



Knowing New Laws Includes Sweating the Little Stuff

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Today's column is the 13th and final installment of our annual review of new laws passed by the Florida Legislature affecting community associations. Today, we will wrap up with a review of some miscellaneous changes not covered in previous columns:

- **Estoppel Fees:** Both the Florida Condominium Act and the Florida Homeowners Association Act require an association, upon written request from a unit or parcel owner, to provide a certificate of outstanding assessments. These are commonly known as "estoppel certificates." The new law states that a unit or parcel owner's "designee" may request the certificate. The new law also states that if the association is going to charge a fee for estoppel certificates, there must be authority for the fee in either a resolution adopted by the board, or in a written management agreement or similar agreement between the association and an outside party (such as a bookkeeping firm). The amount of the fee must be included on the certificate. If an estoppel certificate is requested in conjunction with the sale or mortgage of a unit or parcel, but the closing does not occur, and no later than thirty days after the closing date for which the certificate was sought, the person requesting the estoppel certificate (unless they are the unit or parcel owner) is entitled to a refund, which must be made within thirty days. The new law goes on to provide that the refund amount then becomes the obligation of the unit or parcel owner and the association may collect it from that owner in the same manner as assessments, presumably meaning that the association would have a right to file a lien if the association is not reimbursed by the owner.
- **Receiverships:** The Condominium Act, the Cooperative Act, and the Homeowners' Association Act have all been amended regarding the procedures for a unit owner's or parcel owner's application for a receivership when there is an insufficient number of board members to constitute a quorum. The new law requires that a statutorily-prescribed form be sent to every owner, by the person intending to apply for a receivership, by certified mail or personal delivery, prior to applying to the court to appoint a receiver. This is presumably intended to give other owners the opportunity to step up and serve on the board, avoiding the necessity for a receivership. If a receiver is appointed, the new law requires the receiver to provide all owners with written notice of his or her appointment as the receiver.

- **Common Expenses:** The condominium law has been amended to provide that unless the manner of payment or allocation of expenses is otherwise addressed in the declaration of condominium, the expenses of any items or services required by any federal, state, or local governmental entity to be installed, maintained, or supplied to the condominium property must be assessed as a common expense. Examples given in the new statute, are fire safety equipment and water and sewer service, where a master meter serves the condominium.
- **Division Jurisdiction:** Effective October 1, 2008, the Division of Condominiums, Timeshares, and Mobile Homes will no longer have jurisdiction to become involved in complaints filed by condominium unit owners against their associations, except in matters limited to records access, election disputes, and “financial matters.” The new law does not apply to developer-controlled associations, where the Division retains its previous jurisdiction. The apparent intent

of the new law is for the Ombudsman to have an expanded role in resolving internal condominium disputes, or have those disputes resolved through arbitration.

2008 was undoubtedly one of the most active years in community association legislation that we have seen in a long time. Please note that there are a number of other changes to the laws which may be relevant to associations, but which have not been discussed in our three-month journey. Prohibitions against “transfer fee covenants” and “SLAPP suits”, an expanded role for the Florida Condominium Ombudsman, and new laws on energy devices are but a few examples.

All of the laws adopted during the 2008 Legislation are available from various internet sources, such as On-Line Sunshine, which can be found at www.leg.st.fl.us.

Next week, we will return to the Q&A format for the column.

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.