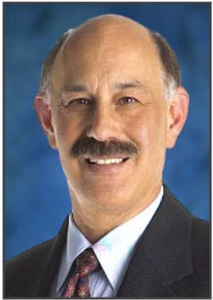

Condominium Law Q&A

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Question – I recently received notice from my condominium association of the date, time and place of the annual meeting and an invitation to submit our name(s) if we desire to run for the board. A date was given on or before which notification of intent to run had to be submitted. It has come to my attention that some members of the present board already know who has submitted intents to run. I was of the impression that that information had to be held in confidence by the manager, until the deadline for qualifying passed. Is this correct? R.L., Coconut Creek

Answer – No. There is nothing in the Condominium Act mandating that notices of intent to run for the board be kept confidential until the end of qualifying. In fact, the Division Rules require that the board send written notification to unit owners who send in notices of intent to run, confirming receipt of same. Both the notice of intent to run and verification of same, in my opinion, are part of the official records, open for inspection by all unit owners. The Division Rules do prohibit members of the board from serving on a committee designated to pre-qualify ballots and count votes.

Question – I seek your opinion regarding action taken by the board of directors of the Florida Homeowners Association of which I have been a member for several years and to the terms of the document of covenants and restrictions to which I agreed when I purchased my property. The document was recorded June 14, 1984. The document stated, in part: "The covenants and restrictions of this Declaration shall run with and bind the land … for a term of twenty (20) years from the date this declaration is recorded." and "… the amendment of this Declaration, the covenants, restriction, easements, charges and liens of this agreement may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of any instrument executed by owners holding not less than three-quarters (3/4) vote of the membership in the association." Although no authority to amend the document, including extending it beyond 20 years, was given to the board of directors, the following motion was made by a member of the board on October 16, 2003: "I hereby make a motion that we as the board of directors of the … homeowners association pass by acclamation the renewal and extension of the current homeowner association documents and covenants, a negative vote by either a board member or a homeowner objecting to this motion shall personally assume the responsibility of gathering the 51% of all homeowners objections to this decision …" The motion passed without objection from the board. Except for a few members present at the October meeting, no notice of the board's action has ever been provided to the other 306 members of the association and neither any other member nor I with whom I have discussed this matter has been given a copy of the re-recorded document. R.M., Port Orange

Answer – In 1963, as a means of simplifying title searches to stabilize property law by clearing old defects from land titles, the Florida Legislature passed the Marketable Record Title Act [MRTA]. Prior to the enactment of MRTA, when one acquired real estate in Florida, a title examiner had to search title back to the Spanish Land Grants of the 1800's. After MRTA, searches only had to go back 30 years or to the closest root of title. An unanticipated consequence of MRTA was its impact on the covenants, conditions and restrictions [CC&R's] of planned developments. Plain and simple, MRTA extinguished them if they were not expressly referenced in every deed conveying the individual lots. Suddenly, planned developments found themselves without the ability to levy assessments to maintain and operate the common areas. To avoid this unintended consequence, the Florida Legislature enacted the first of several remedial laws. The first in 1997 provided for the extension of expiring [but not yet expired] CC&R's, if approved by a majority vote of the homeowners. Then, in 2003, to simplify the process of preserving and extending expiring CC&R's, the law was further modified by granting authority to the board alone, with the approval of 2/3rds of the members of the board, without the need for approval of the members, provided that the members were informed of the extension. That left only one problem, what to do about those CC&R's which had already been extinguished by MRTA. In 2004, Senator Skip Campbell introduced legislation which eventually passed into law [Chapter 720.403, F.S.] providing the mechanism for allowing the membership to readopt expired CC&R's. Under the new law, the preservation of extinguished CC&R's is a two part process. First, it requires the approval of the parcel owners and second, approval of the State of Florida Department of Community Affairs. ■

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