

Proposal Restructures State Agency

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Each year, Florida's Legislature sits in session for sixty days. To say the least, it is a tumultuous and fast-moving

process.

Because Florida has one of the highest per-capita populations of people living in community association settings, it is not surprising that a variety of issues affecting associations are brought up for consideration each year.

Three weeks ago, we began a review of legislative proposals for 2005, with a look at S.B. 2632, a proposal that would limit an association's right to collect delinquent assessments through lien foreclosure proceedings. In the second installment we reviewed H.B. 1593/S.B. 2062, which addresses, among other things, the emergency powers of a condominium association board after a catastrophic event such as a hurricane. Last week, we shifted attention to House Bill 1229, one of the more controversial pieces of pending legislation, focusing on reserve waivers, mandatory education for board members, and audit waivers.

Today we will look at more of H.B. 1229, including homeowners' association regulation, enforcement, and possible expansion of the role of the Ombudsman:

- **Restructuring Regulatory Agency:** H.B. 1229 would change the name of the Division of Florida Land Sales, Condominiums, and Mobile Homes (the state agency currently charged with enforcement of condominium laws), to the "Division of Florida Land Sales, Condominiums, Homeowners' Associations, Community Association Management and Mobile Homes." The changes would bring HOAs and manager regulation under the auspices of the agency (more below).
- **Manager Regulation:** Currently, the regulation of community association managers is handled through the general jurisdiction of the Department of Business and Professional Regulation. H.B. 1229 would shift

regulation to the Division of Florida Land Sales (with its new name) and would also require the licensure of management companies. Under current law, only individual managers (not management companies) have to be licensed.

- **Enforcement:** H.B. 1229 would provide that "any condominium owner" found to be in violation of the law is to be notified by the Division, by certified mail, and "will have 30 days in which to respond in writing." It is unclear what this change would do. Although the apparent intent is to apply to associations (and not unit owners), the use of the term "condominium owner" leaves plenty of room for interpretation.
- **Regulation of Homeowners' Associations:** Perhaps the most significant aspect of H.B. 1229 would be to provide for mandatory state regulation of homeowners' associations. The Division of Florida Land Sales would be empowered to investigate complaints made against HOAs made by their owners, and impose civil penalties, similar to the law that now exists for condominiums. In 2003 and 2004, Governor Jeb Bush's Task Force on Homeowners' Associations extensively debated regulation of HOAs, and concluded that mandatory government regulation was not in the best interest of homeowners' associations.
- **Role of Ombudsman:** H.B. 1229 would increase the role of the Condominium Ombudsman to include monitoring disputes involving condominium elections.

Remember, proposed legislation can be viewed on the Internet at the website of the Florida Legislature, www.leg.state.fl.us, where links to both the House and Senate are available.

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 below.

- Sen. Mike Bennett, District 21; 823-5718; bennett.mike.web@flsenate.gov
- Sen. Burt Saunders, District 37; 338-2777 in Lee or 417-6220 in Collier; saunders.burt.web@flsenate.gov
- Rep. Michael Grant, House District 71; 941-764-1100; michael.grant@myfloridahouse.gov
- Rep. Paige Kreegel, House District 72, 941-575-5820;

paige.kreegel@myfloridahouse.gov

- Rep. Bruce Kyle, District 73, 335-2411; kyle.bruce@myfloridahouse.gov
- Rep. Jeff Kottkamp, District 74, 344-4900; kottkamp.jeff@myfloridahouse.gov
- Rep. Trudi Williams, District 75, 433-6775; trudi.williams@myfloridahouse.gov



Question: Our current homeowners' association board of directors includes a husband and wife. The husband is the board president and the wife is a member of the board at-large. Are there any rules or laws that prohibit this? P.B. (via e-mail)

Answer: No. Chapter 720, the law applicable to homeowners' associations, does not limit the simultaneous service on the board by a husband and wife. Presumably, the homeowners who voted these two into office were aware of their marital status.

It is unclear under Florida law whether your bylaws could be amended to prohibit more than one co-owner representing the home on the board, although I personally believe that such a clause would be upheld.

Question: Our manufactured home park is a "55 and over" community. A question has come up about whether a person who is under age 55 is permitted to buy a lot in the Park. I was under the impression that you could buy a lot, just not reside there. What do you think? F.W. (via e-mail)

Answer: This issue is not addressed by the federal laws that permit so-called "housing for older persons." It depends on how the covenants which implement the "55 and over" clause are written.

The federal law, and most governing documents focus on occupancy, not ownership. For example, someone who is under age 55 might buy a lot in your Park, but intend that his or her elderly parents live there. This would not violate the "eighty percent rule" required for "55 and over" housing status.

Therefore, unless the covenants applicable to your Park specifically prohibit ownership by persons under age 55, it is likely permissible.

Question: I would like to install hurricane shutters at my condo unit. However, I would like to install "accordion" shutters as opposed to the "roll-down" type. Accordion shutters are less expensive and do not require support members, which would block my view. However, our board has adopted a rule that only permits roll-down shutters. Is this rule legal? A.B. (via e-mail)

Answer: Section 718.113(5) of the Florida Condominium Act states that association boards must adopt hurricane shutter specifications for each building within each condominium operated by the association, which shall include color, style, and "other factors deemed relevant by the board." All specifications adopted by the board shall comply with the applicable building code. In my opinion, if your board's specifications meet the applicable building code, the requirement for a unified type of shutter installation would be upheld.

Question: I live in a condominium community with various sections and a master association. Our master association has an annual meeting, where we are asked to vote on different items by proxy. The association opens the proxies prior to the meeting and advises the section presidents how the votes are going, so that the presidents can drum up more votes if needed. Is this legal? R.K. (via e-mail)

Answer: Yes. Unlike, ballots used in electing condominium association directors, proxies received by an association are not required to be kept sealed until the meeting, and in fact are routinely tallied in advance to make the meeting go more quickly. However, if the association chooses to open the proxies before the meeting, they become part of the "official records" of the association, and those who may be opposing the item up for vote are also allowed to inspect the proxies, see how the vote is going, and do their own "politicking."

Question: Our homeowner's association board recently elected five people. Only four of the successful candidates were present at the annual meeting. Right after the annual meeting, they elected the person who received the lowest number of votes as President. Is there a proper way to do this? E.A. (via e-mail)

Answer: In most associations, the members (parcel owners) elect the board, and the board elects its officers. Absent a provision to the contrary in the bylaws, which would indeed be unusual, there is no requirement that the president receive more votes than others who were elected to the board. ⚖️

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.