COMMUNITY COUNSEL

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RECENT CASES

- **Owner must remove spa, blinds and roof panels when he failed to defend arbitration proceeding.**
- **Where HOA could levy non-uniform assessments for maintenance, it could not do so for more significant repairs.**

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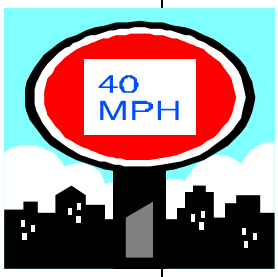
Homeowner Amendments – What Limits?

The hottest issue in the community association legal community may be addressed in the upcoming legislative session. This year's Florida Supreme Court decision in the *Woodside Village* case made it clear that condominiums and cooperatives could amend their documents in pretty much any fashion, as long as the proper procedures were followed. The decision rejected the lower court's supposition that some properly adopted amendments could not impinge on so-called vested rights inuring to the members. Because of the way the Court's decision was framed, the decision had limited relevance to HOAs, which are not statutory creations. Indeed, current section 720.306(1)(c), FS provides:



Unless otherwise provided in the governing documents as originally recorded, an amendment may not affect vested rights unless the record owner of the affected parcel and all record owners of liens on the affected parcels join in the execution of the amendment.

ASSOCIATION ATTORNEYS ARE TRYING TO SET CLEARER LIMITS ON WHAT AMENDMENTS MAY DO.

Though originally drafted to assist courts in determining how to apply the HOA statute to existing documents, the vague "vested rights" language currently creates a real issue for HOAs when contemplating document changes. What rights of members are vested and which can be changed? The answer is by no means clear, and any owner who feels aggrieved by a newly enacted documentary amendment has a basis on which to challenge the validity of the amendment.

To resolve the issue, both the Florida Bar (which usually refrains from seeking legislative changes) and CAI's Florida Legislative Alliance will seek changes to the current statute. One configuration of change, which appears to have the general support of association legal practitioners states in part:

Unless otherwise provided in the governing documents as originally recorded or unless otherwise permitted by this Chapter or Chapter 617, no amendment may materially and adversely alter the proportionate voting interest appurtenant to a parcel, or increase the proportion or percentage by which a parcel shares in the common expenses of the association, unless the parcel owner and all record owners of liens on the parcels join in the execution of the amendment. A change in quorum requirements shall not be deemed an alteration of voting interests. The foregoing shall not be construed to prohibit the merger or consolidation of homeowner associations nor amendments adjusting voting rights incident to a merger or consolidation approved by the members of the merged or consolidated associations.

The proposal does for HOAs what the *Woodside Village* decision did for condos and deserves support so that communities know their amendments are valid.

WEAN & MALCHOW, P.A.
1305 EAST ROBINSON STREET, ORLANDO, FLORIDA 32801
TEL: (407) 894-0040 FAX: (407) 894-5677
W-M@WMLO.COM

RECENT CASE SUMMARIES

In **Steamboat Bend East Condominium Association, Inc., vs. Sky**, Case No. 00-0057 (Final Order 11/29/00, Powell Arbitrator) Association brought an arbitration action against Owner seeking the removal of a spa installed by Owner. Association further sought an order requiring Owner to record a covenant to run with the land regarding maintenance of roof panels installed by Owner, or alternatively an order requiring Owner to remove the panels. Lastly, Association sought an order requiring Owner to remove vertical blinds installed in the lanai area. Owner had sought permission from Association in October, 1997 to install panels on the roof of his lanai, which would prevent rain from entering the portion of the lanai that was open to the sky, and to install a spa in the lanai. Association granted approval to add the roof panels upon the condition that Owner record a covenant to run with the land obligating Owner and Owner's successors to maintain the roof panels. Owner failed or refused to record the covenant. Prior to approving the installation of the spa, Association requested additional information including, but not limited to blueprints for the 220 electrical line to the spa, the method for draining the spa, proof of approval from the master association for water usage, plumbing blueprints for the spa, and sufficient information to determine that the noise level of the spa would not disturb other residents. Owner failed to deliver any of the requested information to Association. Nonetheless, Owner went forward and installed the spa, the roof panels, and the vertical blinds – all without the consent nor approval of Association. Owner raised a defense of selective enforcement and alleged that other owners were in violation of the governing documents. However, Owner failed to present any evidence of these allegations at the final hearing. The Arbitrator ruled in favor of Association and ordered that the spa be permanently removed within 30 days. Additionally, the Arbitrator ruled that Owner must record the proposed covenant for maintenance of the roof panels within 30 days or else Owner must remove the roof panels within 45 days. Lastly, the Arbitrator ruled that the vertical blinds must be permanently removed.

In **Argoff, et al., vs. Rainberry Bay Homes Association, Inc.,** 27 Fla. L. Weekly D2077 (Fla. 4th DCA 9/18/02) Homeowner sued Association and alleged that Association acted outside the parameters of the community's governing documents in levying an assessment against only a particular class of owner, and in adopting Association's budgets. Rainberry Bay is a residential community consisting of a total of 901 units. 565 of these units are governed by Association, of which 357 units are zero lot line properties, 137 of which have atriums; 140 are detached homes; and 68 are estate homes. The distinction between the three is the size of the lots. The Homeowners were owners of zero lot line homes. In 1996 it was discovered that some of the zero lot line homes with atriums had sustained water damage to the atrium walls. Association contracted to have the atrium homes inspected and where necessary, repaired or rebuilt. The total cost for this work was $578,000, which was paid from Association funds. Thereafter, the 1999 budget was adopted. Homeowners argued that the 1999 budget was in fact two budgets, one for the zero lot line owners and one for the owners of the detached and estate homes because the budget levied a $75.00 per quarter assessment against the owners of the zero lot line homes to pay the cost of the atrium repairs. Homeowners argued that Association did not have authority under the governing documents to levy the $75.00 assessment against only the zero lot line owners and not the detached and estate owners, and further that Association did not have the authority to adopt two separate budgets which disparately assessed the property owners for items other than maintenance costs. The trial court entered summary judgment in favor of Association, finding that Its actions were authorized by the governing documents. Association's governing documents permitted it to levy differing assessments for "routine maintenance" against the owners of the zero lot line homes, detached homes, and estate homes based upon the estimated difference in maintenance costs for these three types of properties. The trial court found that governing documents allowed Association to assess the cost for atrium repairs solely against the owners of the zero lot line homes. In reversing the trial court, the Fourth District Court of Appeal held that the atrium repairs were outside the scope of the "routine maintenance" contemplated by the governing documents for which differing assessments were permitted. Additionally, the appellate court reversed the trial court on the issue of whether past budgets levied by Association were in violation of the governing documents because the assessments levied against the zero lot line homes were different from the detached and estate homes for items other than "routine maintenance" as permitted by the governing documents.

WEAN & MALCHOW, P.A.
1305 EAST ROBINSON STREET, ORLANDO, FLORIDA 32801
TEL: (407) 894-0040 FAX: (407) 894-5677