

COMMUNITY COUNSEL

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RECENT CASES

Like the "Cartalk" Puzzler, our case summaries have taken a summer vacation! We resume them next month.

There have been many significant decisions in the past few months and we will try to catch up in the next few issues.

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

Review of Major New Laws – Part 3

We continue our review of SB 2984 and SB 1184.

2. Effective October 1, 2004 in HOAs:

G. Notice of Board meetings at which assessments or rule changes related to use of parcels are to be considered must be sent to each owner at least 14 days prior to the meeting, and must be posted on the property. The notice must reference the subject of the meeting.

H. At Board meetings members may speak on all items placed on the agenda by member petition or as allowed by Association rules. Just who adopts these rules for the Association is unclear, but presumably the authority will follow the rulemaking authority in the documents. However, where the HOA documents limit the Board's rulemaking authority to use of the common areas it is unclear who makes rules on this subject.

I. Items may be placed on the Board's agenda by petition of at least twenty (20%) percent of the total voting interests. Such items are to be noticed to all members within 60 days of receipt of a petition, and on at least 14 days notice delivered to all owners. Any owner signing up can speak for at least three minutes on the pe-



tion item(s), but the Board is not obligated to take any action on the item(s).

J. Official records now include all written documents. Records can be inspected for at least one (1) eight hour business day per month, and copies are charged at the actual cost or up to \$.50/page, if the Association has its own copier. Exceptions to document availability are (1) attorney-client privileged documents, (2) information obtained while screening prospective buyers or renters, (3) employee records, and (4) medical records.

K. Each Association must prepare financial annual statements. For each budget size listed below, the Association must prepare:

(1) If less than \$100,000 or less than 50 parcels (regardless of budget size) – a report of cash receipts and expenditures.

(2) If \$100,000 but less than \$200,000 – a compiled financial statement.

(3) If \$200,000 but less than \$400,000 – a reviewed financial statement.

(4) More than \$400,000 – audited financial statements.

.... Continuing a review of all new laws effecting community associations.

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RECENT STATUTORY CHANGES

J. Twenty (20%) percent of the members can petition to raise the level of financial scrutiny, and within 30 days of receipt of the petition, a membership meeting must be held. A majority vote is needed to raise the level of financial scrutiny, and the Board shall levy assessment needed to pay the extra cost. Similarly, a majority of members can vote to reduce the level of financial scrutiny one level. Financial statements are due 90 days after the end of the fiscal year.

K. Developers may not use Association funds to defend actions brought against the developer-controlled Association.

L. Recalls of directors are now governed by the same procedures that are in place for condominiums. Determinations of election and recall disputes are also handled by the Division, subject to rules that will largely mirror the rules governing condominiums.

M. Owners may display armed forces flags on various federal holidays.

N. Strategic Law Suits Against Public Participation (SLAPP) are prohibited. Such suits are typically brought by developers against members of the public who voice opposition to proposed development plans. The suits are intended to discourage public participation in the permitting and approval process. This new provision, which allows an aggrieved owner to bring a counterclaim if sued because of owner has sought relief from, or complained to public officials. Its language goes far beyond developer conduct. The new provision simply has no place in an HOA statute, but it certainly has great potential to be used by owners for mischief, since it specifically allows an aggrieved owner to counter sue individual directors, officers, managers and attorneys who have allegedly brought suit against an owner in retaliation for the owner's public participation.

O. New Section 720.403 (or maybe 401), Fla. Stat. is created. This and succeeding sections create a procedure whereby a Declaration of Covenants that has lapsed without being extended under Ch. 712, Fla. Stat., can be resurrected. To do this an organizing committee must be formed, consisting of at least three parcel owners. They must create a new Declaration, which must be similar to, but not more restrictive than the original. Although it can cover fewer lots than the original declaration, it must nevertheless have the same voting rights, proportionate sharing of assessment and amendment provisions as the original Declaration. (How these conditions can occur together is neither clear nor logically intuitive.) The committee must also create new corporate documents unless the Association is still alive and kicking. After at least 14 days notice given by the organizing committee, the written approval or affirmative vote of at least a majority of the parcel owners must be obtained. Meeting minutes must be transcribed and the notice, minutes and votes have to be certified by an attorney or court reporter. Within 60 days after the approval, all materials must be provided to the Department of Community Affairs, which has 60 days to determine whether compliance has occurred. If approved, the organizing committee has 30 days to execute and record the new documents and immediately upon recording, a copy must be sent to all parcel owners. The documents are effective upon recording. Owners have one year in which to challenge the application of the new documents to them, based on certain theories. It is unclear whether more time is available to assert other bases for challenge.