

COMMUNITY COUNSEL

JULY, 2017

A PUBLICATION OF WEAN & MALCHOW, P.A.

VOLUME 21 ISSUE 7

RECENT CASES

- ◆ **ARBITRATOR FOUND RACIST OBSCENE AND TAUNTING REMARKS INTERFERED WITH OPERATION OF ASSOCIATION AND WERE A NUISANCE IN VIOLATION OF THE DECLARATION.**
- ◆ **TRIAL COURT'S IMPOSITION OF PRIOR RESTRAINT ON OWNER'S POSTS ABOUT ASSOCIATION WERE UNCONSTITUTIONAL STATE ACTION IN VIOLATION OF OWNER'S FREE SPEECH RIGHTS.**

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.

THE SMOKE CLEARS AND ALL IS REVEALED, PART II

We continue our review of the provisions of HB1237, effective July 1, 2017.

Official Records— Renters may now ask to inspect and copy both the bylaws and rules and regulations of the condo association. (Odd that the declaration isn't included, since it has the very relevant use restrictions, while the bylaws usually deal with less than helpful corporate procedural matters.) Also bids, even unsuccessful, are now official records that must be kept. And as of July 1, 2018 associations with 150 units or more must have websites on which they post certain official records, including summaries of all bids. Compare this to the provisions of SB 398, which requires **all associations** to immediately post contact information on their websites for people seeking estoppel letters.

Financial Reporting— All condo associations with 50 or fewer properties must now produce financial statements based on total revenues, and not just statements of receipts and expenditures if they have less than 50 units. The failure to provide a financial report within five business days after a request can be reported to the Division. If the Division provides a written warning and a financial report still is not forthcoming, then the Association can lose its right to vote to waive its financial reporting requirement. For how long is not stated. In addition, the Division is obligated to collect and retain copies of both financial reports and reports from associations listing of all financial institutions with which they main-

tain accounts. And members are entitled to copies of both.



Use of Debit Cards— no one may use a debit card to charge expenses directly to an condo association, and using a debit card to charge debts to an association that are not legitimate is credit card fraud, a criminal offense. For once, something smart was included in this bill.

Recalls— The process has been changed. While the board must still have a meeting within five business days of being served with a recall, and while a recalled director must surrender association property within 10 business days of being recalled (instead of five days), the recall is now automatic, and a director seeking to challenge a recall must do so after-the-fact. In other words, the requirement for substantial compliance with the recall process has been eliminated, and even a fraudulent recall will be presumed valid and given effect immediately and it is subject to challenge only after-the-fact. This is just a terrible concept and even worse execution in the way the language is drafted.

Receivers— If a receiver is appointed for the benefit of the Association, the votes of units under the control of the receiver may not be voted. What is not stated is whether the total number of available units is considered reduced as well.

Ombudsman— The Ombudsman's representatives may inspect secret ballots at the election at which he or she is present.

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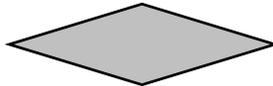
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RECENT CASE SUMMARIES

In **In re: Petition for Arbitration of: Royal Mansion Condominium Association, Inc., vs. Lippert, et al.**, Case No.: 2015-04-9648 (Slaton, Final Order, February 27, 2017) Association filed an arbitration action against Owner for alleged nuisance behavior. Association alleged that Owner made offensive statements, including the use of racial epithets, towards an occupant of Association which gave rise to the pre-arbitration notice and demand that Owner cease any further such conduct. However, after receipt of the pre-arbitration notice, Owner continued to make numerous racist and other disturbing and offensive statements, including foul language, to employees, members, residents and guests of the condominium. The arbitrator found that Owner's offensive conduct interfered with the operations of the condominium. Specifically, Association had to alter the hours of security guards to cover the times Owner was present at the condominium; that Owner caused scenes and confrontations at the front desk of the condominium; that several occupants reported and complained that Owner had screamed at guests and workers; and that Owner's conduct interfered with the ability of other owners to rent their units. The arbitrator ruled in favor of Association and against the unit Owner and found that Owner's making of racist and other disturbing and offensive statements to employees, members, residents and guests of the condominium interfered with the operation of Association and constituted a nuisance. As such, the arbitrator ordered Owner to immediately cease and desist from causing a nuisance or engaging in immoral, improper, or offensive use of the condominium property in violation of the declaration.



In **Fox vs. Hamptons at Metrowest Condominium Association, Inc.**, 42 Fla. L. Weekly D1629d (Fla. 5th DCA, July 21, 2017), Association filed a verified complaint that was later amended, seeking injunctive relief against Owner. The complaint alleged that Owner violated section 718.303, Fla. Stat., by failing to comply with the declaration and rules and regulations thereby causing irreparable harm to homeowners, renters, and guests at Association. Association alleged that Owner engaged in a course of continuous conduct carried out for the purpose of harassing, intimidating, and threatening other residents, Association, and its representatives. The trial court granted a temporary injunction which lead the parties to negotiate a settlement agreement in which Owner agreed to cease certain actions. The trial court entered a final judgment enforcing the settlement agreement and dismissing the lawsuit. Soon thereafter Association filed a motion for contempt alleging that Owner had willfully and intentionally violated the terms of the settlement agreement and final judgment. After the hearing, the trial court found Owner in civil contempt. In addition to enforcing the settlement agreement, the trial court ordered Owner to stop posting, circulating, and publishing any pictures or personal information about current or future residents, board members, management, employees or personnel of the management company, or vendors on any website, blog, or social media platform. Owner was also required to take down any information already posted. On appeal, Owner argued that *the trial court's amendments* to the settlement agreement, *imposed as his punishment*, violate his right to speak freely. The appellate court further noted that the trial court's ruling appeared to be permanent. On appeal, the Fifth District Court of Appeal noted that both the United States Constitution and the Florida Constitution prohibit laws that curtail the freedom of speech. *Prior restraint* on publication, or censorship of information that has already been published, is presumptively unconstitutional under the First Amendment. On the other hand, the right to freedom of speech is not without its limits. Freedom of speech does not extend to obscenity, defamation, fraud, incitement, true threats, and speech integral to criminal conduct. The appellate court also noted that subsequent civil or criminal proceedings, rather than prior restrains, ordinarily are the appropriate sanction for calculated misdeeds in the First Amendment context. The appellate court therefore reversed the trial court and held that it erred when it prohibited owner from making any statements whatsoever pertaining to Association on websites, blogs, and social media websites without first conducting a proper constitutional inquiry. The appellate court thus erred when it prospectively prohibited Owner from posting comments and other information on websites, blogs, or other social media. However, the appellate court affirmed the trial court's enforcement of the settlement agreement and affirmed the contempt order in that respect.

