



## Different Laws Don't Appear Justified

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Today's column concludes a three-month study of the similarities and differences between Florida's laws applicable to condominium associations and homeowners' associations.

I started this exercise with no preconceived opinion about whether a unified law for Florida's community association would be good or bad. After having reviewed the information, I have concluded that there are no significant public policy reasons which justify the current differences in the two laws. Rather, most of the differences appear to be the result of timing, or old fashion politics.

In June of this year, Governor Jeb Bush had ordered the Department of Business and Professional Regulation through its Division of Florida Land Sales, Condominiums, and Mobile Homes, to determine the extent to which the two laws could be synchronized, including whether the Uniform Common Interests Ownership Act (used in a number of other states) should serve as the basis for a unified law in Florida.

Recently, the DBPR issued a sixteen-page report, addressing many of the same issues which have been the subject of study in this column. For those who like all the details, the report can be found online at [www.state.fl.us/dbpr/lsc/condominiums/](http://www.state.fl.us/dbpr/lsc/condominiums/). Under the subheading Announcements, click on Report.

For those who prefer the executive summary, here's a look at the recommendation from the powers-that-be in Tallahassee:

- **Greater Use of Mediation:** The study concluded that greater utilization of private mediators for both condominium and homeowners' associations would facilitate the resolution of internal disputes in communities.
- **Elections:** The DBPR recommended that homeowners' associations use the "two-notice/two-envelope" secret election system used by condominiums, and that the use of proxies in HOAs be banned in connection with board elections.
- **Reserves:** The report, focusing on the fundamental differences between condominium and homeowners' associations regarding maintenance obligations, concluded that Chapter 720 should not be amended to mandate HOA reserves. It was further concluded that if reserves are to be established, the board should not be able to spend reserve funds for operating purposes, or for other non-scheduled reasons, without membership approval.
- **Warranties:** Echoing the recommendations of the Governor's Task Force, the DBPR's study recommended that Chapter 720 be amended to include statutorily-mandated warranties for the common areas of the community.

- **Suspension of Voting Rights:** The study recommended that homeowners' associations be precluded from suspending voting rights for owners delinquent in the payment of assessments. Suspension of voting rights is now permitted for homeowners' associations if a regular assessment is more than ninety days past due, and the governing documents provide for suspension of voting rights. The DBPR's recommendations would place HOAs on par with condominiums, where suspension of voting rights is never permitted.
- **Adoption of the Uniform Common Interest Ownership Act:** The report concluded that Florida's laws are more specific and advanced than UCIOA in many areas. The study also opined

that UCIOA offers less in the way of consumer protection than the existing Florida laws. Accordingly, the DBPR recommended against adoption of UCIOA to standardize Florida's community association laws.

In my view, the Department's study was both thorough and thoughtful. While I do not agree with each and every recommendation, I believe that the report presents a balanced approach of the challenges faced in the current legal context, specifically the inferiority of the law for homeowners' associations in many important areas.

Hopefully, the Legislature will also seriously consider these important questions in the coming year. 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).*

## Majority of Voting Interests Can Recall Board Member

**Question:** I read some of your articles regarding Chapter 720, Florida Statutes, the Florida Homeowners' Association Act. I am confused about the meeting notice requirements. I understand that notice of certain meetings under Chapter 720 must be mailed, delivered, or electronically transmitted not less than 14 days before the meeting. Therefore, if there is a meeting on July 14, and the notice of the meeting is mailed on June 30, and the member actually receives the mailing on July 7, they were really only given a seven day notice. Can you clarify the 14 day notice requirement for certain meetings? S.H. (via-email)

**Answer:** You are correct that Chapter 720, Florida Statutes (unofficially referred to as the Homeowners' Association Act) contains certain provisions setting forth minimum notice requirements for board meetings and member meetings. Typically, notice of all board meetings must be posted at least 48 hours in advance of the meeting in a conspicuous place in the community. If notice is not so posted, it must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Additionally, the by-laws or amended by-laws may provide for giving notice by electronic transmission in a manner authorized by law for board meetings, for committee meetings where notice is required, and for annual and special meetings of the members. In the case of notice by electronic transmission, however, a member must consent in writing to receiving notice in that manner.

Any board meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered requires notice to be mailed, delivered, or electronically transmitted to the members and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

For members' meetings, the Homeowners' Association Act states that the by-laws must provide for giving notice of those meetings, and if they do not do so shall be deemed to provide that the association must give all parcel owners and members actual notice of all membership meetings, which is to be mailed, delivered, or electronically transmitted to the members not less than 14 days prior to the meeting. The person providing the notice must execute an affidavit evidencing compliance with the 14 day notice requirement

Your question points out the fact that hand delivered notice or the electronic transmission of notice can be delivered to, and received by, members a full 14 days prior to the meeting (where 14 day notice is required), whereas notice that is deposited in the mail 14 days prior to a meeting will actually be received by a member less than 14 days prior to the meeting. However, the statute clearly provides that the notice must be "mailed" 14 days prior to the meeting, and therefore, placing the properly addressed notice in the mail 14 days prior to the meeting is sufficient under the statute without regard to the fact that the notice may be actually received by a member less than 14 days before the meeting.

**Question:** I live in a community governed by a homeowners' association. We are preparing for an election at our annual meeting. Our governing documents permit "proxy" voting. Last year we used a limited proxy with the names of several candidates printed on the form. The voters checked off the names of the candidates of their choice and signed the limited proxy. We wanted to use the same process this year but have been told that we can no longer use limited proxies for director elections because the names of candidates nominated from the floor at the annual meeting (as permitted under the Homeowners Act) have no opportunity to be on the limited proxy

which is sent out in advance. What is your view on the use of limited proxies under these circumstances?  
M.B. (via e-mail)

**Answer:** The advice you were given is not correct. Unfortunately, homeowners' association elections have no legal standards, and there is no "one size fits all" procedure that can be used. As mentioned in my opinion column of today, the Florida Department of Business and Professional Regulation has recommended that the law be changed to require HOA's to use a condo-like process, which would prohibit proxy voting in elections. I agree, and in fact made that recommendation when I served on the Governor's Task Force on Homeowners' Association Legislation in 2005. For whatever reason, a majority of the Task Force members did not support my motion to recommend this change in the law.

The Homeowners' Association Act, as it exists today, only says that the election must occur at

(or in conjunction with) the annual meeting and that parcel owners must be permitted to nominate themselves from the floor. The rest is covered by your governing documents. If your documents permit voting by proxy, I believe that proxies can be used in the election. However, the owners should be given notice that additional nominations can be made from the floor. To address this issue, I also normally include, in a limited proxy form, an option for the member to give the proxyholder general proxy rights to vote for those candidates that the proxyholder selects. If the owner selects that option, then the proxyholder gets to cast the vote as he or she sees fit and can also cast the vote in favor of the candidates who nominated themselves from the floor. Many owners do not want to give the proxyholder such broad rights, in which case, I think the owner can direct the proxyholder to vote for the candidates selected by the owner by giving the proxyholder "limited" proxy rights. ■

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