



## Changes Affect Chapter 720 HOAs

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**By Joe Adams**

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Today's column continues our review of SB 1196, which became law effective July 1, 2010. Today's article focuses on a few changes found in SB 1196 that are applicable only to homeowners' associations governed by Chapter 720 of the Florida Statutes, commonly called the Florida Homeowners' Association Act.

In past columns, we have already touched upon some issues that affect HOAs, including: suspension of use rights (June 13, 2010); attachment of rental income (June 20, 2010); official records (June 27, 2010); board vacancies (July 4, 2010); and reserves (July 11, 2010). Past editions of this column can be reviewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).

Here's a look at a few more changes brought about by SB 1196 which apply only to Chapter 720 homeowners' associations:

- **Closed Board Meetings:** In what I would characterize as a significant change, Section 720.303(2)(b) now permits the board of a homeowners' association to meet in closed session (i.e., without parcel owners being present) to discuss "personnel matters", with no requirement that an attorney be present. This change does not apply to condominium associations or cooperative associations. Presumably, "personnel

matters" would be limited to the discussion of specific issues pertaining to employees of the association.

- **Director Compensation and Conflicts:** SB 1196, substantially expanding previous law, prohibits a director, officer, or committee member from receiving any salary or compensation from the association for the performance of his or her duties as a director, officer, or committee member. Perhaps more significantly, the law also states that a director, officer, or committee member "may not in any other way benefit financially from service to the association." In my opinion, this means that directors, officers, or committee members cannot work as association employees, could not serve as a paid manager, nor could the association contract with firms or business entities in which such persons hold a financial interest. This substantially goes beyond previous law, which would generally permit contracts with "interested directors" if the existence of the director's financial interest was disclosed, if the contract was fair and reasonable, and if the interested director refrained from voting. There are a couple of exceptions to the new rule, including any fee or compensation authorized in the governing documents, and

any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by proxy at a meeting of the members.

- **Display of Flags:** SB 1196 states that although parcel owners in homeowners' associations are granted relatively broad rights to display various flags, flag poles and flag displays are still subject to all building codes, zoning setbacks, and other applicable governmental regulations, including but not limited to lighting ordinances. Further, flag poles and flag displays may also be subject to "setback and locational criteria contained in the governing documents."
- **HOA Voting:** There has always been a fair amount of confusion as to how homeowners' associations should conduct their board elections. Many like to follow the "one size fits all" procedure used in condominiums, because it is secret, fair, and there are well established rules. The condominium election system is often called the "two-envelope" system, because secret ballots are used with an unmarked envelope being placed in a signed envelope, and then they are separated for the secret vote (thus "two-envelopes"). Chapter 720 has never expressly authorized the use of the two-envelope voting method in HOA board elections or other voting issues. Rather, the law has simply deferred to the bylaws, and generally still does. However, SB 1196 now states that if the governing documents permit voting by secret ballot by members who are not in attendance at a

meeting, a two-envelope system must be used. Essentially, the new law clarifies that a homeowners' association may use the two-envelope voting method in its board elections, but it must be authorized by the governing documents. Further, it appears that the governing documents may also permit absentee voting in matters other than the election of directors, using a secret ballot /two-envelope procedure.

- **Acquisition of Interests in Recreational Facilities:** In apparent reaction to a fair amount of litigation over the past several years where previously voluntary country clubs are made a mandatory condition of association membership, SB 1196 incorporates language into Chapter 720 which is very similar to language that has been in the Condominium Act for a number of years. Under the new law, a homeowners' association may enter into agreements to acquire leaseholds, memberships, and other possessory or use interest in lands or facilities, including but not limited to country clubs, golf courses, and other recreational facilities, provided that (with some exception for early development agreements) the transaction must be approved by seventy-five percent of the total voting interests of the association.

Next week, we will wrap up our review of SB 1196 with some miscellaneous changes that have not been addressed so far in this 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](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).*