



## There Are Two Kinds of Common Elements

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**By Joe Adams**

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** Last year, I planted some small bushes along the walkway to my condominium door and built some new plant beds in front of my front window. Several of my neighbors have done the same thing, and everybody who sees what we have done comments how nice the plantings look. But now, the association decided to upgrade the landscaping throughout the community and wants to remove the bushes we installed to make all areas uniform. I objected, but the board said the plan was to make the entire community the same. I objected again, but was told I had no legal right to install bushes in the first place. Can you help me and my neighbors save our landscaping? **F.B. (via e-mail)**

**A:** In most condominiums, the exterior landscaping, including walkway areas, are common elements. Occasionally, walkways and courtyards are defined as “limited” common elements, which is a legal term meaning they are reserved for use of certain owners, and usually maintained by those owners. But most often, all outside areas and landscaping are “general” common elements (a shorthand term often used for common elements that are not limited common elements). The first thing you need to do is confirm whether the areas you improved are limited common elements to be maintained by owners, or general common elements that are

maintained by the association. The answer to that question lies in your declaration of condominium.

If these areas are general common elements, the association has complete control over the area, legally speaking. Even where board approval to alter common elements by adding landscaping is granted, there is no obligation on the part of the association to maintain, or retain, that landscaping. In other words, by allowing members to improve the landscaping on the common elements, or not objecting to it, the association does not forfeit its legal rights.

If the areas at issue are limited common elements to be maintained by unit owners, then the association would not have the right to remove and replace your plantings.

**Q:** I own a unit week in a timeshare condominium. This year when I received my annual meeting and election packet, I noticed that on the limited proxy was a space to be used for voting for Board members. I was under the impression that proxies were not to be used in condominium elections. Would you clear this matter up for me? **S.B. (via e-mail)**

**A:** The voting, meeting, and election procedures in Chapter 718 of the Florida Statutes, the Florida Condominium Act are contained in a

number of different sections. In some cases, the general condominium statute specifically exempts timeshare associations. In other cases, there is no exemption for timeshares.

Accordingly, some parts of election rules in the Condominium Act apply to timeshare condominium associations, while other provisions do not. Section 718.112(2)(d)3. deals with the election of directors in a condominium association. The last sentence in Section 718.112(2)(d)3., specifically says: "The provisions of this subparagraph shall not apply to timeshare condominium associations." Therefore, the "two envelope/secret ballot" election procedures in the Condominium Act do not apply to timeshare condominium associations.

Further, Section 718.112(2)(d)2. of the Condominium Act specifically allows timeshare condominium associations to use proxies for the election of directors.

It is well-established in the law that timeshare condominium associations may conduct their board

elections by using proxies, and many, if not most, do so.

**Q:** In a recent column, you wrote that both the Florida Homeowners' Association Act and the Florida Condominium Act provide a statutory right for members of the association to have items placed on the agenda of a regular or special board meeting. I was not aware of this provision, and have been unable to find it in the latest copy of the condominium statute I have. Will you please tell me where to find it? **G.R. (via e-mail)**

**A:** The provision was added to Section 718.112(2)(c) of the Florida Condominium Act in 2008. The condominium statute now provides: "If 20 percent of the voting interests petition the board to address an item of business, the board shall at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, place the item on the agenda."

*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](mailto: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](http://www.becker-poliakoff.com).*