COMMUNITY COUNSEL

FEBRUARY , 2017 | A PUBLICATION OF WEAN & MALCHOW, P.A. | VOLUME 21 ISSUE 2

DOES YOUR CONDO COME WITH A JAILCELL AND BARS?

Okay folks. The lunacy is rapidly overtaking us. Ever since the bad old days of Julio Robaina and his henchmen at CCFJ, who were convinced that everyone who volunteered to serve on a condominium board had ulterior motives, many in South Florida accused condo board members of wide-ranging racketeering and other crimes. Recently, in early February, 2017, the State Attorney for Miami-Dade County issued a 37 page final report of a Grand Jury that was impaneled to look into corruption in the operation of condominiums. The report concluded with several pages of recommendations that showed a complete lack of understanding and perspective about condominium living and operations.

That report's recommendations have now been translated into an even more absurd pair of bills—SB 1682 and HB 1237— that showcase an even denser pair of legislators, and an even more superficial comprehension of condominium living and regulation.

The first thing it does is criminalize some of the more common issues that confront members of the board in connection with matters like the production of records for inspection by members. So the willful failure to timely produce records for inspection three times in a 12 month period becomes a misdemeanor. The same is true for the knowing destruction of financial records. And refusal to produce records to " facilitate the commission of a crime or avoiding or escaping detection…" commits a felony. Do you want to volunteer to serve on the Board of your Association? But wait, there other, just as stupid initiatives elsewhere in the bill.

Perhaps the most successful regulatory program the state has had in connection with condominiums — the arbitration program — is privatized by this bill in a manner that is clumsy and unworkable. First, the qualifications for becoming a private arbitrator are unattainable by anyone currently practicing in the State of Florida, because until now condominium arbitrations have been the exclusive domain of the state. Therefore few private practitioners have had condominium arbitration experience and can meet the requirements set forth in the bill. Additionally, under the bill if an arbitrator fails to render a decision in writing within 30 days after a hearing that arbitrator loses his certification and can no longer arbitrate cases. Would you want to do the work necessary to obtain a certification if you could lose it by being a day late in rendering a decision? I wouldn't. Such a provision is reminiscent of the type of discipline that a junior high gym school teacher might mete out to juvenile delinquents. It is hardly worthy of professionals; but this entire bill illustrates the mindset that our legislators bring to the regulation of both our public at large and our working professionals.

The bill also seems to eliminate the entire recall arbitration process without replacing it with anything. And it attempts to impose provisions aimed at eliminating conflicts of interest in financial transactions, but the language is so vague as to be troublesome, leaving members at their peril as to whether they may have a conflict.

The net effect of these bills will be to discourage anyone with a brain from being willing to volunteer to serve on a condominium board.

RECENT CASES

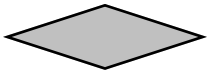
- BLOG MAINTAINED BY THE ASSOCIATION PRESIDENT WAS NOT AN ASSOCIATION PUBLICATION AND COULD ENDORSE CANDIDATES IN ELECTION. TO BE AN ASSOCIATION ORGAN THE BLOG HAD BE AUTHORIZED BY THE BOARD AND/OR PAID FOR OR CREATED BY STAFF OR ON ASSOCIATION EQUIPMENT.
- IN A REVERSAL OF PRIOR DECISIONS, BASED ON A RECENT COURT CASE, ARBITRATOR RULES THAT ALL RESIGNATIONS FROM THE BOARD, EVEN THOSE MADE AT A DULY NOTICED MEETING OF THE BOARD, MUST BE IN WRITING IN ORDER TO BE EFFECTIVE.

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.

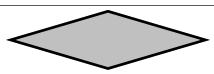
WEAN & MALCHOW, P.A.
646 EAST COLONIAL DRIVE, ORLANDO, FLORIDA 32803
TEL: (407) 999-7780 FAX: (407) 999-LAW1 E-MAIL: W-M@WMLO.COM
WWW.WMLO.COM

RECENT CASE SUMMARIES

In **Weiss vs. International Village Association, Inc.**, Case Number 2015-01-1888 (Simms, Summary Final Order, January 19, 2016) Owner filed a an election dispute petition for mandatory non-binding arbitration against Association alleging Association allowed the use of official Association publications for the election of specific directors to the Board of Administration and to endorse candidates for the annual election held on February 24, 2015. The arbitration concerned the alleged wrongful dissemination and publication of a blog called, "Village Viewpoint" which was maintained by the president of Association. The president's blog typically had a statement "The official blog of International Village Condominium Association in Inverrary, Florida, keeping unit owners informed about important issues affecting the community." However, the president posted two entries to the blog on February 9 and February 17 urging the owners to vote for specific candidates. These blog posts omitted the "official blog" language of all of the other blog posts. The rules governing condominium elections prohibit communication by the Board that endorses, disapproves, or otherwise comments on any candidate. The president admitted that he changed the heading on the two February blog posts due to the possibility of misinterpretation by the unit owners. The Arbitrator issued an order to Owner to provide evidence that the blog was designated by the Association as its official website or that it used the funds of Association to maintain the website or was designated as such at a meeting of Association, is drafted from Association's offices or on Association computers or that employees of Association contributed to the information published on the site. When Owner failed to produce any such information, Arbitrator issued her ruling that the two blog posts in February, which had been modified to remove the suggestion that it was the official blog of association, did not violate the Condominium Act and denied Owner's request for relief.



In **Brand, et al., vs. Sundance Association, Inc.**, Case No.: 2016-00-5242 (Jones, Summary Final Order, July 6, 2016) Owners filed a petition for mandatory binding arbitration in an election dispute against Association. Owners alleged that they did not effectively resign from the Board of Directors. The issue before the Arbitrator was whether a verbal resignation from the Board of Directors was effective when given at a properly noticed meeting of the Board. Association is a homeowner's association subject to Chapter 720, Fla. Stat. Owners were members of Association as well as Directors of Association prior to their alleged verbal resignations. On November 17, 2015, Owners verbally resigned from the Board. Owners alleged that their verbal resignations were not effective, because under Florida Law, resignations must be in writing. Association argued that because the resignations were at a properly noticed meeting of the Board of Directors the resignations were effective. Section 720.302(5), Fla. Stat., states in relevant part that homeowner's associations subject to Chapter 720, Fla. Stat., are also governed by and subject to Chapter 617, Fla. Stat. Section 617.0807, Fla. Stat., states in relevant part that "directors may resign at any time by delivering written notice to the board of directors or its chair or to the corporation." The resignation is effective when delivered unless a later date is specified in the notice. The arbitrator noted that prior arbitration decisions have recognized a verbal resignation occurring at a board meeting. These older cases noted that the requirement in Chapter 617 that a Board member resign in writing was designed to insure adequate notice to the proper persons of the resignation. However, where the verbal resignation occurred at an official meeting of the Association, there is no reason to strictly apply the provisions of Chapter 617, Fla. Stat. The Arbitrator noted however that the First District Court of Appeal in a more recent decision reached a contrary resolution on the interpretation of Section 607.0807, Fla. Stat. In *Pain Reduction Concepts, Inc., vs. Frisbie*, the First District Court of Appeal held that the version of the statute applicable to "for profit" corporations requires that notice must be in writing, unless notice is "expressly authorized by the articles of incorporation or the bylaws and is reasonable under the circumstances." The provisions of this "for profit" statute are nearly identical to the provisions of Section 617.0807, Fla. Stat., governing not for profit corporations. The Arbitrator could find no discernable or substantial differences between the two statutes. Therefore, the Arbitrator receded from the prior arbitration decisions permitting oral resignations. Since oral resignations were not explicitly authorized by Association's governing documents, resignations from Association's Board of Directors must be in writing and properly delivered to Association to be effective. As such, the Arbitrator ordered Owners to be reinstated to the Board of Directors.



WEAN & MALCHOW, P.A.
646 EAST COLONIAL DRIVE, ORLANDO, FLORIDA 32803
TEL: (407) 999-7780 FAX: (407) 999-LAW1 E-MAIL: W-M@WMLO.COM
WWW.WMLO.COM