

necessary to state the required waiver vote in the bylaws, although (for the same reasons applicable to the reserve vote), it is a good idea to do so.

- **Removal (Recall) of Directors:** Both condominium and HOA regulations permit the members of the association, with or without cause, to remove any director from office by a vote of a majority of the entire voting interests (there is usually one voting interest per lot or parcel). This is a higher standard than the waiver of reserves or financial reports, which are based upon the majority of the quorum. Again, while both laws contain detailed recall procedures, a well-written set of association bylaws will provide additional guidance on the right of recall, including petition procedures and the required vote.

- **Amendments to Documents:** As was covered in more detail in an earlier installment of this series, each of the constituent legal documents should contain a clear procedure as to how they are to be amended.

There are also some areas where the law does not mandate a unit owner vote, but provides that the Board cannot act unless the governing documents confer the authority. These areas include:

- **Material Alterations of Condominium Property:** As discussed at length in last week's column, enabling authority for "material alterations or substantial additions to the common elements" should be included in a declaration of condominium. The law for homeowner's associations does not regulate this area.

- **Acquisition of Real Property:** Again, the condominium law is stricter. The condo statute

provides that an association may not acquire title to real property except as authorized by the declaration of condominium. If the declaration is silent, seventy-five percent of the entire voting interests must approve the acquisition. It is helpful in the governing documents for both types of associations to have guidance on the right to acquire property. In my experience, most associations will want to have membership approval for the acquisition of real property, since it could involve significant expense. One exception would be in the area of the acquisition of a unit or parcel at a foreclosure sale, where the board of directors should be empowered to act.

- **Termination of Condominiums:** The Florida condominium law provides that a condominium may not be "terminated" without unanimous approval of the association members, unless otherwise provided in the declaration of condominium. Termination is becoming a hot topic as real estate available for development shrinks, and the highest and best use of an existing development may be knock it down and build something else. Termination also comes into play when property suffers significant casualty damage, such as a major hurricane strike. The law for HOA's does not contain any guidance on termination. In a future edition of this column, we will take a more detailed look at the termination clauses in the documents.

In the next installment of this series, we will take a look at those items of association powers and duties which are usually vested in the board of directors, but which should be set forth in the governing legal documents. ■

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.

FCC Prohibits Most Restrictions on Satellite Dishes

Question: One of our owners is requesting to install one of those small satellite dishes. The installation will not penetrate the roof, nor protrude from the exterior of the building. Our rules prohibit antennae or satellite dish without approval of the board. The board is split on whether to approve this request. What is the current thinking on this issue? L.P. (via e-mail)

Answer: Assuming that the satellite dish is one meter (39 inches) or less, the board's discretion is substantially limited by federal law.

The Federal Communications Commission, pursuant to the Telecommunications Act of 1996, has adopted the "Over The Air Devices Rule" curtailing the ability of condominiums to ban or impede the installation of satellite dishes. Specifically, the rule prohibits any restrictions that either:

- Unreasonably delay or prevent installation, maintenance or use of satellite dishes designed to receive direct broadcast satellite service or a video programming service where the satellite is one meter (about 39 inches) or less in diameter;
- Unreasonably increases the cost of installation, maintenance or use of such satellites; or
- Precludes reception of an acceptable quality signal.

Accordingly, associations may no longer enforce restrictions that cause any one of these impairments.

The FCC rule prevents restrictions impairing the installation and use of satellite dishes on property that is "within the exclusive use or control of the antenna user, where the user has a direct or indirect ownership interest in the property." The FCC has recently clarified that residents of condominiums

may install satellite dishes on a balcony, deck, patio or other area where the individual resident has exclusive use or control, which will be dictated by the condominium documents. Conversely, the FCC has concluded that its rule does not apply to, and Associations may restrict, the installation and use of reception devices on common elements not within the exclusive use or control of a particular viewer, which in most condos would include walkways, hallways, exterior walls, or the roof. Additionally, an owner does not have the absolute or unfettered right to install a satellite dish antenna on a balcony or terrace of a condominium unit, if the installation will penetrate or intrude upon the common elements or other portions of the property maintained by the Association.

Further, the rule allows associations to restrict the installation of satellite dishes and antennas where clearly defined safety objectives exist, but there are caveats. First, the restriction cannot be more burdensome than necessary to accomplish the safety objectives stated in the restriction. Secondly, a safety restriction is only valid if the same kind of safety considerations are applied to other devices that are comparable in size and in weight and pose a similar or greater safety risk. For example, the rule would not allow an association to enforce a ban on satellite dishes and antennas if it claimed there was a safety objective, unless an existing rule banned the devices of similar size and weight such as air conditioning or pool equipment.

Question: We were told that according to Florida condo law, a condo owner with water damage caused by a leak from a unit above is responsible for repairs and files the claim with his insurance company. This does not seem fair as the damage may be caused by neglect of the owner above. Do you know if any associations have amended their by-laws to state

that the owner above would be required to pay the insurance deductible that the owner of the damaged unit must cover at his own expense? M.C. (via e-mail)

Answer: The Florida Condominium Act and most declarations of condominium are designed so that insurance is the first source of recovery in the event of a casualty loss. The statute requires that the Association's insurance cover all condominium property, including common elements and portions of the unit as initially installed, subject to certain exceptions for items including carpeting, window treatments, built-in cabinets and other items listed in Section 718.111(b)(3) of the law. The individual unit owners are well-advised to adequately insure the remainder of their property. However, the damage that occurs when a washing machine hose leaks or a water heater fails often does not meet the Association's insurance deductible, leaving someone with a bill to pay.

Most well-written declarations of condominium include an express provision making an owner liable to the association or to other unit owners for intentional or negligent acts that result in damage. Some declarations establish criteria to define negligence, such as requiring water valves to be turned off when nobody will occupy the unit overnight, or even requiring certain maintenance or replacement schedules for equipment that is likely to cause damage. I am aware of some associations including a "strict liability" provision in the declaration, making a unit owner responsible for any damage caused by that owner or his/her property without regard to fault. However, there is some question as to whether such a strict liability obligation will be covered by insurance, so that the owner who effectively caused the damage, even if the damage occurred through no fault of his own, may get stuck with a large, uninsured damage bill. ■

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