



New Laws Tackle Flags, Receiverships, Liens

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Today's column is the 12th installment of our annual review of legislation affecting community associations. We shift gears today and discuss some new laws aimed specifically at homeowners' associations:

- **Flags:** Section 720.304(2) of Florida's statute applicable to homeowners' associations has been amended effective July 1, 2008 to provide that any homeowner may erect a free-standing flagpole no more than twenty feet high on any portion of the homeowners' real property, regardless of any covenants to the contrary. The flagpole cannot obstruct sight lines at intersections, or be erected upon easements. Homeowners are entitled to display from that flagpole, in a respectful manner, certain flags not larger than 4 ½ feet by 6 feet. Permitted flags include: United States Flag, one official flag of the State of Florida, and various armed services flags.
- **Receiverships** When There is an Insufficient Number of Board Members: Section 720.3053 and Section 720.313 have been created as part of the HOA law. These amendments provide that if an association fails to fill vacancies on the board sufficient to constitute a quorum, any member may give notice of intent to apply to the circuit court for appointment of a receivership.

The new statute contains a prescribed form of petition which must be used, and sets forth the manner in which the petition must be delivered to all of the parcel owners. If a receiver is appointed, the new law requires the receiver to provide all members with written notice of his or her appointment.

- **Collection of Delinquent Assessments:** The collections law for HOAs has been substantially amended, making it generally similar to the law for condominium associations. Among the more relevant changes are the following:
 - **Mortgagee Priority:** The new law states that an HOA's lien is inferior to the lien of a mortgagee (unless the assessment lien is recorded first, which rarely happens). However, a first mortgagee, its successors or assigns who acquire title to a parcel by foreclosure or deed in lieu of foreclosure must pay the association the parcel's unpaid common expenses and regular periodic or special assessments that accrued or came due during the twelve months preceding the acquisition of title or one percent of the mortgage debt, whichever is less. This is similar to the condominium law, although

mortgagees foreclosing in the condominium context are only on the hook for six months' assessments.

- Lien Priority: With the exception of the priority of a first mortgage, the HOA's claim of lien is said to "relate back" to the date of recording of the original declaration of covenants, which would give the lien priority over other potential interests, such as second mortgages, "equity lines", and judgments recorded after the date of the recording of the declaration of covenants. There is a grandfathering clause for current interests which have priority over the association's lien.

- Contents of Lien: The new law contains detailed requirements as to what must be contained in an HOA claim of lien, similar to what is found in the condominium statute.

- Attachment of Rental Income: The new law provides that if a parcel is rented or leased during the pendency of a foreclosure action, the association is entitled to the appointment of a receiver to collect rents.

Next week, we will continue with a review of some miscellaneous laws passed in 2008, affecting condominiums, cooperatives, and homeowners' associations.

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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