



Gov. Crist Vetoes Bill Dealing with HOA Operations

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Today's column continues our review of 2008 Legislation applicable to condominium associations and homeowners' associations.

By way of late breaking news, one of the major pieces of legislation adopted during the 2008 Session of the Florida Legislature was recently vetoed by the Governor. House Bill 679 primarily dealt with homeowners' association operations, including areas such as HOA election procedures and reserves. According to the Governor's veto message, he killed the law because he did not support a provision which would have de-regulated swimming pool water quality monitoring requirements for smaller HOAs.

Continuing with our review of House Bill 995, which impacts condominium associations, today we will review some changes to the law applicable to boards of directors.

- **Abstentions:** Under existing law, a condo board member cannot abstain from voting unless they have a conflict of interest. If they do not vote, they are deemed to have assented to the majority position on the matter. Under the new law, a director can apparently abstain from voting even in the absence of a conflict of interest and, in such cases, is "presumed to have taken no position with regard to the action."
- **Director Standards of Care:** HB 995 statutorily codifies what is often referred to as the "Business Judgment Rule." This rule provides that a director is not subject to personal liability if he or she acts in a manner that a reasonably prudent person would consider to be in the best interests of the association. Personal liability may be asserted against a director where he or she acts in bad faith, with malicious purpose or in a manner "exhibiting wanton and willful disregard of human rights, safety or property." Further, personal liability can attach where a director acts for improper self-gain or in violation of criminal laws.
- **Director Assessment Delinquencies:** Section 718.112(2)(n) is a new section of the Florida Condominium Act which provides that any board member who is more than 90 days delinquent in the payment of regular assessments "shall be deemed to have abandoned the office."
- **Embezzlement Allegations:** A director who is "charged with a felony theft or embezzlement offense" is removed from office until the charges are resolved. If the director is found innocent of the charges, their office is restored. Guilty until proven innocent, I guess.

- **Unit Owner Right to Call For Board Vote:** Similar to the law for homeowners' associations, the condominium law will contain a procedure for unit owners to require that their board consider an issue. A petition must be signed by at least 20 percent of the voting interests to require the board to take up an item of business within

60 days of receipt of the petition, at either a regular or special meeting.

Next week, we will continue with our review of HB 995, which has an effective date of October 1, 2008.

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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