Condo, Home Sunshine Laws Differ

Fort Myers The News-Press, September 28, 2006

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Today's column is the eighth installment of a comparative study of Florida's laws applicable to community associations, with an emphasis on the difference between the laws for condominiums and homeowners' associations. As previously reported, Governor Bush has recommended that the powers-that-be study whether there should be a unified law for all of Florida's community associations.

The first three installments looked at the historical development of both condominiums and non-condo deed restricted communities (generically referred to as homeowners' associations) and the development of the laws applicable to the different types of entities. Succinctly stated, condominiums got a thirty year head start on homeowners' associations, although HOA legislation has become markedly condo-like over the past decade.

The following three editions studied the main differences between the two laws in the areas of government regulation and consumer protection. Last week, we began a discussion on procedural differences in the two laws, looking at the election process.

Today, we will focus on the difference in the "sunshine" regulations for condominium and homeowners' associations.

For a complete review of this topic, column readers can review a brochure I put together called "Community Association Sunshine Law Course 101", which can be found on the internet at: http://www.becker-poliakoff.com/publications/article_archive/pdf/sunshine_laws_web.pdf.

Here's a look at some of the main differences between the two laws:

• **Location For Posted Notices of Board Meetings:** The condominium law requires that the board adopt a written rule specifying where official notices will be posted on the condominium property. As I have frequently observed, this law is honored in the breach by most condominium associations. Conversely, the HOA statute simply states that notices must be placed "in a conspicuous place" in the community.

• **Owner Participation Rights:** Section 718.112(2)(c) of the Florida Condominium Act provides that meetings of the board shall be open to owners, and that the right to attend such meetings includes the right to speak with reference to designated agenda items. A condominium association may adopt written reasonable rules governing owner statements. Conversely, Chapter 720 does not confer a right upon members to speak at board meetings. There are two exceptions in the HOA context. First, if twenty percent of the voting interests petition the board to address an item of business at a board meeting, owners have the right to speak at those meetings. Secondly, if the bylaws confer a right to speak at board meetings, that would supersede the statute and would need to be honored.

• **Time Limits For Owner Statements:** The Florida Condominium Act simply states that the Board may adopt "reasonable rules" regarding the duration of owner comments. While there used to be an administrative rule from the state agency which regulates condominiums establishing a three-minute per-speaker per-topic minimum, that rule was repealed. Conversely, Chapter 720 provides that for those meetings at which owners do have the right to speak, at least three minutes per agenda item must be afforded for owner statements.

• **Requiring the Board to Meet:** For condominium associations, there is no legal right for the owners to insist that the board consider a particular topic at a board meeting, the setting of the agenda is typically vested in the board itself. Conversely, as noted above, the law permits twenty percent of parcel owners in a homeowners' association, through written petition, to demand that the board call a meeting to discuss a particular item of business, although the board is not obligated to take any particular action on the item which is subject to the petition.

• **Application of the Laws to Committees:** The Condominium Act is rather confusing on how the sunshine regulations apply to committees. The way the law is written, there are certain committees (which most practitioners call "statutory committees") that are always subject to the sunshine regulations. These include committees which can take final action on behalf of the board, and committees which make recommendations to the board regarding the budget. Further, unless other committees (usually called "non-statutory committees") are exempted from the sunshine regulations in the bylaws, the sunshine rules apply to all committees of the condominium association. Conversely, for HOA's, the sunshine rules only apply to committees which can make final decisions regarding the expenditure of association funds, or committees vested with the power to approve or disapprove architectural decisions, regardless of what the bylaws say.

• **Exceptions to the Rules:** For condominiums, the only exception to the sunshine regulations are meetings between the board or a committee and the association's attorney with respect to "proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice." For HOA's, the law contains a nearly identical exclusion, but also contains a second exemption which is found at Section 720.303(2)(b) of the statute. This law provides that meetings between a quorum of the board (or a committee) and legal counsel may be closed when "personnel matters" are under discussion. There is no exception in the condominium laws for meetings involving "personnel" matters.

While both laws attempt to effectuate the same basic goals, which is a transparent decision-making process, there does not appear to be any rational reason for the differences between the two laws. In my opinion, for the sake of consistency and clarity, this is definitely one area where Florida's laws would benefit from a unified code.

Next week, we will take a look at similar subtle differences between the two laws regarding record-keeping and owners' rights to obtain the official records of the association. ■

Mr. Adams concentrates his practice on the law of community association law, primarily representingcondominium, 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.

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