



Revitalizing Covenants Takes a Number of Steps

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Q: My husband and I live in an older community with a very antiquated set of covenants. We have a voluntary association with dues of \$25 per year. About half of the owners are members of the association. We have read your articles about the Marketable Record Title Act (MRTA) and we think that our covenants have probably expired as they are more than 30 years old. Is there anything we can do to adopt a new set of covenants that are more up to date? **D.M. (via e-mail)**

A: Yes, if your association has the authority to enforce the use restrictions that are contained in the covenants. However, there would be a number of steps involved.

The first step would be to “revitalize” the covenants. During the 2004 Legislative Session, the Florida Legislature adopted a covenant revitalization procedure that would permit a homeowners’ association to revitalize a declaration of covenants that had ceased to govern one or more parcels in the community. This procedure is set forth in the statute governing mandatory homeowners’ associations, which is the Florida Homeowners’ Association Act. Because of its inclusion in the Homeowners’ Association Act, the revitalization process was not available to other types of homeowners’ associations.

In order to be considered a “homeowners’ association” as defined by the Homeowners’ Association Act, the association must be made up of parcel owners, membership must be a mandatory condition of parcel ownership, and the association must be authorized to impose assessments that, if unpaid, may become a lien on the parcel. Because of this definition, many associations that did not fall within that definition of “homeowners’ association” could not take advantage of the revitalization process contained in the Homeowners’ Association Act.

During the 2007 Legislative Session, the Legislature adopted an amendment to the Marketable Record Title Act (MRTA). The new legislation states that a homeowners’ association not otherwise subject to the statute governing mandatory homeowners’ associations may use the procedures in the Homeowners’ Association Act to revive covenants that have lapsed because of MRTA. The MRTA statute defines “homeowners’ associations” as those subject to the Homeowners’ Association Act as well as any association of parcel owners which is authorized to enforce use restrictions that are imposed on the parcels. Therefore, even if an association is not a mandatory association governed by the Homeowners’ Association Act, it may now revitalize expired covenants if it otherwise falls

within the definition of a homeowners' association as set forth in the MRTA statute.

In summary, the new law will permit non-mandatory homeowners' associations that have the authority to enforce use restrictions that are imposed on the parcels to revitalize covenants that have expired because of MRTA. However, when covenants are "revitalized", they cannot be significantly amended. Basically, you can only revitalize the documents that were in effect before they expired. Once revitalized, however, the owners can use the amendment provisions in the revitalized covenants to further amend and update the documents.

Q: I am a board member of a large condominium association. Currently, there is debate between the board members and the association's manager regarding the notice that is required for the board to hold a budget meeting. Our bylaws require that notice of board meetings need to be posted on the condominium property no less than 72 hours prior to a meeting. Our manager, however, insists that the board is required to provide notice, directly to the unit owners, 14 days in advance of the meeting. What is the association legally required to do? **R.H. (via e-mail)**

A: When a conflict exists between the Florida Condominium Act and the association's condominium documents, the Condominium Act will control. The condominium documents, however, may contain more restrictive requirements than the requirements contained in the Condominium Act, and in such a case you must comply with the requirements set forth in the condominium documents.

In your case, the Condominium Act requires that the board provide notice at least 14 days prior to

any meeting at which a proposed budget will be considered by the board or by the unit owners. This notice, along with a copy of the proposed budget, must be hand delivered, mailed, or electronically transmitted to each owner. Additionally, the person providing notice of the budget meeting must execute an affidavit evidencing compliance with this notice requirement, and that affidavit is to be filed among the official records of the association. If your association were to comply with the bylaws and only give notice of the budget meeting by posting notice 72 hours before the meeting, the association would not be complying with the notice requirements for budget meetings as set forth in the Condominium Act. Accordingly, the association is required to comply with the statutory 14 day notice requirement.

The 72 hour notice requirement set forth in your association's bylaws is also different from the notice requirement for regular board meetings as contained in the Condominium Act. The Condominium Act provides that the association must post notice of regular board meetings conspicuously on the condominium property at least 48 hours in advance of the meeting, except in an emergency. In the case of a regular board meeting (which is not subject to any 14 day notice requirement), if the association complied with the 72 hour notice requirement contained in the bylaws it would not be in violation of the 48 hour notice requirement contained in the Condominium Act. On the other hand, if the association followed only the statutory requirements by posting notice 48 hours in advance, this would run afoul of the stricter 72 hour notice requirement contained in the bylaws. For regular board meetings, your association should follow the more restrictive 72 hour notice requirement contained in the bylaws.

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.

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consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.