

COMMUNITY COUNSEL

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RECENT CASES

- ◆ **IF CHAPTERS 617 AND 718 CONFLICT ON HOW A CORPORATE ELECTION IS RUN, IF THE CORPORATION IS A CONDOMINIUM ASSOCIATION, CHAPTER 718 CONTROLS. THUS, WEIGHTED VOTING WAS PERMITTED IN A CONDOMINIUM MASTER ASSOCIATION.**
- ◆ **ASSOCIATION NOT ENTITLED TO RECOVER FOR VALUE OF DEVELOPER IMPROVEMENTS TO COMMON AREAS IN AN EJECTMENT ACTION.**

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

THE PROPER ROLE OF AN ASSOCIATION

What is the proper role of a community association in the life of a neighborhood? To some extent the question is inherently political, since an association represents a sort of rudimentary local governmental authority, and opinions can and do vary on the wisdom of even this type of governmental intrusion into individual affairs. Some are opposed to any impairment of individual freedoms, while others find comfort, assistance and strength in enforcing the consensus represented by a common scheme of development.



The trick for any board of directors is to balance intrusion into the use and enjoyment of private property by its owner with the requirements and limitations imposed by a recorded set of covenants - agreements which each owner is presumed to have accepted and consented to by buying into a community encumbered by recorded governing documents.

But far too often, we have seen attempts by owners and residents of community associations to shoehorn their associations into roles that are clearly inappropriate. It is too often unsaid in our society to that persons desiring greater personal freedom must accept greater personal accountability - not less - toward others as the price of that freedom. If a person in a community association wishes to be left alone and wishes to be free of association interference, that person is responsible for not acting in a way that impairs the rights of others. By policing one's own conduct, the need for others to intrude on private conduct is removed. Too many in our society believe that freedom means a total lack of accountability. It does not. Freedom is the ability to regulate one's own conduct responsibly, removing the need for extrinsic oversight.

On the opposite side of the spectrum are those that feels that a community association can and should act as a general surrogate for all governmental authority, exercising types of authority that community associations are ill equipped to exercise. Some want associations to act as police forces or bodyguards, some as health code enforcers and even etiquette enforcers, taking action against antisocial residents who verbally abuse their neighbors. This belief that associations can and should protect residents from all manner of affrontery is as misguided as that of the individualists who think associations are always pure evil.

The truth is that a community association represents the collective will of the owners, enforcing a set of recorded restrictions that are contractual in nature and which are presumed to state the collective will until they are properly changed. The association is not a police force and can not enforce general laws, civil or criminal. It has neither the resources, the expertise, nor the legal authority to do anything but hold members and residents to their contractual obligations, when there is a material breach of an obligation that impacts the community at large. Generally, the community at large is impacted when more than one resident is aggrieved by improper conduct. Thus, in a dispute between two and only two owners, an association is justified in abstaining from becoming involved, since this is the essence of a private dispute not yet involving the community at large. The association's role is thus limited in scope and authority by the contractual nature of the documents and by the notion of community impact.

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RECENT CASE SUMMARIES

In **Heron at Destin West Beach & Bay Resort Condominium Association, Inc., vs. Osprey at Destin West Beach and Bay Resort Condominium Association, Inc., et al.**, 37 Fla. L. Weekly D1582b (Fla. 1st DCA, July 3, 2012) an issue arose over the election of officers in the Appellant Master Association by the representatives of the Appellee Condominium sub-associations. Specifically, the question was whether officers of Master Association were to be elected by a simple majority vote of the five (5) members of the Master Association board of directors, or whether weighted voting was to be used based upon the number of condominium units represented by each representative of each Condominium sub-association. The trial court held that weighted voting was not permitted, and that the election of officers would be by a majority vote of the board of directors. Master Association was comprised of five (5) smaller Condominium sub-associations: Osprey at Destin West Beach and Bay Resort (37 condominium units); Sandpiper at Destin West Beach and Bay Resort (48 units); Pelican at Destin West Beach and Bay Resort (48 units); Heron at Destin West Beach and Bay Resort (54 units) and Destin West Office Building (4 units). The developer controlled the Master Association until November 7, 2009, when control was turned over to the board of directors. The board of directors of the Master Association is comprised of the five (5) presidents of the Condominium sub-associations. One of the first actions taken by the board of directors of the Master Association was the election of officers. Two persons were nominated for president. During voting, a dispute arose over how the votes were to be tallied. One nominee asserted that each board member should be given the number of votes equal to the number of units in that member's condominium (i.e. "weighted"). In contrast, the other nominee asserted that the vote to elect the president was a simple majority of the five (5) member board of directors. After the voting split 3-2, the nominee who received only two (2) votes asserted that she was properly elected because she received a higher number of votes based upon her interpretation of the governing documents which called for a weighted voting scheme based upon the number of units represented by each board member. On appeal to the First District Court of Appeal, the appellate court noted that pursuant to the master declaration, the Condominium sub-associations were the "Class A" members and that the "Class A" members were entitled to "one (1) vote for each Unit (excluding Cabana Units) that the Class "A" Member represents in the Master Association." The master declaration also stated that the "Director shall cast the Class A Member's votes as a block in the manner as the Directors may, in his sole and reasonable discretion, deem appropriate, acting on behalf of the Class A Member. . . ." Based upon the language of the governing documents, the nominee receiving two (2) votes moved for summary judgment and argued that under the weighted voting language, she should have been elected president of the Master Association. The nominee receiving three (3) votes also moved for summary judgment, alleging that Chapter 617 governing not-for-profit corporations controlled, and Chapter 617 prohibits weighted voting. The appellate court was called to resolve a relatively simple issue: does the permitted weighted voting provided by Section 718.103(2), Fla. Stat., control over the provisions of Section 617.0824, Fla. Stat., which prohibits weighted voting? The appellate court determined that the Master Association was a condominium association subject to Chapter 718, and thus the provisions of 718.103(2), Fla. Stat., prevailed over Section 617.0824, Fla. Stat. Therefore, the appellate court reversed the decision of the trial court and permitted the weighted voting.

In **Centennial Homeowners Association, Inc. vs. Dolomite Co., Inc.**, 37 Fla. L. Weekly D 1763a (Fla. 3rd DCA, July 25, 2012) Association appealed an order granting Company's motion in limine to exclude evidence in Association's betterment action and from a final judgment entered in favor of Company. Developer began development of a residential community, including improvements to common areas. Improvements were made to the common areas before developer abandoned the community and while developer had legal title to the common areas. Thereafter, Company eventually came to own the common areas that were purchased through a sheriff's sale for the benefit of developer's creditors. Association was given an opportunity to submit proof of its ownership of the common areas, but after it failed to do so, the trial court entered a final judgment confirming the sale. Company succeeded to the rights of a plaintiff that filed an action for ejectment against Association, which eventually resulted in an ejectment order being entered against Association. Association then filed an action against Company for betterments; for compensation for improvements to the common areas by the developer and later by Association when it was in possession of the common areas. The trial court entered an order prohibiting Association from presenting evidence of improvements made by developer, and Association was limited to introducing evidence of permanent improvements Association made while in possession. After a jury trial, the jury found that Association did not make any improvements to the property. On appeal to the Third District Court of Appeal, the appellate court concurred with the rulings of the trial court. Association could not recover damages for betterments installed by developer, and the jury found that Association had not made any betterments during its possession of the common areas.