Q&A Sheet Again a Key Document

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Today's column continues the review of changes enacted during the 2004 session of the Florida Legislature, most of which become effective October 1, 2004.

In the first four installments of this series (*Law Gives Members More Voice*, July 8, 2004; *Law Denies Developer Fund Access*, July 15, 2004; *Law Calls for Binding Arbitration*, July 22, 2004; HOA Law Changes Not Perfect, July 29, 2004), we looked at changes primarily affecting homeowners associations. Subsequent installments have looked at changes to the law involving lender questionnaires (*Lender Surveys are Tricky*, August 5, 2004) and defibrillators (*Liability Changes offer More Coverage*, August 12, 2004). The series was interrupted by Hurricane Charley and several columns devoted to post-disaster legal issues (A*ssociation Can Help After Storm*, August 19, 2004; *Association Should Act Deliberately*, August 26, 2004; *Flood Insurance Sound Idea*, September 9, 2004; *Easy to Stumble into Second Disaster*, September 16, 2004; and *Have Plan Before, After Disaster Hits*, September 23, 2004).

Remember, past editions of this column, going back four years, can be retrieved on the internet at http://www.becker-poliakoff.com/. Click on "ATTORNEYS", click on "A", then click on "Joseph E. Adams" and scroll down the page where past editions are sorted by date.

Today's column involves the so-called Q&A Sheet. The Q&A Sheet is a document which a condominium association must by law keep among its official records. It is helpful to understand the purpose of the Q&A Sheet, the history of the law pertaining to the document, and the new law.

Back in 1992, the Florida Legislature implemented radical changes to the Florida condominium laws. Much of the focus of the new law was to provide more "disclosure" and "consumer protection". The 1992 amendments required both developer-controlled associations and unit-owner controlled associations to prepare (and annually update) the Q&A Sheet on one "sheet" of paper (there was some debate whether two sides of the same sheet could be used.).

The list of items to be disclosed in the Q&A Sheet is found in Section 718.504 of the Florida Condominium Act which provides:

> [E]ach buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; contain a statement identifying that amount of assessment which, pursuant to the budget, would

be levied upon each unit type, exclusive of any special assessments, and which identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and state whether membership in a recreational facilities association is mandatory and, if so, identify the fees currently charged per unit type....

Florida law permits a right of rescission (right to back out of a contract) in condominium unit sales. There is a 15 day right of rescission in developer sales and a 3 day right of rescission in resales. The right of rescission is triggered by the buyer's receipt of a number of disclosure documents, including the Q&A Sheet.

Apparently, what began to happen was that condominium buyers looking for "loopholes" to get out of contracts would find that the Association had not updated its Q&A Sheet within the previous year, as required by law, and then void the contract. The annual update of the Q&A Sheet is something that "falls through the cracks" with many associations. In 2001, one legislator (who is also a real estate attorney) successfully led an effort to eliminate the Q&A Sheet from the rescission-triggering documents required to be provided by a unit owner controlled association. Stated otherwise, the change in the law several years ago did not eliminate the requirement that an association keep a Q&A (nor the requirement that it be updated annually) but did remove it as a required disclosure document tied to the right of rescission in resales.

The 2004 Legislature again changed the law. The new change to the statute re-institutes the Q&A Sheet as a document keyed to the right of rescission. Therefore, it is especially important for associations to keep a Q&A Sheet on hand, and update it at least annually. Otherwise, a buyer could theoretically seek to get out of a contract, citing the lack of a Q&A Sheet, and the seller (unit owner) might seek relief from the association.

As the old saw goes, history has a way of repeating itself. Whoever coined that phrase must have been a student of Florida's condominium laws.

Q&A

Question: The bylaws for our homeowners association provide that a change in annual dues, or a special assessment, can only be approved "by a 2/3 majority vote of the members of the association." Does this mean two-thirds of all of the members, or only two-thirds of those who vote? J.W. (via e-mail)

Answer: Without reviewing the documents as a whole, it is impossible to give an accurate answer. The language you quote suggests that the voting should be based upon two-thirds of all members, not just those who vote.

This is one area where associations are particularly benefited by having clear and concise documents, which often requires amendment. For example, voting should be based on "voting interests", not "members". If a husband and wife both own a parcel, they may both be "members" but there is typically only one vote signed to the parcel, and that is why the term "voting interest" is more precise.

When distinguishing between votes which require some percent of the entire voting interests and those which require a percentage of only those who vote, clear language can easily be added to eliminate confusion. For example, if the intention is two-thirds of everyone, the document should read "two-thirds of the entire voting interests". Conversely, if the intention is only for those who

vote, the clause should read "two-thirds of the voting interests present, in person or by proxy, and voting at a duly noticed meeting of the association at which a quorum has been established."

Question: Our condominium association is having difficulty with home owners following our rental regulations. We are in the process of implementing fines. I have three questions. First, is there a maximum find we can charge? Secondly, if the owner does not pay a fine, can we file a lien against their property or attach it to their quarterly maintenance fee? Finally, if we can prove that it is the real estate agent (not the unit owner) who is violating the documents, what is our recourse? G.M. (via e-mail)

Answer: In order for a condominium association to levy fines, the condominium documents must specifically grant that right. The ability to levy fines is also controlled by the Florida condominium statute, specifically section 718.303.

Under the law, the maximum fine that can be levied is one hundred dollars per violation and up to one thousand dollars for a continuing violation.

A fine cannot be attached to the unit's title like maintenance fees, and your association cannot file a lien for unpaid fines. This is also specifically spelled out in the statute.

The association has no legal relationship with a unit owner's real estate agent. Accordingly, the association has no standing fine them. However, if owners are fined for the conduct of their agents, they will hopefully find a new agent, or at least prevail upon their existing agent to comply with the association's regulations.

Question: What is the status of the new change to the law regarding condominium rentals? K.G. (via e-mail)

Answer: Stay tuned. The Florida Legislature enacted a significant change regarding amendments to condominium documents concerning rentals. The new law will become effective October 1, 2004. I will be reporting on this change, in depth, within the next couple of weeks.

Question: I have a question regarding the new law for homeowners associations which becomes effective October 1, 2004. Can anyone put something on the agenda for a board meeting.
R.H. (via e-mail)

Answer: No. The new law does not change how the directors create the agenda for their meetings. That is typically covered by the association's bylaws.

Under the new law, HOA members can petition the board to take up an item of business by a petition signed by twenty percent of the voting interests. The board must consider the item at a regular board meeting or special board meeting called within sixty days from receipt of the petition. There is no requirement that the board take any specific action regarding the item, only that the board take it up as an item of business.Section 718.113(5) of the Florida Statutes provides that an association may not prohibit a unit owner from installing hurricane shutters. The association can adopt uniform specifications for shutter installation, including both functional and aesthetic items. The condominium board can require that hurricane shutters be installed in accordance with its specifications.

There is no parallel law for homeowners associations. Rather, the issue is guided largely by the governing documents, such as a declaration of covenants or deed restrictions. Theoretically, a restrictive covenant could prohibit the installation of hurricane shutters. I would consider such a restriction to be unwise at best, perhaps reckless (arguably contrary to public policy).

It is a proven fact that hurricane shutters save lives and lessen property damage. I would

never encourage an association to add a shutter prohibition to their covenants (and would strongly discourage it). In fact, if there were a restriction in a current covenant that prohibited shutters, I would strongly recommend deleting it by amendment. This may be another area where the Florida Legislature needs to look to the history of condominium law development for guidance on a very important topic.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

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