



Review Changes To Statutes On Financial Operations

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Today's column continues our review of SB 1196, which became effective July 1, 2010. Today's topic, changes to the statutes involving association financial operations and procedures.

In 2008, the Florida Condominium Act was amended to impose personal exposure to civil penalties upon any person (including directors, officers, or managers) who knowingly or intentionally defaced or destroyed association accounting records. The 2008 law further imposed the same liability upon any person who knowingly or intentionally failed to create or maintain required accounting records. The latter situation (failure to create an accounting record) has caused some concern, since a failure to act is typically not the type of malicious or reckless conduct that justifies imposition of personal liability in the law. The 2010 version of the law still imposes liability in these instances, but further stipulates that the destruction of an accounting record, or the failure to create a required accounting record, must be done with intent to cause harm to the association or its members. In the absence of such intent, a director, officer, or manager will not be personally subject to a civil penalty.

SB 1196 made a significant change to the condominium statute regarding year-end financial reporting requirements. As most are aware, a condominium association must always provide its

members with a year-end financial report (or notice that a report is available, free of charge) within 120 days of the end of the fiscal year. The level of required financial report depends upon the association's annual revenues. Associations with revenues of more than \$400,000.00 must produce an audit. Associations with revenues of \$200,000.00 to \$400,000.00 must produce a review. Associations with revenues of \$100,000.00 to \$200,000.00 must produce a compilation. Associations with revenues of less than \$100,000.00 must produce a report of cash receipts and expenditures.

The required year-end financial reports can be waived to a lower level (but for no more than three consecutive years) by majority unit owner vote, and the board always has the prerogative of obtaining a higher-level report than the minimum required by statute. Also, the bylaws may impose stricter financial reporting requirements than the minimum set forth in the statute.

Under previous law, associations operating fewer than 50 units were exempt from the law, regardless of the level of annual receipts, provided that the association would still be required to prepare a report of cash receipts and expenditures. SB 1196 raises the exemption to associations which operate "fewer than 75 units." In other words, a condominium association operating between 50

and 74 units will be impacted by the new law, and will now be exempt from the compilation-audit-review requirements of the statute. However, a report of cash receipts and expenditures is still required.

SB 1196 amends Section 718.115(1)(d) of the Florida Condominium Act to expand the types of communication services which may be purchased in bulk by condominium associations. Under the previous statute, an association could purchase master antennae television or duly franchised cable television service. The new law permits communication services, information services, or Internet services to be purchased in bulk.

Switching gears to the homeowners' association side, Section 720.303(6) of the Florida Homeowners' Association Act has been amended regarding budgets and reserves. Specifically, the new law recognizes that HOAs may keep "reserve" funds, which are not necessarily what I refer to as "statutory reserves", borrowing condominium terminology, and referring to reserves that have been established by majority vote of the membership or the developer.

Under previous law, even if an association kept voluntary reserves, the year-end report for the

association was required to contain a boldface disclosure, in capitalized type, noting that reserves were not kept. This did not make sense to many associations since they were indeed keeping "reserves", simply not those directly regulated by the statute. Under the new law, an association which keeps non-statutory reserves must still include a bold-face disclosure in the year-end financial report, but the nature of the disclosure has been changed to note that voluntary reserves are being kept, and as such, the funds are not subject to the restrictions on use set forth in the law as applies to "statutory reserves."

Finally, SB 1196 amends Section 720.315 of the Florida Homeowners' Association Act to provide that before the developer turns over control of the HOA to the members, the HOA board may not levy a special assessment unless a majority of the parcel owners other than the developer have approved the special assessment by a majority vote at a duly called special meeting of the membership at which a quorum is present.

Next week, we will continue our review of SB 1196 with a focus on changes involving physical plant issues, including changes in elevator and fire-safety requirements for condominium buildings.

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.