



## Records Laws Have Some Similarity

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During the past two decades, community associations have proliferated in Florida. In addition to the condo boom, virtually every new housing development includes mandatory membership in a homeowners' association.

As with any form of government, the balance of powers, rights, and responsibilities is a subject of constant debate. Numerous advisory groups and task forces have been empanelled to study the laws and make recommendations for improvement.

Undoubtedly, one of the most frequently debated issues, and one of the greatest sources of contention in associations, involves access to the books and records of a community association.

Today's column continues our review of records access issues in Florida's community associations, both condominiums and homeowners' associations (see, Records Access Set by Statute, June 16, 2005).

As noted in last week's column, records access for condominiums is governed by Section 718.111(12) of Florida's statutes, while the HOA counterpart is found at Section 720.303(4) and (5) of the statutes.

Although there are some slight differences between the two laws, recent legislative efforts have focused on trying to create some consistency in the laws for

condominiums and homeowners associations. Here are some of the highlights:

- **Place Where Records Must Be Kept.** Both laws require that official records be maintained within the State of Florida.
- **Right To Inspect And Copy.** Both laws confer the right of inspection and copying on every member of the association (parcel owner or unit owner) as well as their "authorized representative." Therefore, an association member can permit a third person to act as his or her agent when inspecting association records.
- **Time For Compliance By Association.** Here, there is a slight difference between the two laws. The condominium law requires that the association make the records available for inspection within five working days after receipt of a written request. After ten working days, a presumption arises that the condominium association has willfully failed to comply with the unit owner's request. For homeowners associations, there is ten working days provided for compliance with a records inspection request.
- **Statutory Minimum Damages.** Both laws provide that an association which willfully fails to comply with an owner's inspection request is responsible for actual damages, plus statutory minimum damages of \$50.00 per day, up to a

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maximum of \$500.00 in statutory minimum damages.

- **Entitlement to Attorney's Fees.** Both laws provide that any owner who is wrongfully denied access to association records may recover their attorney's fees in a court action to compel delivery of the records.
- **Copying.** Both laws permit owners to copy association records in connection with their inspection of them. In next week's installment, we will further explore some of the challenges involved with records copying.

- **Board Right to Control Inspection and Copying.** Both laws allow the board of directors to adopt reasonable written rules regarding the frequency, time, location, and notice requirements for records inspection. Next week's column will also focus a bit more on these concepts.

Associations have been described by the courts as "democratic sub-societies." Thus, like our other elected levels of government, there is little tolerance in the law for secrecy in association affairs, or as the popular express goes, everything must be done in the sunshine. ■

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*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).*

**Question:** One of the unit owners in our condominium community used to be the property manager. We now have a new property manager. As the board president, I was primarily responsible for changing property managers. Now this individual owner constantly sends emails complaining about items in the condominium. The ironic part is that the former property manager should have addressed many of the items that he is now complaining about. We are still having trouble getting financial information from the former manager. What can I do to complain about the way that the former manager handled our affairs? (R.S. via e-mail)

**Answer:** Managers provide an important service for associations. They can relieve the Board of the many day-to-day functions required to operate an association, and can provide experienced-based guidance on many important aspects of community operations. With limited exceptions, any person who manages community associations must be licensed and receive such a designation from the state of Florida.

To become a licensed community association manager, an individual must undergo a background check, pass a state of Florida-administered examination, and must then meet continuing education requirements. These continuing education requirements include 20 hours of classes every two years to keep up with changes in the industry.

Chapter 468 of Florida statutes contains guidelines as to what a manager is authorized to do. The Department of Business and Professional Regulation also promulgates rules governing managers' conduct, including "Standards of Professional Conduct". For instance, managers are bound by their license to be certain all the association funds are placed in the proper accounts. The Florida Administrative Code also requires the manager to relinquish the books, records, accounts, funds and other property of a community association when requested by the association. The manager must provide such items within 20 business days after receipt

of a written request from the association, even if there is a pending contract dispute between the association and the manager. The law deems violation of this rule to be "gross misconduct."

Your situation points out something I have always felt strongly about, that being business relationships between unit owners and the associations in which they are members should be avoided in most cases. Particularly where a unit owner serves as manager, there is too much potential for confusion about what pertains to the individual as an owner (with their attendant rights) and what pertains to them as manager (with their attendant duties).

I would recommend that you ask your current manager (if they have a good relationship with the former manager), or your attorney, to try to get you the records that you need, and move on. If the manager remains uncooperative, then you could seek recourse from the appropriate licensure authorities.

Should it become necessary, complaints can be filed against most regulated professions through the office of the Department of Business and Professional Regulation, including on-line filing. The DBPR's website is [www.myflorida.com/dbpr](http://www.myflorida.com/dbpr).

You also ask about complaints regarding the manager's performance of his job duties. This is not an area where I would waste valuable time or expend negative emotional energy. After all, it is the board of directors that is responsible to see that the manager is doing his job correctly. In some sense, that is akin to complaining about your own actions.

There is little an association can effectively do to stop unit owners from sending e-mails. When a unit owner abuses their privilege to obtain or receive information by e-mail, I typically advise an association to simply not respond. The law does not require you to acknowledge

or respond to unit owner e-mails, only certain letters sent to you from the unit owner by certified mail.

**Question:** I recently volunteered to be part of our condominium association's board of directors, and I was elected the treasurer. In recent months, I have realized that this position is not a good fit for me, and that I do not wish to continue with my position as treasurer. What steps must I follow so I can resign my position? (K.A.C. via e-mail)

**Answer:** Resignations of directors and officers are governed by the Florida statutes governing corporations (Chapter 617 for not-for-profit corporations). If you wish to resign from the board, you may do so by delivering written notice to the corporation (written notice to the board president would be sufficient). The resignation would be effective when the notice is delivered, unless the notice specifies a later effective date. If the resignation is made effective at a later date, and the corporation accepts the future effective date, the board may fill the pending vacancy before the effective date, if the board of directors provides that the successor does not take office until the effective date of the pending vacancy.

If it is your intent to resign only as treasurer but remain on the board as a director, the same steps must be followed. You should be clear in your resignation letter whether you are resigning as treasurer, as a director, or both.

**Question:** I live in a community with a homeowners' association, and have some questions regarding our last election. During election time, most of the property owners are available to be at the election meeting.

Some of the homes are rented and those owners receive absentee ballots through the mail. I am troubled because every property owner received an absentee ballot in their mailbox, and their lot numbers were marked on the ballot. If an owner is available to vote in person, why do they get an absentee ballot in the mail box and why were the lot numbers put on them if this is to be a secret ballot? When these ballots were returned, they went into a box in the clubhouse. When the votes were tallied, there appeared to be an inordinate amount of absentee ballots. I was told that this has never happened before. Can anything be done to prevent this from happening in future elections? (J.M via e-mail)

**Answer:** Chapter 720 of the Florida Statutes, which governs homeowners' associations, states that elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. These procedures are generally spelled out in the by-laws. The law also states that members have the right to vote in person or by proxy, unless otherwise provided in the association's governing documents.

Unlike condominiums, where all elections are handled the same way, each homeowners' association's governing documents differ, and need to be looked at on a case by case basis to determine the proper procedures for elections and voting. Unless your association's governing documents provide otherwise, the board has some degree of latitude in structuring the election papers.

I do not know if your association's governing documents provide for secret ballots when electing directors, but there is no requirement for secret ballots in the law. ■

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