Homeowners Associations/Developers

Number: INFORMAL

Date: October 16, 2008

The Honorable Michael S. Bennett
Senator, 21st District of Florida
Wildewood Professional Park
3653 Cortez Road, West
Suite 90
Bradenton, Florida 34210

Dear Senator Bennett:

Thank you for contacting this office for assistance relating to the actions of homeowners' associations and developers under Chapter 720, Florida Statutes. Attorney General McCollum has asked me to respond to your letter. The following general comments are offered to assist you in advising your constituents.

A homeowners' association created pursuant to Chapter 720, Florida Statutes, is a Florida corporation responsible for the operation of a community[1] in which the voting members are parcel owners or their agents, or a combination of both, and in which membership is a mandatory condition of parcel ownership. A homeowners' association is authorized to impose assessments that may become a lien on the parcel if they remain unpaid.[2] The term "homeowners' association" does not include a community development district or any other similar, statutorily created special taxing district.[3]

The expressed purpose for Chapter 720, Florida Statutes, relating to homeowners' associations, is "to give statutory recognition to corporations not for profit that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions."[4] The Legislature has specifically determined that "it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations." Thus, involvement in these matters by state agencies and officials has been discouraged by the Legislature.[5]

You have asked several questions involving changes made to Chapter 720, Florida Statutes, by Chapter 2007-173, Laws of Florida. My review of legal resources does not indicate any case law that has developed since those changes became effective on July 1, 2007, which would assist in answering your questions. I am enclosing a copy of the final staff analysis of the Florida Legislature for your consideration as that will give you some idea whether these matters were considered and addressed by Chapter 2007-173. It is a rule of statutory construction that the legislative intent is the guiding force in statutory construction, and legislative history may be helpful in determining legislative intent.[6]

You have asked whether Chapter 720, Florida Statutes, would allow the initial developer of a subdivision community to assign its development rights to another developer. I would caution that Chapter 720, Florida Statutes, is specifically limited to homeowners' associations within the definition of that term.[7] Corporations operating residential homeowners' associations in Florida are governed by and subject to Chapters 607 or 617, Florida Statutes, as well as the provisions of Chapter 720. Chapter 720, Florida Statutes, does not appear to address the assignability of development rights in a "subdivision community" or in other "homeowners' associations" or "associations" within the scope of the statute.

You also ask whether the transfer of control of a homeowners' association under section 720.307, Florida Statutes, results in the relinquishment of any developer rights. A reading of section 720.307, Florida Statutes, indicates that certain rights of developers are affected by the transition of association control in a community. Among those rights are voting rights;[8] rights to control the association;[9] the control of association funds;[10] and control of tangible property of the association.[11]

Finally, you have asked whether section 720.3035, Florida Statutes, provides a statutory cause of action in favor of a parcel owner against a homeowners' association for unreasonably infringing upon or impairing the rights of a parcel owner under the declaration of covenants. Section 720.3035(4), Florida Statutes, provides that:

"If the association or any architectural, construction improvement, or other such similar committee of the association should unreasonably, knowingly, and willfully infringe upon or impair the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, the adversely affected parcel owner shall be entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney's fees incurred in preserving or restoring the rights and privileges of the parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants."

This section clearly recognizes the right of a parcel owner to bring an action for damages caused by unreasonable, knowing, and willful violations of the declaration of covenants or other published guidelines and standards by the association or others.

I trust that these informal comments will be helpful to you.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosure: The Florida Senate Professional Staff Analysis
and Economic Impact Statement, April 18, 2007

---

[1] *See* 720.301(3), Fla. Stat., defining "[c]ommunity" to mean "the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term 'community' includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

[2] Section 720.301(1), Fla. Stat.

[3] Section 720.301(9), Fla. Stat.

[4] Section 720.302(1), Fla. Stat.

[5] *And see* s. 16, Ch. 2007-173, Laws of Fla., repealing provisions relating to the authority of the Department of Business and Professional Regulation to assist with dispute resolution pursuant to section 720.311, Fla. Stat.

[6] *See Ellsworth v. Insurance Company of America*, 508 So. 2d 395, 401 n. 3 (Fla. 1st DCA 1987) (staff analysis of legislation should be accorded significant respect in determining legislative intent); *Byte International Corporation v. Maurice Gusman Residuary Trust Number 1*, 629 So. 2d 191, 192 (Fla. 3d DCA 1993); Op. Att'y Gen. Fla. 00-07 (2000).

[7] *See* s. 720.302(4), Fla. Stat., as amended by s. 8, Ch. 2007-173, Laws of Fla., stating that this chapter does not apply to any association that is subject to regulation under Ch. 718, Ch. 719, or Ch. 721 or to any non-mandatory association formed under Ch. 723, Fla. Stat.; *and see* the definition of a "[h]omeowners' association" in s. 720.301(9), Fla. Stat.

[8] Section 720.307(2), Fla. Stat.

[9] Section 720.307(3)(h), Fla. Stat

[10] Section 720.307(3)(j), Fla. Stat.

[11] Section 720.307(3)(k), Fla. Stat.