



Legislature Lets Most Association Bills Die

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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 controversial issues affecting associations are brought up for consideration each year.

Over the past seven weeks, we have reviewed proposed legislation which was filed and debated during this year's legislative session.

The 2005 session ended last Friday. For association legislation, it ended with a thud. Most measures affecting associations, even those which were not considered controversial, got bogged down in Tallahassee's gridlock, in what many describe as one of the most acrimonious sessions of the Florida Legislature in recent history.

HB 1593/SB 2062 died "in messages", meaning that it did not pass. That Bill addressed emergency powers of association boards after catastrophic events such as hurricanes. HB 1593/SB 2062 would have also tried to address problems in homeowners' association mediation, reinstatement of covenants in voluntary associations, and the extension of the current deadline for retrofitting fire sprinklers in high-rise condominium buildings. An amendment to that Bill introduced midway through the session, which would have allowed homeowners' associations to place liens

for unpaid fines, became very controversial and may have had some role in the Bill's demise.

HB 1229 also was a focus of much attention during the Session. That Bill, at various stages of its life, would have required mandatory education for condo board members, would have prohibited the waiver of reserves, and would have required mandatory audits for many condominium associations at least every two years. This Bill did not survive the committee process.

SB 2362, which would have severely limited association collection rights never got a committee hearing, and died.

SB 2360, the proposal that would have liberalized the "termination" procedures for condominiums after a calamity also met its demise at the last minute.

The one piece of legislation which did survive the fracas, and which is now on its way to the Governor, is **HB 291**. HB 291 primarily deals with developer control of condominium associations and procedures required for litigation after transition of control (commonly called "turnover") has occurred.

Among the highlights of HB 291 are the following:

- **Developer Responsible For Its Board Members:** If signed by the Governor, a new section will be added to the condominium statute, Chapter 718. A new section 718.301(6) will be added which provides that

actions taken by members of the board who are designated by the developer are considered actions of the developer. The developer will be responsible to the association and its members for all such actions.

- **Construction Defect Claims:** A new section 718.301(7) will be added to the law (again, assuming approval by the Governor). The new law will require that in any construction defect claim by an association against a developer, an

appropriately licensed Florida engineer, design professional, contractor, or “otherwise licensed Florida individual or entity” will be required to be involved. This would not appear to be a major detriment to associations, since the vast majority of claims against developers are supported by professional input anyway.

So once again, the most important news from the 2005 session is not what happened, but what did not happen. ■

Disclaimer: This document is intended as an informational reminder and does not constitute legal advice. If you have any questions about the article or would like to discuss a particular situation pertaining to business litigation or intellectual property law (including patents, trademarks, copyrights, trade secrets, and the Internet), please contact Manjit Gill at Becker & Poliakoff, P.A. The purpose of this article is to provide general information about significant legal developments and should not be construed as legal advice on any specific facts and circumstances.

Question: My husband I recently purchased a condo unit. Between the date of our contract and the date of closing, the association owners met to change the condominium documents, requiring all units to be “owner occupied”, meaning that rentals are no longer permitted. Does Florida law allow an association to change a use of a unit while it is under contract? The “old” owners are allowed to continue renting. L.V. (via e-mail)

Answer: This is one of the many flaws in the so-called “grandfathering law” passed by the Florida Legislature in 2004.

When an association amends rental provisions, it only applies to those owners who consent to the amendment, or their successors in title. The amendment is effective when it is recorded in the public records where the condominium is located.

Since this amendment was recorded four days prior to your closing, you were not an “owner” on the “grandfathering date.” Therefore, I think the amendment can be applied to you.

You may wish to speak to your legal counsel as to whether the seller had notice of the pendency of the proposed amendment, and whether there may have been a duty to disclose the proposed action to you during the sale process.

Question: Our condominium association board has five directors. There is a split on the board. Three of the members are constantly having meetings without inviting the other two. Those three members also approve “newsletters” that are sent out, and send them out only to selective people who are “in their camp.” Is this legal? W.T. (via e-mail)

Answer: The day-to-day affairs of a condominium association are run by a board, which makes its decisions by majority vote. Therefore, “majority rules” in most cases.

However, the law is also designed to allow participation by those who may have a minority point of view, including your two directors who are apparently “on the outs” with the majority.

Most association bylaws require that, in addition to 48-hour posted notice for board meetings, that each director is entitled to personal notice of board meetings. Personal notice can usually be given directly by telephone. If your board has not been giving all of the directors proper personal notice of its meetings, the actions taken at those meetings may be set aside as unlawful unless ratified at a properly noticed meeting.

With respect to selective dissemination of association “newsletters”, the law does not address this topic. Certainly, anything which comes as an official publication of the board should be made available to all owners, not just a select few.

Question: My understanding is that the Florida Government In The Sunshine Law applies only to state agencies and public collegial bodies. You have stated in your articles that it also applies to homeowners’ associations. I would appreciate your comments. B.T. (via e-mail)

Answer: Technically, you are entirely correct. The Government In The Sunshine Law, Chapter 286 of the Florida Statutes, only applies to public bodies.

However, the laws for condominium associations, cooperative associations, and homeowners’ associations have many “sunshine” procedures, and that is the term that is colloquially used for member rights in community associations as well.

One big difference between the “official” Government In The Sunshine Law and the “sunshine” laws for associations is that the government version applies to any meeting between two government officials, while the association version only applies to quorums of the board.

Question: In one of your recent columns, you state that if a quorum of the board is on the telephone at the same time, and association business is discussed, a “meeting” of the board occurs and that it is subject to the sunshine laws. What do we do in our case, where we have a three-member board? D.G. (via e-mail)

Answer: Technically, any gathering of a quorum of the board (including telephone conversations) where association business is conducted constitutes a “meeting.”

Accordingly, if you have a three-member board, telephone calls between two members are subject to the sunshine laws, including prior posting and the opportunity for homeowners to observe the discussion. That is one of the

major problems with three-member boards, and why I typically recommend boards of five members or more.

Question: Our condominium association has a long-standing practice of weekly “pool-side meetings”, where a quorum of the board listens to owners’ concerns. Anybody can attend and speak, no business is voted on. Is this legal? M.G. (via e-mail)

Answer: In my opinion, such meetings are entirely appropriate if the notice is properly posted. Votes cannot be taken on items not placed on the agenda, so no votes should occur at these meetings. The posted notice, where it designates an agenda, could say something like “town hall meeting to discuss unit owners’ concerns.” ■