



JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT & COMPTROLLER
PALM BEACH COUNTY

Homeowner & Condo Owner Association Laws



Workshop Overview

- About the Clerk of the Circuit Court & Comptroller's Office
- Differences between HOAs and COAs
- Association Powers & Duties
- Home/Condo Owners Rights & Obligations
- Elections & Recalls
- Arbitration, Mediation, & Litigation
- Q & A



Clerk of the Circuit Court & Comptroller's Self-Service Center



- Clerk of the Circuit Court & Comptroller is the trustee of the county's public records and public funds.
- The Self-Service Center provides:
 - User-friendly forms/packets
 - Public access computers
 - Free document preparation assistance appointments
 - Notary services and more
- Clerk of the Circuit Court & Comptroller's office can only provide ministerial assistance and cannot give legal advice.

HOAs v. COAs: What's the Difference?



- Condo Owner Associations (COAs) are more regulated than Homeowner Associations (HOAs).
- COAs have a regulatory agency: Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division provides condo owners with mediation & arbitration for most disputes. Only provides HOA & homeowners arbitration for election and recall issues. Provides training/education for COAs.
- Condominium Ombudsman:
 - Advisory Opinions
 - Appointment of Election Monitors

Where are Association's powers defined?

- HOA Act: FL Statute 720
- COA Act: FL Statute 718
- Articles of Incorporation
- Declaration of Condominium or Declaration of Covenants(HOA)
- Bylaws
- Rules



- By Statute HOA/COA must make these available for members to read or copy. Starting 7/2018 COAs with more than 150 units must also make available on a website

Association Powers



"I think the seller will accept your offer, but the Homeowners Association will never approve that shirt."

- May initiate, maintain, defend, settle or appeal law suits or other proceedings in its name on behalf of all members.
 - Must be regarding matter of common interest
 - If suit for more than \$100k must obtain approval of majority of voting members at a meeting in which a quorum has been obtained.
- May assess & collect fees, dues, and other assessments per the governing documents or as voted on by the members.
- May review & approve plans and specifications for any building/improvement of property within community per the governing documents.

Association Powers

(cont'd)

- May levy reasonable fines for failure to comply with any provision in the governing documents.
 - ❑ Can't exceed \$100 per day of violation or \$1,000 total per violation, unless voted on and included in governing documents.
 - ❑ Fine may be levied for each day of a continuing violation with a single notice.
- May suspend, for reasonable period of time, right of a member to use common areas/facilities for failure to comply with rules or for being more than 90 days delinquent on fees/assessments. May also suspend voting rights for delinquency.
- Member must receive notice and right to hearing for violation related suspension or fine, but only notice for delinquency.



Association Powers: Liens & Foreclosure



- If you are more than 90 days delinquent and owe \$1,000 or more, the HOA or COA may obtain & record a lien on your property for the amount due plus:
 - Late fees – no greater than \$25 or 5% of each late installment.
 - Reasonable attorney fees and costs.
 - Interest – per bylaws or 18%
- HOA/COA must first make a formal written demand for amounts due with notice of intent to file lien.
 - 45 days prior to recording lien for HOA
 - 30 days for COA.
- Per statute these liens have priority over most creditors, even if recorded after. No priority over 1st mortgage.



Association Powers: Liens & Foreclosure

- Home/Condo owner may record a “Notice of Contest of Lien”.
 - ❑ Form template in statute
 - ❑ Association then has 90 days to file an action to enforce lien or lien becomes void.
- One option for enforcement is for association to initiate foreclosure proceedings with the court. **HOA/COA can foreclose on your home even if you are current on your mortgage payments!**
- Must give an additional written demand with intent to initiate foreclosure at least 45 days before filing action (30 days for COA).



Association Powers: Liens & Foreclosure

- HOA/COA Foreclosure action follows same procedure as a mortgage foreclosure.
- Per statute, anytime before judgment of foreclosure entered the owner may file a “qualifying offer” to pay all amounts.
 - ❑ This stays proceedings as specified in offer, but not to exceed 60 days.
 - ❑ Form template in statute
 - ❑ Owner only allowed one chance to do this during proceedings.
- After foreclosure, borrower still liable to lender for mortgage



Misc. Association Powers

- May enter into contracts with service providers.
 - ❑ Any contract entered into by HOA may be canceled by a majority vote at the next regular or special meeting of the HOA members.
 - ❑ If vote fails or no motion made at 1st meeting after entering into contract, contract is deemed ratified for its term.
- Emergency Powers: go into effect in response to damage caused by an event for which a state of emergency is declared.



Association Duties

- Responsible for maintenance, management, and operation of “common areas” for HOA; “condominium property” for COA.
- Must compile and provide an annual financial report for preceding fiscal year.
- Must prepare an annual budget.
 - Include estimated revenues, expenses, surplus or deficit.
 - Must provide budget or notice of availability of the budget to all members.
- Must conduct board meetings and give notice of board meetings to all members per governing documents, but at least 48 hrs in advance.



Association Duties

(cont'd)

- Must hold an annual meeting of its members.
 - ❑ Election of directors must be at annual meeting.
 - ❑ Members must be notified per governing docs or at least 14 days prior to meeting. Mail, hand delivery, or electronic notice plus posting in a conspicuous place.
 - ❑ Must hold special meetings of members per governing docs or, if silent, when requested by at least 10% of total voting members.
 - ❑ To vote at meetings need a quorum:
 - For Condos: Simple majority- more than 50% of voting members must be present
 - For HOAs: 30% of voting members.



Association Duties

(cont'd)

- HOA/COA must maintain all official records relating to association and must make them available to all owners for inspection and/or copying, going back at least 7 yrs. Includes all:
 - Governing Docs (bylaws, articles, rules)
 - Minutes of all meetings
 - Roster of all members
 - All insurance policies
 - Financial reports, accounting records
 - Plans, specifications, permits & warranties related to improvements, construction, or maintenance of common areas.



Owner/Member Rights

- Right to attend and speak at any board meeting. Right to record any meeting. HOA/COA may set rules re: frequency & duration of member speech or recording.
- If at least 20% of total voting members petition the board to address an item of business, board must address at its next meeting or at a special meeting no later than 60 days after receiving petition.
- Rights to inspect and copy most association records.



Member Rights (cont'd)

- Right to peacefully assemble in common areas/facilities. Right to invite guests, including public officers and candidates for public office.
- Right to protection against retaliatory lawsuits for member exercising their right to petition for redress of grievances re: HOA/COA. Can be awarded damages, attorney fees, & costs.
- Right to vote in board member elections, on amendments to governing docs or to common expenses, unless legally suspended for delinquency or violation.



Member Rights

(cont'd)



- Right to run for board of directors, unless delinquent on fees or convicted felon.
- Condos: Right to response to inquiries. When unit owner files a written inquiry by certified mail to board, the board shall respond in writing within 30 days. Response shall:
 - Give an answer,
 - Notify that a legal opinion has been requested, or
 - Notify that advice has been requested from the division.



Member Rights (cont'd)

- Right to display one portable, removable US flag and one portable, removable official flag of the State of FL or of one of the branches of the US military in a respectful manner. HOA and COA statutes have different specifications as to size and location.
- Can't be prohibited from implementing FL friendly landscaping.
- Right to construct accessibility ramp for medical necessity/disability.
- If association has a contract for cable or internet services, you can't be denied access to other providers as long as you pay them directly.



Member Obligations

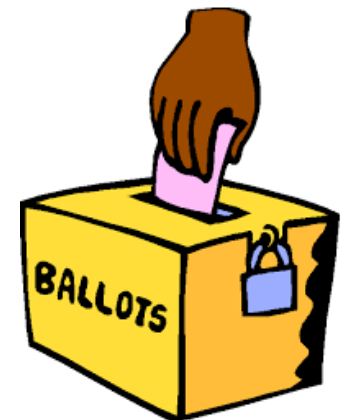


- Members, their tenants, guests, & invitees, and the HOA must comply with the statutes, governing documents, and the rules of the association.
 - Failure to do so can be addressed by suspension, fine, or civil litigation.
- Must timely pay any legally assessed dues, fees, or special assessments.
 - Also jointly & severably liable with previous owner for all unpaid assessments that came due up to the time of transfer of title.



Elections

- Election of board members must be held at, or in conjunction with, annual meeting unless filling a vacancy made by reason other than term ending.
- Quorum must be present for election.
- COA members cannot vote in elections by proxy; HOA members can. Both require secret ballot.
- COA only: 15% of total voting members, or 6 members, whichever is greater, may petition Ombudsman for election monitor to attend annual meeting and conduct election.



Disputing an Election

- Must file a dispute petition with division of condominiums within 60 days after election results announced.
- Before filing petition must give HOA/COA notice of specific nature of dispute, a demand for relief, reasonable opportunity to comply, and intent to file an arbitration or other legal action in absence of resolution.
- Must submit to mandatory arbitration with division.
- Petition to be filed by a member representative. \$200 for HOA; \$50 for COA. Whoever loses arbitration will be charged the division's additional fees for arbitration ("amount adequate to cover all costs & expenses incurred during arbitration"), and other party's attorney fees.

Recalling Board Members

- Any member of board can be recalled & removed from office with or without cause by the written agreement or written vote of the majority of the total voting members.
- Serve notice of recall on association by certified mail or personal service.
- Board has 5 business days to hold a meeting. If they fail to do so the recall immediately goes into effect.
- If board fails to approve recall members may file petition for arbitration. Board or recalled director may also file. Must be filed within 60 days of recall.
- Arbitration is mandatory prior to any litigation.
- Costs same as for election dispute.



Arbitration, Mediation & Litigation

- COA members can apply for free or paid mediation through the division of condominiums, prior to arbitration. HOA would have to hire private mediator.
- COAs may also mediate non-election/recall disputes if pertaining to violation of statute.
- Decision of arbitrator is binding if litigation not filed within 30 days of receipt of final decision.
- Most provisions in HOA & COA statutes provide attorney fees and costs to prevailing party in any litigation relating to violation of statute by member or association. In some cases willful violation allows for damages as well.



Helpful Links

- FL Division of Condominiums, Timeshares, and Mobile Homes:

<http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>

- Condominium Ombudsman:

<http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/condominium-ombudsman/>

EMAIL: ombudsman@myfloridalicense.com

Phone Inquiries: 850.922.7671

- Florida Statute 720- Homeowners Act & Florida Statute 718- COA Act:

<http://www.leg.state.fl.us/Statutes/>

Q & A



QUESTIONS?



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Thank You

