



New 'Election Law' Applies To Condo Associations

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Q: I read your recent article regarding the new association election laws. I live in a manufactured home community. Our bylaws allow for three-year terms. Is this still valid? **J.M. (via e-mail)**

A: Probably.

The new "election law" only applies to condominium associations. There are a few RV Parks which might be considered "manufactured home communities" that are set up as condominiums. These associations would need to follow this new law.

However, most "resident-owned parks" are set up as cooperatives or homeowners' associations. The new election laws do not apply to these communities.

Q: Our board of directors recently elected its officers at a board meeting held right after our annual meeting. The board retired into a separate room and the officers were elected there. Aren't meetings where officers are elected supposed to be open to the owners? **K.R. (via e-mail)**

A: Yes, the only board meetings which can be closed to owner observation are those involving pending or proposed litigation, where an attorney is present. In homeowners' associations, board meetings involving "personnel matters" can also be

closed, provided that the association's attorney is present.

That being said, I have seen many situations where the board does meet in a separate room to elect officers. This is often necessary because many of the homeowners like to stay in the room where the meeting was held to visit socially afterwards, and the board cannot have a quiet place to conduct its business. As long as the board's organizational meeting was properly posted for the other room, and as long as the other unit owners were entitled to attend (whether they chose to do so or not may be another question), the law was not violated.

Q: I live in a community with several, separate condominiums and a master association all within the same community. For years, we have had one manager handle our entire community and he has done a good job. This year, several new board members were elected and are making an issue of the fact that the manager does not have a written contract. While the entire board understands there can be benefits from a written employment contract, things have worked very well for many years and some are concerned that adding a legal document might needlessly complicate things and maybe even send a message to the manager that he is not trusted by the new board. Could you give your comments on this situation so that we can

decide how to proceed in the best interest of our community. **G.B. (via e-mail)**

A: I suspect you already know that I strongly recommend a written contract for management personnel. Florida law does recognize the validity of verbal employment arrangements, and such arrangements are generally considered “at will” relationships. However, from the perspective of both the employer and employee, I think it is a good idea to have a clear understanding of the relative rights and responsibilities of the parties.

In addition, it is important to outline the specific duties and authority of the manager in a written agreement. This actually helps both the association and the manager to be certain they are “on the same page” with respect to the management relationship. Importantly, the manager must also make certain representations to the association including that he or she maintains the proper community association manager license, and that he or she indemnifies the association against any negligence or willful misconduct. Likewise, there is a mutual benefit to the manager as the association would normally agree to indemnify the manager for any liability that the manager incurs by reason of carrying out his or her duties with due care and in good faith.

Finally, the description of your community, with its several condominiums and a master association, provides another important reason for having a written management contract. It is not clear from your question whether the separate condominium associations are administered by one association, which is called a multi-condominium, or by several different associations. If the community is administered by several different associations, those are each, separate legal entities and each have independent legal relationships with a manager who is performing services on its behalf. It is my recommendation that those separate relationships be clearly established and defined in separate written employment contracts. Further, although many communities do perceive some benefit in all having the same management relationship, I believe that each board of directors

should have the authority to decide, at any time, what particular management arrangement best works for their association.

Q: Can the treasurer of a condominium association board also serve as secretary? **I.J. (via e-mail)**

A: Yes.

In the absence of a provision in the bylaws to the contrary, there is nothing in the law that prohibits a director from holding two offices. The combination of secretary and treasurer is, in fact, quite common. Many bylaws prohibit the president from also serving as the secretary, usually because certain formal legal documents are customarily executed by those officers, in separate capacities.

Q: Our condominium association is involved in some foreclosures and we are told that we need to prepare for the inability to collect what is owed to us. How does an association word a line-item in the budget for bad debt? How much should we budget? **P.S. (via e-mail)**

A: I believe that the term “bad debt” is what is customarily used. I have seen “allowance for doubtful accounts” also used. Budgeting for bad debt does not mean that you are excusing the payment obligation. Rather, you are trying to predict what losses may have to be absorbed.

In most “bad debt” situations we see these days, a bank is owed more than the unit is worth, and the bank will ultimately foreclose its mortgage. When the bank forecloses, the previous unit owner’s past due debts will be no longer subject to the association’s lien, and the bank will only be obligated for the payment of past due fees in the amount of one percent of the original mortgage debt or six months of assessments, whichever is less. Of course, the bank must pay all assessments going forward, after it takes title, and for so long as it holds title.

While the association would typically still have the right to pursue a money judgment or deficiency judgment against the former unit owner after the bank forecloses, it is often not considered cost-effective to do so.

Unfortunately, it is difficult to predict when a bank will decide to start its foreclosure or when the foreclosure process will be completed. There are several complicating factors in this market, including the fact that the court system is clogged with foreclosures and they do not move as quickly

as they used to. Further, some banks are not aggressively pushing their foreclosure actions, for a variety of reasons.

Therefore, trying to predict the amount of bad debt you will incur on any particular account is somewhat of an exercise in crystal ball gazing. You will need to predict when the bank will obtain title through foreclosure, and how much was owed by the former owner at that point in time. That is the amount of bad debt you will have to absorb.

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.