



Florida Condo Act Enacted in 1963

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As mentioned in last week's column (*Lee Condo Termination forum today*, August 3, 2006), the gubernatorial veto of House Bill 391 has resurrected the decade-old debate of whether a single law should govern all of Florida's community associations. In his letter accompanying the veto of H.B. 391, Governor Bush ordered a study regarding "whether the State of Florida should consider adopting a single unified statute governing condominiums, cooperatives, homeowners' associations and other community associations."

Unlike Florida, most states have adopted some type of "uniform" law to regulate community associations within that state. Although there are a couple of different uniform law models, they generally treat condominium associations and homeowners' associations the same in many respects.

Of course, Florida is not like most other states, and has a significantly higher percentage of its population living in common interest developments than other regions of the country. Additionally, the "condo vote" in Florida is more of a key to political success (particularly in the Dade-Broward-Palm Beach County areas) than perhaps anywhere else in America. The political influences on community association legislation are tremendous, with condos dominating the landscape for decades, but with homeowners' associations now a dominant force as well.

One of the questions I am most frequently asked, through postings to this column, teaching classes, or at seminars, is the main differences between condominium associations and homeowners' associations. This is a particularly important question for community association managers since they may need to jump from a condo problem to an HOA problem on a moment's notice, and may well have to face two entirely different sets of rules in addressing the same basic issue.

In today's column, and the next several editions, we will take a look at some of the key differences between condominium associations and homeowners' associations in the State of Florida. Perhaps at the end of the exercise you can judge for yourself whether a one-size-fits-all law is better than the status quo. You will likely find that your answer depends on your personal view of the role of government in community association affairs, whether a particular community's governing documents should be permitted to trump state statutes, and whether developers should be held to heightened standards of responsibility in terms of construction warranties and accountability for the operation of the association prior to its being turned over to the home owners.

Like any comparative study, in order to figure out where you are going, you need to look at where you have been. Let's start with a brief foray into the history of Florida's condominium laws.

Originally found at Chapter 711 of the Florida Statutes, the Florida Condominium Act was enacted in 1963, and was one of the nation's first condominium statutes. Although condominiums had reportedly existed in ancient times, in modern America real estate lawyers could not grasp the concept of conveying title to "pie in the sky." Accordingly, in order to create a legal system where vertical interests in property could be conveyed, and the titles insured, a law needed to be in place to recognize the condominium form of ownership. This was the basic purpose of Chapter 711 in its initial form, consisting of only 14 pages (compared to today's version, which would take up over a hundred pages if printed in the same format).

Perhaps beyond anyone's wildest imagination, the condo craze took hold in Florida. Americans were living longer, retiring with more money (pensions), and were being drawn in droves to the maintenance-free lifestyle in the Sunshine State, where communities could collectively provide amenities that were simply unaffordable in the single-family home ownership context. Golf courses, clubhouses, tennis facilities, restaurants, swimming pools, and similar shared amenities were a staple in condo developments throughout Florida.

Unfortunately, the 1970's saw sharp development practices aimed at unsophisticated consumers, reminiscent of the swamp-land deals of earlier

decades. Not content with profits on the sale of condo units, developers went to great lengths in devising schemes that would guarantee cash-flow from their developments, long after the last unit had been sold. Sweetheart management contracts, and the now infamous "recreation leases" became standard fare in condo developments.

Although some of these schemes were negated by the courts, in general the courts came down on the side of contract rights and found that purchasers should be bound by what they agreed to, even if shocking to the judicial conscience.

The 1970's was also a period of heightened consumer awareness and reforms throughout America, with people like Ralph Nader leading the charge. In Florida, most of the condominium legislation of the 1970's focused on curbing perceived abuses in condominium development. The 70's saw the creation of construction warranties, strict requirements regarding the developer's handling of association finances, and many onerous practices were curtailed, if not eliminated. Condo sales became subject to state filing and regulation, with an emphasis on disclosure.

Next week, we will continue our history lesson and move to a focus on the difference between the two laws, and whether the distinctions make a difference. ■

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.

Association Not Obligated to Provide Contract Copies

Question: My condo association contracted with a glass company to repair windows damaged by Hurricanes Frances and Jeanne. Without notification to residents, the association signed an agreement with the glass company that the glass company would not be responsible for any damages resulting from their repairs. While repairing my window the workers broke the marble ledge. The worker did say they would take care of it. I sent a notice to the association that the ledge needed to be replaced. Months passed when the president then told me the window company would not cover it. I was still unaware an agreement was signed by the association relieving the glass company of responsibility for damages. I took it upon myself to get the ledge repaired and submitted the bill to the association. I further contacted the glass company at which time I learned there had been an agreement signed between the association and the glass company. With this information I sent a letter to the association requesting reimbursement of \$110.00. The request was denied indicating I should take it up with my own insurance company. Does an association have the right to enter into agreements without notifying residents? Also, are they responsible or am I for the cost to replace the marble ledge? S.M. (via e-mail)

Answer: Board meetings must be properly noticed, but there is no requirement for an association to provide the owners with copies of contracts unless an owner requests a copy through an official records request. Once the Board chooses the contractor, the President or other officer and the association's attorney will typically negotiate the terms of the contract. The provision in the contract that you refer to, relieving the glass company from liability for damages, is not a provision that I would recommend including in a contract.

Although the contractor may be off the hook for the damages, that does not necessarily mean that

the association is off the hook. It depends on a number of provisions in the declaration including the maintenance provisions, the repair after casualty provisions, and whether there are any provisions making the association responsible for incidental damages that occur as a result of the association's maintenance or repair activity. However, you will need to decide how much time and energy you want to expend fighting a hundred dollar dispute.

Question: I live in a homeowners' association where many homes were damaged by Hurricane Wilma. Most of the damage was to trees, pool cages, and some roof tiles blew off. Here it is July, and several of the owners have not yet repaired the damage. What can the association do to get the homeowners to make needed repairs? P.T. (via e-mail)

Answer: A well-written HOA declaration of restrictions will include at least general provisions about the upkeep of the home and property. The first step is to carefully review your declaration and identify all of the provisions that address the standards and requirements for maintenance of the improvements on the lot. Then, you must identify all of the remedy provisions available to the association that are found in your declaration. Some remedies are better than others, and some are not often advisable, even though they are mentioned in the declaration.

For example, many declarations provide that if an owner does not make repairs after being given reasonable notice and an opportunity to comply, the association may contract for the repairs itself and charge the cost to the owner. The problem with this remedy is that there is a great chance for a confrontation, and there is a chance that the owner may claim that the association caused damage while its contractors were on the property making the repairs. This remedy of "self-help", while often effective, has legal risks.

An association also often has the right to levy a fine against the owner, which must be authorized in the governing documents. Sometimes just the threat of a fine resolves the problem, but not always. Even if a fine is levied and paid by the owner, the damaged house and landscaping problem may not be resolved.

In my opinion, the best recourse for your association is to notify the owners in writing and give them a reasonable opportunity to fix the problem. I recommend first a polite (but firm) letter from the association, and then (if necessary) a formal demand letter from the association's legal counsel.

Then, if it becomes necessary, the association can file a mediation petition with the Department of Business and Professional Regulation (which is required before filing a court action). If the mediation process does not resolve the issue, the association may file a court action seeking a court order that requires the repairs to be made. Then, if the court order is not followed, the judge can charge the owner with contempt or might even expressly permit the association to go on the property to make repairs. The association can also make a claim for its reasonable attorneys' fees and cost incurred in bringing the legal action.

Question: I am a Gulf War veteran who retired from the United States Marine Corps. I live in a condominium that has a set of rules that is more than sixty pages long. On July 4th, I put an American Flag and U.S. Marine Corps Flag on my lanai. I took them down at sunset. Yesterday, I received a letter from the property manager informing me that I could fly the American flag, but that I could not fly the Marine Corps flag in the future. She said I could be fined by the association if I do not comply, but I cannot find any rules on flags. This does not seem right. What should I do? B.M. (via e-mail)

Answer: By state law, any condominium unit owner may display one portable, removable United States Flag in a respectful manner any time of the year. In addition, on certain holidays, including Independence Day, unit owners may display in a respectful way portable, removable, official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any rules or requirements in your condominium documents dealing with flags or decorations.

If your Marine Corps flag meets the above requirements, you can display it on Independence Day, as well as Armed Forces Day, Memorial Day, Flag Day, and Veterans Day. ■

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