

# COMMUNITY COUNSEL

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## Recent Cases

- ♦ **Suit for damages by HOA against owner who cut a down a tree related to owners use of the common areas and had to be mediated prior to suit being filed.**
- ♦ **Action to remove sons of unit owner an action to remove a tenants and is outside jurisdiction of condo arbitration.**
- ♦ **Owner could not avoid one pet rule by claiming 2nd dog in their unit was owned by others.**

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## Roll-out of the 2007 Statutory Changes Pt. 4

We finish our overview of new statutory changes for 2007:

SB 314 (Geller, Lynn) was another victim of last year's veto pen. This slightly revised bill is a revision to 718.117, Fla. Stat., which deals with terminations of condominiums. The "normal" termination method under this law requires approval of 80% of the voting interests.

However, there are two optional methods that come into play in extra-ordinary circumstances, as when there has been substantial catastrophic damage to a condominium and, because of either local land use restrictions or the pure economics of the situation, reconstruction is not possible or practical. In such circumstances the concurrence needed is dropped to a majority of the members. In addition, if an effort to obtain 80% membership concurrence fails, but if that failure is due to apathy rather than to a negative vote in excess of 20%, the owners can petition the circuit court to permit termination of the condominium. In any event, a termination must be the subject of a plan that addresses how the termination will be conducted and how funds will be distributed. A market analysis of all portions of the property is required and members are given only a short time to challenge the components of the plan.

SB 396 (Margolis) also addresses the law governing the three main forms of community associations in Florida. Among the more significant changes it makes:

1. It permits a condominium to be created on real estate that is already part of a condominium regime. This was an initiative of the developer portion of the Bar's condominium practitioners.

2. It also assists developers by allowing them to give a disclosure and disclaimer on the figures used in creating condominium budgets, such that changes caused by rising prices — such as insurance premiums — do not invalidate a proposed budget. The budget is now a "good faith estimate" and changes to it do not trigger a buyer's 15 day rescission period. A copy of a correct budget must be provided at the time of closing.

3. Revisions to Part VI of the Condominium Act, regarding conversions of property to condominiums are made. These changes include:

A. Allowing owners and associations to directly pursue engineers who draft misleading and incorrect conversions reports, and

B. Adding other items, such as fire protection, irrigation systems, docks and walkways to the list of items and components the condition of which must be disclosed, and

C. Imposing a requirement for a supplemental conversion report for items which have been renovated or repaired and requiring that the report must be updated yearly from the date of original preparation until the declaration for the condominium is recorded.

D. Adding a provision allowing condos, coops and HOAs to combine to pool insurance and participate in self-insurance programs. However, the requirements to do this are still so stringent, that it is unlikely that many associations, acting on their own, will be able to participate in these programs. On the other hand, some managers are rumored to be looking at ways to bring these programs to their clients.



**The final Chapter of new changes to the law governing the most common forms of associations.**

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## RECENT CASE SUMMARIES

In **Conrad vs. Hidden Lakes Homeowners Association, Inc.**, 14 Fla. L. Weekly Supp. 943a (Circuit Court, 15<sup>th</sup> Judicial Circuit (Appellate-Civil) in and for Palm Beach County, July 13, 2007) Owners sought review of a trial court's final judgment entered in favor of Association. Owners own a home and reside in Association. In March of 2004, a storm swept through the community and damaged a tree located on Association's common area. The tree branches fell and blocked a screen door that led onto the patio. Owners did not contact Association to arrange for removal of the tree. Instead, Owners removed the downed limbs and also cut down the tree. Association removed the stump, covered the area with grass, and then sought to have Owners reimburse Association for costs incurred in the amount of \$325.00. Owners did not pay the amount demanded and Association filed suit. Owners filed a motion to dismiss for failure to participate in mandatory mediation pursuant to Section 720.311, Fla. Stat. The trial court denied the motion, but stayed the action and referred the parties to mediation. The parties proceeded to trial and the trial court entered a final judgment in favor of Association. Owners appealed, arguing that the dispute fell within the purview of Florida Statute Section 720.311, which required mandatory mediation as a condition precedent prior to initiating a lawsuit and that therefore, the action should have been dismissed. Section 720.311, Fla. Stat., applies to disputes "... between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes ..." Under Section 720.311, Fla. Stat. (as it then existed), such disputes "... shall be filed with the department for mandatory mediation before the dispute is filed in court." Association's argument was that the dispute was merely one for damages. The appellate court noted that while the complaint sought damages, the conduct that gave rise to the claim for damages was Owners' removal of a tree located in the common area. As such, the suit fell within the purview of a dispute between an association and a parcel owner regarding changes to the common area. The appellate court therefore ruled that because the dispute fell within the purview of Section 720.311, Fla. Stat., the trial court had no choice but to dismiss the suit due to the failure to satisfy a pre-condition to initiating a lawsuit. Therefore, the appellate court reversed the trial court.

In **Calais at Pelican Bay Condominium Association, Inc. vs. Apuzzo**, Arbitration Case No.: 2007-04-7129 (Final Order of Dismissal, August 30, 2007), Association sought to have Owner's two sons removed from the condominium unit. Association argued that the sons were occupying the unit in violation of the governing documents. Pursuant to Section 718.1255, Fla. Stat., disputes involving the eviction or removal of tenants are not eligible for arbitration. The arbitrator noted that prior arbitration decisions have broadly defined the term "tenant" to include friends, family members and other occupants whose rights to occupy the unit exists in the absence of a formal lease or rental agreement. Because Association sought an order requiring Owner to remove her sons, this matter was not a "dispute" eligible for arbitration and the action was dismissed.

In **Bayfront Tower Condominium Association, Inc. vs. Rebmann**, Arbitration Case No.: 2006-06-6721 (Final Order, September 13, 2007) Association brought a arbitration action claiming Owners were in violation of the declaration by keeping more than one dog in the unit and further alleging that Owners were in violation by allowing one of their dogs to bite another owner's dog as well as biting other unit owners. Owners initially occupied their unit with one large black dog named "Ozzie." Later, owners obtained a miniature black poodle named "Joey." Owners claim that they sold Joey to another unit owner. However, Joey lives in Owners' condominium unit and Ozzie and Joey are only seen in the custody of Owners. Ozzie has a history of attacking other dogs and unit owners in the condominium. The declaration permits each owner to keep one dog or one cat in the unit. The declaration further provides that any pet creating a nuisance or unreasonable disturbance shall be permanently removed from the property. The arbitrator ruled that Owners were in violation by keeping more than one dog and ordered one of the dogs removed. The Owners could not avoid the clear wording of the declaration by claiming that one of their dogs was sold to another unit owner. The declaration clearly prohibits the keeping of more than one dog or one cat in the unit. The arbitrator further ordered that if Owners keep Ozzie, they shall securely leash and muzzle him at all times he is outside their unit, on the common elements or condominium property.