



Miscellaneous Changes in SB 1196 Discussed

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By **Joe Adams**

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Today's column is the tenth and final edition in our review of SB 1196, which became effective July 1, 2010. The previous nine editions of the series, along with past editions of this column, can be reviewed at www.becker-poliakoff.com.

Today, we will complete our review of the statute with a few "miscellaneous" changes to the law that have not been covered in the previous columns.

- **Amendments Affecting Rental Rights:**

The Florida Condominium Act was amended in 2004 in reaction to a Florida Supreme Court decision which basically held that a condominium association could enact unlimited rental restrictions through an amendment to the declaration of condominium. The 2004 amendment to the statute provided that any declaration amendment "restricting" an owner's "rights relating to rentals" could not be applied to those unit owners who did not approve the amendment, but would only be binding on those who purchased from them. The 2004 so-called "Rental Amendment Grandfathering Law" created some confusion as to whether all amendments that dealt with rentals were subject to grandfathering. SB 1196 provides, perhaps in the way of clarification, or perhaps as a substantive change, that only amendments

that prohibit a unit owner from renting their unit, alter the duration of permissible rental terms, or restrict the number of times unit owners are allowed to rent, are subject to the grandfathering rule.

- **Exemption of Time-Shares:** SB 1196 exempts time-share condominiums from the requirement that board members may only stand for election to one-year terms (there is an exception if an affirmative "opt in" vote is taken, in which case two-year staggered terms are permissible). In other words, the governing documents for a time-share condominium will be the sole source which governs the duration of board terms in the time-share context. Condominium associations that include time-share units or time-share interests are also now exempt from the general prohibition against co-owners of a unit simultaneously serving on the board of directors.
- **Fire Alarms:** SB 1196 amended Section 633.0215 of the Florida Fire Prevention Code to provide that condominium buildings less than four stories in height, with an exterior means of egress, are exempt from requirements in the law that they install a manual fire alarm system.

- **Limited Common Elements:** SB 1196 creates a new provision in the Florida condominium statute which states that a portion of the common elements that is not designed and intended to be used by all owners may be reclassified, through an amendment to the declaration of condominium, as “limited common elements.” SB 1196 states that the new language in the statute is a clarification of existing law, and that unanimous approval is not required for such amendments. Rather, the association need only follow the process it regularly follows when amending its declaration. This amendment clears up a gray area in the law which has not been consistently treated through the state’s arbitration program and the courts as to whether an association can amend the declaration of condominium to shift maintenance responsibilities for certain portions of condominium buildings. Air conditioner compressors are a prime example of how the new law operates. Most air conditioners are located outside of the unit and are therefore “common elements.” If the declaration of condominium does not define them as a “limited common element”, and provide for the unit owner’s maintenance of the equipment, the association would typically be obligated to maintain the air conditioner. The new change in the law clarifies that an association could, in this instance, amend

the declaration to designate the air-conditioner as a “limited common element” and thus also amend to require that the air-conditioner unit be maintained by the unit owner.

- **Condominium Fining:** In what I would characterize as a significant change, the Florida condominium statute has been amended to permit the levy of fines against units, even in the absence of authority to levy fines in the declaration or bylaws. Most other basic rules regarding fining in the condominium context were not changed by SB 1196. The maximum permissible fine is still \$100.00 per violation, with a maximum of \$1,000.00 for ongoing violations. Fines still are not secured by liens against the condominium unit and cannot be levied without fourteen days notice and opportunity for a hearing before a specially appointed committee. However, the statute was specifically amended by SB 1196 to state that a fine must be levied at a duly noticed meeting of the board of directors. Further, SB 1196 changes the law regarding fines against unoccupied units. The previous law prohibited the levy of fines against unoccupied units. SB 1196 repealed this restriction.

Next week, we will resume the customary question and answer format for the column.

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.

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.