



HB 1195 Tightens Laws Regarding Associations

Condo, homeowner groups affected by new provisions

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Today's column continues our review of HB 1195, which became effective on July 1, 2011:

- **Condominium Association Director Certification:** HB 1195 clarifies that where a newly elected condominium association board member chooses to complete an education curriculum (in lieu of providing a written certification of intention to uphold the condominium documents), he or she must complete the curriculum within one year before, or ninety days after, the date of election or appointment. Proof must be submitted within ninety days after election or appointment. The new statute also clarifies that a written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption.
- **HOA Director Qualifications:** HB 1195 amends the statute applicable to homeowners' associations, now making it consistent with the condominium statute, providing that a person who is more than ninety days delinquent in the payment of fees to the association is not eligible to serve on the board. Curiously, the statute does not contain the language found in the

condominium law which states that once a director becomes ninety days delinquent, he or she is deemed to have "abandoned" his or her office. The HOA statute now, similar to the condominium law, prohibits convicted felons from serving on the board.

- **Master Association Lien Priority:** The new statute somewhat alleviates an existing glitch in the law when an association forecloses a claim of lien for unpaid assessments, the association can be jointly and severally liable with the foreclosed owner for assessments owed to another association, such as a "master association." HB 1195 provides that a foreclosing association is not liable for past due assessments owed to an association which holds a superior interest in the unit. This rule applies to both condominiums and homeowners' associations.
- **Attachment of Rents:** HB 1195 cleans up some glitches from the 2010 law which permitted an association to require that rents owed by a tenant to a delinquent owner be paid directly from the tenant to the association. HB 1195 clarifies that when a unit owner is delinquent to the association in the payment of any monetary obligation, the association may require that

all future rents be paid to the association, as they become due until the owner's debt is satisfied. The statute also contains a standard form demand letter that associations must send to tenants. This provision of the statute applies to condominiums, cooperatives, and homeowners' associations.

- **Suspension of Use Rights:** I would consider the most significant change in the law to be a new provision which allows condominiums, cooperatives and homeowners' associations to suspend common area use rights for behavior-oriented issues which constitute a violation of the communities' governing documents. Under prior law, use rights could only be suspended for financial delinquencies. Under the new statute, the suspension must be limited to a "reasonable time." Further suspensions for document violations cannot be imposed unless the owner is given an

opportunity for a hearing before an independent committee.

- **"Bundling" in Condominiums:** The Homeowners' Association Act was amended in 2010 to allow homeowners' associations to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities upon approval by seventy five percent of the total voting interests if not so authorized by the declaration. HB 1195 adds a similar provision to the Condominium Act, though such a transaction need only be approved by a majority of the total voting interests of the association where the declaration is silent.

Next week, we will wrap up our overview of the new statutes.

Joe Adams has focused his practice on the representation of community associations since 1987, and has provided legal counsel to well over one thousand community associations throughout the state. Joe has served as Chairman of the State Advisory Council on Condominiums and has written this column since 1995.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com. This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.