both the House and Senate are available.

S.B. 2632 would accomplish the following:

- Condominium associations would not be entitled to recover any attorneys' fees incurred in connection with the collection with delinquent assessments.
- Condominium associations could not file liens for unpaid assessments until the amount of delinquency exceeded \$2,500.00.
- A condominium association would need to wait 180

days (the current law is 30 days) before starting a foreclosure action in those cases where foreclosure would still be permitted.

A similar proposal was considered in 2004 by the California Legislature in reaction to a few widely-publicized stories involving reported abuses of the foreclosure remedy. In his veto message, Governor Arnold Schwarzenegger stated that this Bill could “unfairly result in increased assessment for other homeowners who pay their assessments in a timely manner”, which seems to be the likely result if this Bill passes in Florida.

Whether you are for or against, your Legislator is interested in your opinions. You can contact members of the Southwest Florida delegation as set forth to the right:

- Sen. Mike Bennett, District 21; 823-5718; [bennett.mike.web@flsenate.gov](mailto:bennett.mike.web@flsenate.gov)
- Sen. Burt Saunders, District 37; 338-2777 in Lee or 417-6220 in Collier; [saunders.burt.web@flsenate.gov](mailto:saunders.burt.web@flsenate.gov)
- Rep. Michael Grant, House District 71; 941-764-1100; [michael.grant@myfloridahouse.gov](mailto:michael.grant@myfloridahouse.gov)
- Rep. Paige Kreegel, House District 72, 941-575-5820; [paige.kreegel@myfloridahouse.gov](mailto:paige.kreegel@myfloridahouse.gov)
- Rep. Bruce Kyle, District 73, 335-2411; [kyle.bruce@myfloridahouse.gov](mailto:kyle.bruce@myfloridahouse.gov)
- Rep. Jeff Kottkamp, District 74, 344-4900; [kottkamp.jeff@myfloridahouse.gov](mailto:kottkamp.jeff@myfloridahouse.gov)
- Rep. Trudi Williams, District 75, 433-6775; [trudi.williams@myfloridahouse.gov](mailto:trudi.williams@myfloridahouse.gov) ♻️



**Question:** Our condominium is located on Pine Island, and consists of thirty-two units, contained in two-story buildings. Our insurance costs continue to rise and we are looking for ways to save money. Do we have to carry flood insurance, which is over one-third of our insurance costs? All of the ground floor units (except one or two) carry flood insurance. Can the board make this decision or are we required to have a unit owner vote? R.S. (via e-mail)

**Answer:** For those of us who hunkered down as Hurricane Charley was about to hit, one of the greatest fears was a storm surge which was predicted to run higher than fifteen feet. Fortunately, due to Charley’s fast-moving pace, the surge did not materialize, but it reminds us that it could happen. Indeed, Charley was initially anticipated to parallel a 1960 storm named Donna, which produced tremendous flood surges throughout the region.

The Florida Condominium Act requires an association to maintain “adequate” insurance. The law does not specifically mandate flood insurance, and in fact refers to flood coverage among insurance that an association “may” obtain. Accordingly, there is some debate as to whether flood insurance is or is not mandatory for Florida condominium associations.

In my opinion, every condominium association should have flood insurance. Further, I believe that if you are located in a

flood hazard area (which I assume you are), the requirement for “adequate insurance” in the law, probably includes full flood insurance.

Your unit owners’ individual flood insurance is usually similar to “renters’ insurance”, and primarily covers damage to contents. Further, second floor owners are exposed to flood claims, even if the water does not rise to their level. After a significant flood loss, there will be no power in the buildings, there will likely be substantial water intrusion, there will be mold problems and other structural problems. The “upstairs owners” will likely be equally assessed for all of the repair costs, which could be astronomical in the absence of insurance.

Personally, I would never serve on the board of directors of a condominium association located on a barrier island that did not carry full flood insurance.

**Question:** I am on the board of a condominium association. Our condominium documents state that “each independent purchaser is required to remit a non-refundable transfer fee of one hundred (\$100.00) dollars with the application to purchase. The transfer fee is to defray any present or future cost of transferring unit responsibility from the present owner to the new owner. A board majority may waive the background investigation but it must be recorded in the minutes of a duly called directors meeting.”

If a husband and wife purchase a unit, they are charged \$100 for a background check. However, the background check is done on both the husband and wife.

If two women, two men, or a man and a woman, who are not married purchase a unit, they are each charged \$100 for a background check. Some feel that it's discriminating to charge them each \$100 when we only charge a husband and wife \$100 combined for both.

I would appreciate your expertise on this subject. B.K (via e-mail)

**Answer:** Section 718.112(2)(i) of the Florida Condominium Act specifically authorizes an association to charge a fee in connection with the approval of the sale or lease of a unit. However, in order for the association to have the authority to charge the fee, the association must have the authority to approve the transfer (sale or lease) in the first instance, and the fee must be authorized by the documents.

The law goes on to say that any such fee may be preset "but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant."

Accordingly, since separate checks are done on each applicant, the law authorizes a separate fee for each applicant, so long

as the documents do. However, spouses and parents and children are considered a single "applicant" for the purposes of the law.

**Question:** I read your recent columns regarding the requirement for the Q&A Sheet. Where can I get a copy?

**Answer:** The Q&A Sheet is a state-mandated form known as DBPR Form CO-6000-4. It can be found at the website of the DBPR. Go to <http://myflorida.com/dbpr> and navigate through Land Sales, Condominiums, and Mobile Homes, then condominiums, then miscellaneous forms.

**Question:** I read your recent series on the sunshine law for condominium and homeowners associations. You have not addressed how the sunshine law applies to developers who control the board. Does the same law apply? G.S. (via e-mail)

**Answer:** Yes.

The provisions in Chapters 718 and 720 regarding "sunshine" requirements for community association boards apply equally to developer-controlled associations and associations which are controlled by the unit owners or parcel owners. ⚖️

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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).*