



## Legislature Considers Condo Laws

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Today's column continues our review of proposed legislation pending in the 2006 Session of the Florida Legislature. Two weeks ago, we began review of House Bill 1227/Senate Bill 2570. (*Bill Looks To Change Rules For Condos*, March 30, 2006). The first segment looked at proposals in H.B. 1227/S.B. 2570 that would require certified mail notice of proposed amendments, prohibit waiver of financial reporting requirements, address reconstruction of condominium property after casualties such as hurricanes, limit an association's ability to regulate "certified inquiries" from unit owners, and require all actions of a condominium association to be authorized at a duly noticed meeting of the Board. In the second installment (*Legislature Proposals Reviewed*, April 6, 2006), proposed changes to the law regarding special assessments, the imposition of term limits, election procedures, annual meetings, and reserve voting were examined. Today, we will complete the legislation proposals in H.B. 1227/S.B. 2570.

- **Hurricane Shutters:** Section 718.113(5) of the Florida Condominium Act is proposed to be amended regarding hurricane shutter specifications. First, the new law, if adopted, would require the board to update hurricane shutter specifications annually, or at least restate the specifications each year. This would be required to be done at the association's annual meeting. Current law permits the board, by majority vote of the unit owners, to install hurricane shutters on the condominium property.

The new law would permit a vote to be taken to install other hurricane shutter protection that complies with the applicable building code. This change is presumably aimed at permitting an association to vote to install "hurricane windows", as an alternative to shutters.

- **Periodic Engineering Inspections of Condominium Buildings:** A new Section 718.113(6) would be added to the law, and would require the board to have the condominium buildings inspected by a professional engineer or architect at least every five years. The engineer or architect would be required to render a report that would include identification of "any matters ... requiring remedial action." This proposal is an apparent reaction to problems encountered in some communities, particularly older condominiums, where deferred maintenance requirements are not addressed in a timely fashion, which can result in devastating special assessments.
- **Cable Television:** Section 718.115(1)(d) of the Condominium Act would be amended to provide that if an association purchases bulk cable television, it can only contract for "basic" service, which would presumably prohibit contracting for "premium" services, such as movie channels.
- **Foreclosing Mortgagee's Responsibility For Unpaid Assessments:** The current law provides

that if a mortgage holder forecloses its mortgage lien against a condominium unit, the mortgagee is liable for six months' worth of unpaid assessments, or one percent of the original mortgage debt, whichever is less. H.B. 1227/S.B. 2570 would amend Section 718.116(1)(b) of the Condominium Act, and appears to intend that the mortgagee would be on the hook for all unpaid assessments after foreclosure, although the language of the Bill itself is susceptible to differing interpretations, and could be read to excuse a mortgagee from any unpaid assessment liability whatsoever.

- **Application of Delinquent Assessment Payments:** Section 718.116(3) of the Florida Condominium Act would be changed substantially by this Bill. Current law provides that if a delinquent owner makes payments on the account, the payments are first applied to interest, late fees, and attorney's fees incurred in collection. The proposed change would re-shuffle the application of payment, and provide that payments made on delinquent accounts would be applied to the principal sum of the assessment before being applied to attorney's fees.
- **Special Assessment Payments:** H.B. 1227/S.B. 2570 would amend Section 718.116(10) of the Florida Condominium Act requiring the levy of special assessments. The new law would require that when an

association levies a special assessment, a payment schedule must be established "with due regard to the financial burden of the assessment on the unit owner."

- **Enforcement of Rules and Restrictions:** The proposed new law would amend Section 718.303 of the Florida Condominium Act by adding a new subsection 4. This proposal would require that an association allow a unit owner who is alleged to have violated the rules and regulations to have thirty days to respond in writing before legal action could be taken.
- **Power of the Office of Ombudsman:** The proposed new law would remove the Office of Condominium Ombudsman from oversight by the Department of Business and Professional Regulation. The proposed law would require the DBPR to "defer" to findings of the Ombudsman, and would empower the Ombudsman to "order" meetings between unit owners and their boards. The new law, if adopted, would also apparently permit the Ombudsman to render legal opinions and advice to associations and unit owners.

At press-time, H.B. 1227/S.B. 2570 has not gone through the committee hearing process, which would suggest that its chances of passage during this Session are slim. Nonetheless, in the tumultuous days that typically mark the close of the legislative sessions in Tallahassee, almost anything can happen. Stay tuned. ■

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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).*

## Public Notice Must be Given for Committee Meetings

**Question:** I am a board member on a nine member board in a large condominium association. I have two questions. First, we have a number of standing committees. The committee meetings are all announced in advance by a published agenda. How many members of the board can be present at these meetings without violating the Florida Sunshine laws and can this issue be avoided if not all board members participate in the discussion? Second, we have an executive committee that is expressly provided for in our bylaws and that consists of the President, Vice-President and two other directors. Is it possible for the President to also form an “officers group” composed of the same members as the executive committee and hold private meetings of the officers group? G.A. (via e-mail)

**Answer:** The Florida Condominium Act provides that the notice and open meeting requirements applicable to board meetings apply equally to committee meetings, with some exceptions. As you may know, all board meetings (defined as any gathering of a quorum of the board at which association business is discussed) must be duly noticed by a notice incorporating all agenda items. Such meetings must be open to members of the association and such members are entitled to speak on each agenda item, subject to reasonable rules and limits adopted by the board. All committee meetings must meet these same requirements and be duly noticed and open to unit owners who are entitled to speak, except that the association bylaws may exempt committee meetings from these requirements as long as the committee is not meeting to take final action on behalf of the board and is not making recommendations to the board regarding the budget. In addition, as with board meetings, committee meetings may be closed to unit owners if the committee is meeting with legal counsel to discuss proposed or pending litigation, but even those meetings should be preceded by the required notice.

Given these requirements, the practice that you describe in your first question regarding standing committees appears to include giving notice, and if that notice meets

the statutory requirements, appears to be permissible. Presumably the committees permit unit owner comments at such meetings. Director participation in properly noticed committee meetings, and in their capacities as either committee members or unit owners, is not problematic as long as the participating directors restrict their participation to committee matters that were included in the committee meeting agenda. The second question concerning the officers group does not appear to be a problem initially because the committee of four is not a quorum (usually a majority) of the board. But the officers group is a quorum of an existing committee (the executive committee) regardless of the label attached to the group, and unless the bylaws permit otherwise, all such meetings must be noticed and open unless legal counsel is in attendance.

**Question:** I am on the Board of Directors of my condominium association. We would like to adopt a rule prohibiting cooking on balconies. Is this legal? L.B. (via e-mail)

**Answer:** First, you must look at the association’s governing documents (the Declaration, Articles of Incorporation, and Bylaws) to determine whether the Board has the authority to adopt rules and regulations without a vote of the owners. If so, the Board enacted rule must not contravene an express provision in the Declaration or a right reasonably inerrable therefrom, and the rule must be reasonable. In addition, if the rule involves unit use, notice of the board meeting and the proposed rule must be mailed to all unit owners and posted conspicuously on the condominium property not less than fourteen (14) days prior to the board meeting at which the rule will be considered.

Assuming that the Board has the authority to adopt the rule and that it does not contravene the Declaration, the issue is whether the rule would be considered reasonable. In this regard, the State of Florida has adopted the Florida Fire Prevention Code (Rule 69A-60, Florida Administrative Code), which applies to all

buildings and structures throughout the State. The Florida Fire Prevention Code includes the National Fire Prevention Association (NFPA) 1, Uniform Fire Code, Florida 2003 Edition, adopted in Rule 69A-60.003, Florida Administrative Code. The NFPA code includes a provision which provides as follows: For other than one and two family dwellings, no hibachi, gas-fired grill, charcoal grill or other similar devices used for cooking, heating or any other purpose shall be used or kindled on any balcony or under any overhanging portion or within 10 ft of any structure. Listed electric ranges, grilles or similar electrical apparatus shall be permitted.

Therefore, a rule which is consistent with the NFPA code would undoubtedly be considered reasonable.

**Question:** Our condominium association collects maintenance fees on a quarterly basis. We are experiencing cash flow problems because our insurance bill is due at the beginning of the year. Our question is whether we can “load up” the annual maintenance fees to require higher payments for the first two quarters, and lower payments for the second two quarters. D.C. (via e-mail)

**Answer:** In my opinion, this is not permissible. Presumably, your bylaws require the association to adopt an annual budget for operating expenses. The Florida Condominium Act requires that assessments cannot be imposed more frequently than quarterly. For example, a condominium association could not require pre-payment of the association’s maintenance fees at the beginning of the year. Your board should look at a special assessment as an option, or adoption of a budget with higher maintenance fees at the beginning of the year, which can then be amended later in the year.

**Question:** May three members of a seven member homeowner’s association board hold un-noticed meetings with the property manager to discuss association business? L.R. (via e-mail)

**Answer:** Yes. The requirements for posting notice for all community associations applies only to “meetings”, which are defined as a gathering of a quorum of the association board for the purpose of conducting association business. Presumably, your bylaws specify a majority (four directors) as a quorum, so a meeting of three would not violate the law.

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