

Homeowners association, selection of cable company

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The Honorable Debbie Wasserman Schultz
Representative, District 97
13090 West State Road 84
Davie, Florida 33325-3243

Dear Representative Wasserman Schultz:

Thank you for considering this office as a source for assistance. According to the material forwarded by your office, one of your constituents is concerned about the selection of a cable company by the homeowners association. The constituent, who states that the developer controls not only the homeowners association but also the cable company, wishes to know what action may be taken.

Regrettably, in a situation such as this, there are numerous factual variables that affect whether specific laws are applicable. However, in order to offer some assistance, I would note that some developers specifically reserve the right to provide cable services within the development. Such a reservation of rights is generally contained in the Declaration of Covenants and Restrictions that runs with the land. There is no statutory prohibition against such a reservation, and provided the services are being furnished in accordance with the agreement, this is a matter between the developer and the homeowners who took title to their homes subject to the Declaration.

If, however, the developer has not reserved that right and the concern is that the homeowners association, which selects the cable company, is a developer-controlled association, the provisions of chapter 617, Florida Statutes, may provide some insight. Section 617.0832(1), Florida Statutes, which governs the operation of not-for-profit corporations, provides:

"No contract or other transaction between a corporation and any one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or their votes are counted for such purpose if:

- (a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interest directors;
- (b) The fact of such relationship or interest is disclosed or known to the members entitled to vote on such contract or transaction, if any, and they authorize, approve, or ratify it by vote or written consent; or
- (c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members. "

Sections 617.301-617.312, Florida Statutes, specifically recognize corporations that operate residential communities and provide procedures for the operation of homeowners' associations. The applicability of these statutes, however, is dependent upon the date the association was created and the provisions contained in the governing documents of the association. Moreover, the provisions of sections 617.301-617.312, are not applicable to associations subject to regulation under Chapter 718 (condominiums), Chapter 719 (cooperatives), or Chapter 721 (vacation and timeshare plans) or to any nonmandatory association formed under Chapter 723 (mobile home park lot tenancies), Florida Statutes.[1] Consideration must also be given to the governing documents for the association.[2]

Section 617.303(1), Florida Statutes, provides that the "officers and directors of an association have a fiduciary relationship to the members who are served by the association." [3] This section provides that the powers and duties of an association include those set forth in Chapter 617 and, except as limited in the general law, those set forth in the governing documents.

Section 617.305(1), Florida Statutes, requires the association and each member to comply with the general law, the governing document of the community, and the rules of the association. It authorizes any member or the association to bring an action at law or in equity to seek redress for the failure of the association or a member to comply with the above-mentioned provisions. The prevailing party is entitled to recover reasonable attorney fees and costs.[4]

I trust that the above informal observations provide some assistance in this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 617.302(4), Fla. Stat.

[2] Section 617.301(6), Fla. Stat., states that "governing documents" include the recorded declaration of covenants and the articles of incorporation and bylaws of the homeowners association.

[3] *Compare* s. 718.111(1), Fla. Stat., governing condominium associations, which provides that the officers, directors and manager of the association have a fiduciary duty to the unit owners. *Cf.* s. 718.1232, Fla. Stat. providing that no resident of a condominium dwelling unit shall be denied access to any available franchised or licensed cable television service or required to pay anything of value in order to obtain such services except those charges normally paid for like services by residents of single family homes within the same franchised or licensed area and except for installation charges as such charges may be agreed to between such resident and the provider of such service.

[4] Section 617.311, Fla. Stat. (after the filing in a court of competent jurisdiction of a complaint relating to a dispute under ss. 617.301-617.312, Fla. Stat., the court may order the parties to enter into mediation or arbitration).