



## Lee Condo Termination Forum Today

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As reported previously (Two Vetoes Will Impact Associations, July 13, 2006), Governor Jeb Bush ordered the Department of Business and Professional Regulation, through its Division of Florida Land Sales, Condominiums and Mobile Homes (the "Division"), to conduct public hearings regarding the issues surrounding the termination of condominiums.

As previously reported, the Governor expressed some concern about S.B. 1556, adopted by the 2006 Florida Legislature, which dealt with the termination of condominiums. In detailing the bill, Bush expressed reservations that the law could have "unintended consequences" and could have the effect of "diminishing security in ownership of private property."

The Division has already held five public meetings, turn-out has reportedly been light. Today, those interested in providing input about the termination of condominiums have their chance. The Division will be conducting its Southwest Florida public hearing today, August 3, 2006 from 4:00 p.m. to 8:00 p.m. at the Old Lee County Courthouse, 2120 North Main Street, Fort Myers, Florida.

I have also been informed that, after formal input on the termination issue has been concluded, the Division will open up the floor to other questions and comments, in an "off-the-record" session. The Division is the state agency which regulates condominiums, cooperatives, and mobile home communities in the State of Florida (homeowners'

associations are not regulated, except that the Division administers a mediation program for HOAs).

Among the main functions of the Division, set forth by state statute, are: review and approval of developer filings; provision of education for condominium and cooperative unit owners and board members; administration of an arbitration program which adjudicates disputes between associations and unit owners; the issuance of formal rulings, known as "declaratory statements", which provide guidance to associations under certain circumstances; and general enforcement of the provisions of Chapters 718 and 719 of the Florida Statutes, the Florida Condominium Act and the Florida Cooperative Act.

The Division is empowered, by law, to conduct investigations, to issue subpoenas, and can levy fines of up to \$5,000.00 per violation of the law. Under certain extreme circumstances, fines can be levied against individual officers and directors. The Division currently administers its enforcement program under written guidelines which attempt to distinguish between "minor" violations (primarily technical violations) and "major" violations (primarily violations involving financial issues). For first-time offenders, there is usually a voluntary compliance alternative offered before fines are meted out.

The Division's current method of enforcing the condominium laws is the focal point of ongoing debate and study by the Florida Advisory Council

On Condominiums. The Council is considering recommending legislative changes which would shift dispute resolution between unit owners and their associations to a mediation-oriented process, as opposed to the current penalty-oriented process.

So, if you would like to speak about condominium terminations, or anything else that is on your mind that pertains to the enforcement and administration of the Florida condominium or cooperative laws, today is your chance.

As also reported previously, Governor Bush also vetoed another bill involving condominium associations, as well as homeowners' associations, H.B. 391. In his veto message, Bush directed the Division to seek public input regarding, among other things, "whether the State of Florida should consider adopting a single unified statute governing condominiums, cooperatives, homeowners' associations and other community associations." The Division is not holding public hearings on this issue (although I assume they would listen to what affected parties would have to say at today's meeting), but rather, has solicited input through the Internet. Additional information regarding this study is found on the Division's homeowners' association website at [www.MyFlorida.com/dbpr/lsc/hoa/hb391study.shtml](http://www.MyFlorida.com/dbpr/lsc/hoa/hb391study.shtml). For those interested weighing in on this issue, e-mail the Division at [FLS.HOASStudy@dbpr.state.fl.us](mailto:FLS.HOASStudy@dbpr.state.fl.us).

The idea of a common statute for all community associations in Florida (condominium associations, cooperative associations, homeowners' associations, mobile home park owners associations, master associations, etc.) has been batted around for years. There are certainly some appealing aspects to a single law, particularly regarding procedural issues such as the conduct of elections, budget and assessment procedures, and the like. On the other hand, there are significant differences between the various types of associations, particularly between condominium associations and homeowners' associations. For example, some homeowners' associations have very little property under their jurisdiction, and may simply maintain a roadway and perhaps enforce restrictive building covenants. Conversely, a condominium association buys insurance for its members, maintains their premises, and has substantial control rights regarding day-to-day behaviors (leasing restrictions, guest provisions, alteration limitations, etc.).

A challenge for a unified law in Florida governing community associations is the fact that there is certainly no one-size-fits-all guideline, given the different roles different types of associations play. It is certainly an interesting question, and will hopefully be debated with appropriate regard for all points of view. 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).*

## Condo Documents Determine Propriety of Bank Loan

**Question:** I do not think that the board of directors of my condominium association did a very good job creating our budget this past year. Apparently, there are a number of things that we just do not have enough money to pay for. I just heard that the board is trying to obtain a bank loan to pay for some of these expenses, but they did not let us vote on it. Shouldn't the owners be allowed to vote on whether we take out a loan that we are responsible for paying back? T.I. (via e-mail)

**Answer:** The answer to your question will ultimately depend on how this issue is addressed, if at all, in your association's condominium documents. There is nothing in the Condominium Act that specifically empowers an association to take a bank loan, or that gives the board of directors the unilateral authority to do so. However, the Condominium Act does indicate that the powers of an association include those set forth in the "Florida Business Corporation Act" and the "Florida Not-For-Profit Corporation Act."

Most condominium associations fall under the Florida Not-For-Profit Corporation Act, which provides that a corporation has the power to borrow money. Next, you need to look at your association's condominium documents. If they do not prohibit the association from taking a bank loan, or are silent as to the required procedure to do so, I believe the association would have the authority to borrow money through a board resolution, without a membership vote. On the other hand, if the condominium documents provide for specific procedures to borrow money, such as a membership vote, then such procedures would have to be followed.

**Question:** I live in a condominium that is part of a master association. The master association governs 14 separate neighborhood associations. The master association bylaws require that each neighborhood association elect one director for the master association

board. This is proving to be a problem because there are too many different opinions to get anything done. How can we change the board structure to be more efficient and effective? S.D. (via e-mail)

**Answer:** The board of directors' framework that you describe for your master association is not uncommon. One benefit of this framework is that each neighborhood association is assured of representation on the master board of directors. In addition, the procedure for appointing directors to the master association board from the neighborhood associations is usually left to the various neighborhood associations, thereby relieving the master association of having to conduct an election involving hundreds of members. However, your difficulties with such a large board are also not uncommon.

In order to change the board of directors structure and method for electing those directors, it will be necessary to amend the master association governing documents that currently require this structure. In my experience, an ideal size for a board of directors is 5, or maybe 7, directors. However, the only practical way to elect a 5 or 7 member board in a master association such as yours is to simply allow the board seats to be filled by members "at large." The risk is that certain neighborhoods within the master community may feel unrepresented on the board of directors. Other members may accuse the Board members of bias toward their own neighborhood associations. Some master associations are structured to operate with a reduced number of directors by establishing voting districts, which combine two or more neighborhood associations. Then, one director is sent to the master board from each district.

**Question:** I live in a condominium building that contains multiple condominium units. It is apparent that the building is infested with rodents, specifically

mice. Can you tell me if it is the condominium association's responsibility to rid the building of mice, or if the individual unit owners must take care of this problem? L.E. (via e-mail)

**Answer:** As you likely know, the condominium association has the obligation to administer and maintain all of the common elements of the condominium property. It seems inconceivable that a rodent infestation does not involve the common elements in some manner. Therefore, the association should take action to rid the condominium building of the mice. In this regard, the association has some "tools" at its disposal. First, the association has an irrevocable right of access to the units during reasonable hours for the purpose of maintaining the common elements, and the association may access the various units to

address the mice infestation. Hopefully, since the unit owners will clearly benefit from a successful eradication program, this access to units will be a cooperative effort.

In addition, most well-written condominium documents require that unit owners keep their units in good and habitable condition, and that the unit owners refrain from any activity that would create a nuisance to other owners. Therefore, to the extent that the mice infestation problem is a result of any unit owner's poor habits or failure to properly maintain the unit, the association may demand that the unit owner correct that condition. In certain circumstances, the association might charge the unit owner who has created the conditions causing the infestation for the costs incurred in eliminating the mice. ■

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