

Steve Inglis

From: Mark R. Benson [Mark@markrbenson.com]
Sent: Monday, June 29, 2009 4:27 PM
To: Steve Inglis
Subject: RE: Common Interest Residential Community Association Drafting: 7xx-2

Hi,

Is this it?

DON'T ASK, DON'T TELL

There is a lot of discussion and angst over the insurance section of the Condo Act passed in 2008. It has been described as draconian and may be abused by boards exercising intimidation.

Please look at what it really says:

718.111(11)(g)(2). The association shall require each owner to provide evidence of a currently effective policy of hazard and liability insurance **upon request**, but not more than once per year. Upon the failure of an owner to provide a certificate of insurance issued by an insurer approved to write such insurance in this state within 30 days after the date on which a written request is delivered, **the association may** purchase a policy of insurance on behalf of an owner. The cost of such a policy, together with reconstruction costs undertaken by the association but which are the responsibility of the unit owner, may be collected in the manner provided for the collection of assessments in s. 718.116.

Note: It does not require the association to demand certificates. It also says the association may place insurance, not that it must.

I am not an attorney and this is not a legal opinion. Please consult your own counsel for legal advice.

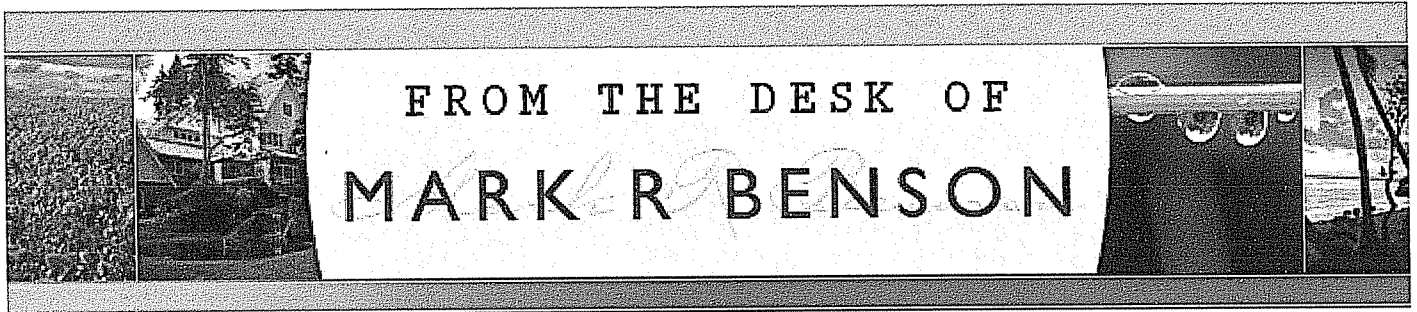
Mark

CAM, CMCA, AMS, PCAM

From: Steve Inglis [mailto:stevei@bristolmanagement.com]
Sent: Monday, June 29, 2009 4:08 PM
To: mark@markrbenson.com
Subject: RE: Common Interest Residential Community Association Drafting: 7xx-2

Mark you sent out something on Condo insurance which was very good could you resend it to me
Thank you

From: Web Admin [mailto:mark@markrbenson.com]
Sent: Monday, June 29, 2009 1:31 PM
To: Steve forwarding
Subject: Common Interest Residential Community Association Drafting: 7xx-2



Common Interest Residential Community Association Drafting: 7xx-2

Hi,

Response for the first part of the process was very encouraging even though there was not much that could be called controversial.

Florida Legislators and the Governor are included in this request for participation and it will be disappointing if their input is not provided. Input from the participants will be most effective if contact with the politicians is apparent and they reflect the views of their constituents. Please contact them to be sure they are also adding their support and comments.

Please look over these Sections as they now exist and provide suggestions and recommendations for changes. Keep in mind "condominium" will be changed to include terminology to provide for the several forms of residential property ownership.

Very truly yours,

Mark

CAM, CMCA, AMS, PCAM
Past Chairman of the Florida Community Association Living Study Council
Past Member of the Regulatory Council of Community Association Managers
Past Vice-Chairman of the Advisory Council on Condominiums
County Court Mediator

This is the current language

718.107 Restraint upon separation and partition of common elements.--

- (1) The undivided share in the common elements which is appurtenant to a unit shall not be separated from it and shall pass with the title to the unit, whether or not separately described.
- (2) The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.
- (3) The shares in the common elements appurtenant to units are undivided, and no action for partition

718.108 Common elements.--

- (1) "Common elements" includes within its meaning the following:
 - (a) The condominium property which is not included within the units.
 - (b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.
 - (c) An easement of support in every portion of a unit which contributes to the support of a building.
 - (d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.
- (2) The declaration may designate other parts of the condominium property as common elements.

718.1085 Certain regulations not to be retroactively applied.--Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation thereof, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium that meets the definition of "housing for older persons" in s. 760.29(4)(b)3. to comply with requirements relating to handrails and guardrails if the unit owners have voted to forego such retrofitting by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting in common areas in a high-rise building. For the purposes of this section, the term "high-rise building" means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable level. For the purposes of this section, the term "common areas" means stairwells and exposed, outdoor walkways and corridors. In no event shall the local authority having jurisdiction require retrofitting of common areas with handrails and guardrails before the end of 2014.

- (1) A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall provide each unit owner written notice of the vote to forego retrofitting of the required handrails or guardrails, or both, in at least 16-point bold type, by certified mail, within 20 days after the association's vote. After such notice is provided to

each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

(2) As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

718.109 Legal description of condominium parcels.--Following the recording of the declaration, a description of a condominium parcel by the number or other designation by which the unit is identified in the declaration, together with the recording data identifying the declaration, shall be a sufficient legal description for all purposes. The description includes all appurtenances to the unit concerned, whether or not separately described, including, but not limited to, the undivided share in the common elements appurtenant thereto.

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.--

(1)(a) If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owners of not less than two-thirds of the units. Except as to those matters described in subsection (4) or subsection (8), no declaration recorded after April 1, 1992, shall require that amendments be approved by more than four-fifths of the voting interests.

(b) No provision of the declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of declaration. See provision _____ for present text."

(c) Nonmaterial errors or omissions in the amendment process will not invalidate an otherwise properly promulgated amendment.

(2) An amendment, other than amendments made by the developer pursuant to ss. 718.104, 718.403, and 718.504(6), (7), and (9) without a vote of the unit owners and any rights the developer may have in the declaration to amend without consent of the unit owners which shall be limited to matters other than those under subsections (4) and (8), shall be evidenced by a certificate of the association which shall include the recording data identifying the declaration and shall be executed in the form required for the execution of a deed. An amendment by the developer must be evidenced in writing, but a certificate of the association is not required. The developer of a timeshare condominium may reserve specific rights in the declaration to amend the declaration without the consent of the unit owners.

(3) An amendment of a declaration is effective when properly recorded in the public records of the county where the declaration is recorded.

(4) Unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment. The acquisition of property by the association and material alterations or substantial additions to such property or the common elements by the association in accordance with s. 718.111(7) or s. 718.113, and amendments providing for the transfer of use rights in limited common elements pursuant to s. 718.106(2)(b) shall not be deemed to constitute a material alteration or modification of the appurtenances to the units. A declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

(5) If it appears that through a scrivener's error a unit has not been designated as owning an appropriate undivided share of the common elements or does not bear an appropriate share of the common expenses or that all the common expenses or interest in the common surplus or all of the common elements in the condominium have not been distributed in the declaration, so that the sum total of the shares of common elements which have been distributed or the sum total of the shares of the common expenses or ownership of common surplus fails to equal 100 percent, or if it appears that more than 100 percent of common elements or common expenses or ownership of the common surplus have been distributed, the error may be corrected by filing an amendment to the declaration approved by the board of administration or a majority of the unit owners.

(6) The common elements designated by the declaration may be enlarged by an amendment to the declaration. The amendment must describe the interest in the property and must submit the property to the terms of the declaration. The amendment must be approved and executed as provided in this section. The amendment divests the association of title to the land and vests title in the unit owners as part of the common elements, without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the unit owned by them.

(7) The declarations, bylaws, and common elements of two or more independent condominiums of a single complex may be merged to form a single condominium, upon the approval of such voting interest of each condominium as is required by the declaration for modifying the appurtenances to the units or changing the proportion or percentages by which the owners of the parcel share the common expenses and own the common surplus; upon the approval of all record owners of liens; and upon the recording of new or amended articles of incorporation, declarations, and bylaws.

(8) Unless otherwise provided in the declaration as originally recorded, no amendment to the declaration may permit timeshare estates to be created in any unit of the condominium, unless the record owner of each unit of the condominium and the record owners of liens on each unit of the condominium join in the execution of the amendment.

(9) If there is an omission or error in a declaration, or in any other document required by law to establish the condominium, the association may correct the error or omission by an amendment to the declaration or to the other document required to create a condominium in the manner provided in the declaration to amend the declaration or, if none is provided, by vote of a majority of the voting interests of the condominium. The amendment is effective when passed and approved and a certificate of amendment is executed and recorded as provided in subsections (2) and (3). This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected unit owners consent in writing. This subsection does not restrict the powers of the association to otherwise amend the declaration, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose

of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(10) If there is an omission or error in a declaration of condominium, or any other document required to establish the condominium, which omission or error would affect the valid existence of the condominium, the circuit court has jurisdiction to entertain a petition of one or more of the unit owners in the condominium, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners, the association, and the mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on unit owners may be by publication, but the plaintiff must furnish every unit owner not personally served with process with a copy of the petition and final decree of the court by certified mail, return receipt requested, at the unit owner's last known residence address. If an action to determine whether the declaration or another condominium document complies with the mandatory requirements for the formation of a condominium is not brought within 3 years of the recording of the declaration, the declaration and other documents shall be effective under this chapter to create a condominium, as of the date the declaration was recorded, whether or not the documents substantially comply with the mandatory requirements of law. However, both before and after the expiration of this 3-year period, the circuit court has jurisdiction to entertain a petition permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

(11) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of a condominium association to approve amendments to the condominium documents through legal means. Accordingly, and notwithstanding any provision to the contrary contained in this section:

(a) As to any mortgage recorded on or after October 1, 2007, any provision in the declaration, articles of incorporation, or bylaws that requires the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to the declaration, articles of incorporation, or bylaws or for any other matter shall be enforceable only as to the following matters:

1. Those matters described in subsections (4) and (8).

2. Amendments to the declaration, articles of incorporation, or bylaws that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before October 1, 2007, any existing provisions in the declaration, articles of incorporation, or bylaws requiring mortgagee consent shall be enforceable.

(c) In securing consent or joinder, the association shall be entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each unit owner whose unit is encumbered by a mortgage of record any information the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record. The

association shall be deemed to have complied with this requirement by making the written request of the unit owners required under this paragraph. Any notices required to be sent to the mortgagees under this paragraph shall be sent to all available addresses provided to the association.

(d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing shall be deemed to have consented to the amendment.

(e) For those amendments requiring mortgagee consent on or after October 1, 2007, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded. Any amendment adopted without the required consent of a mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in subparagraphs (a)1. and 2. and 5 years after the date of recordation of the certificate of amendment for all other amendments. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.

(f) Notwithstanding the provisions of this section, any amendment or amendments to conform a declaration of condominium to the insurance coverage provisions in s. 718.111(11) may be made as provided in that section.

(12)(a) With respect to an existing multicondominium association, any amendment to change the fractional or percentage share of liability for the common expenses of the association and ownership of the common surplus of the association must be approved by at least a majority of the total voting interests of each condominium operated by the association unless the declarations of all condominiums operated by the association uniformly require approval by a greater percentage of the voting interests of each condominium.

(b) Unless approval by a greater percentage of the voting interests of an existing multicondominium association is expressly required in the declaration of an existing condominium, the declaration may be amended upon approval of at least a majority of the total voting interests of each condominium operated by the multicondominium association for the purpose of:

1. Setting forth in the declaration the formula currently utilized, but not previously stated in the declaration, for determining the percentage or fractional shares of liability for the common expenses of the multicondominium association and ownership of the common surplus of the multicondominium association.
2. Providing for the creation or enlargement of a multicondominium association by the merger or consolidation of two or more associations and changing the name of the association, as appropriate.

(13) Any amendment restricting unit owners' rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of that amendment.