



HB 995 Removes Most Association 'Opt-Out' Rights

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Today's column is the third installment of our annual review of new laws affecting community associations. Today, we will continue reviewing House Bill 995, which primarily impacts condominium associations, and which has an effective date of October 1, 2008.

The Florida Condominium Act spells out many procedures which need to be followed, some of which are rather complex, and not required of any other type of corporation under state law. But, the law has often allowed owners to vote to "opt out" of these procedures and come up with something they felt worked for their community.

HB 995 has eliminated most opt out rights, save a few exceptions for condominiums of less than 10 units. Condominium associations no longer have the right to opt out of the election procedures set forth in the law, nor the provisions that require all absentee voting at association meetings to take place through the use of a limited proxy form promulgated by the state, which in many cases, has to be prepared by an attorney. Associations are likewise no longer permitted to opt out of the competitive bidding requirements of the statute.

More significantly, associations have been restricted in their right to vote on what type of financial report they will have prepared at each year's end. As most are aware, the condominium law requires associations with annual receipts between \$100,000 and \$200,000 to have a

compilation prepared annually. For associations with receipts of \$200,000 to \$400,000, an annual review is required. For associations with receipts in excess of \$400,000, an annual audit is required. However, under current law, an association can vote each year, by majority vote of the unit owners to have a lower level year end financial report. For example, an association required to have an annual audit could take a vote every year and have a review or compilation prepared instead, with the obvious intent of saving on the costs of a full blown audit.

Under HB 995, associations will only be entitled to vote for a lower level report 2 out of every 3 years. Stated otherwise, for an association with annual receipts of more than \$400,000, an audit will be required no less than once every three years, even if one hundred percent of the owners in the condominium are opposed to it.

HB 995 also addresses other topics that affect the financial operations of the association.

There are new notice procedures that an association will need to follow in the levy of special assessments. Under the new law, the notice that must be sent to the owners and posted 14 days in advance will need to include the "estimated cost" of the special assessment, which is not a requirement under current law (which only requires disclosure of the purpose of the proposed assessment).

There will also be an important change on voting to waive or reduce reserves, or use of reserves for a non-scheduled purpose. The new law requires a bold face disclaimer on the proxy question, using statutorily prescribed language.

Finally, similar to the law for homeowners' associations, condominium associations will be prohibited from filing liens against units which are delinquent in the payment of their assessments

until a 30 day notice of the association's intent to lien is sent to the owner by certified mail.

Next week, we will continue our review of HB 995 with an emphasis on its effect on the physical aspects of operating the condominium property, including mandatory building inspections, new requirements for developers when turning over new properties, and a new right to affix religious symbols to common property of the condominium.

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.