



Covenant Enforcement

Signing on the Dotted Line

by Michael J. Gelfand, Esq.

“He said, she said!” Who said what to whom has plagued society from time immemorial. Condominium and homeowner associations are no exception, living in fear of the dilemma created when a property owner asserts that the president, manager, or even a director without portfolio gave “oral approval.”

It does not matter what was approved, whether an alteration, a transfer, or other regulated conduct. In these circumstances, there rarely is any written documentation of the approval. Of course, in these situations the Association’s “documents” almost always clearly require written approval. What is an association to do?

For years, it seemed that trial courts balancing the equities, and trying to steer clear of calling anyone a liar, would side with the owner. But now, Florida associations and owners have a seemingly definitive answer in appellate Judge Warner's well drafted opinion in *Curci Village Cd'm Ass'n, Inc. v. Maria*, 34 Fla. L. Weekly D1228 (Fla. 4th DCA, June 17, 2009). In the Curci Village litigation, condominium unit owner Santa Maria asserted that the association's president, who was also a manager for the developer who was in control of the association, stated that he "didn't see a problem with" Santa Maria's proposed landscaping changes. As one would expect, because the Curci Village declaration of condominium required written approval, this dispute erupted.

Judge Warner, noting that the declaration of condominium is akin to a "condominium's 'constitution'" reminded all of us that unit owners are required by the Condominium Act, §718.303, to comply with the condominium's declaration. Applying the traditional concept of "estoppel" or what otherwise is frequently referred to as "reasonable reliance," the appellate court sent a strong message that written contract provisions, even in a declaration of condominium, are to be enforced. Thus, in this instance when the declaration of condominium requires written approval

for an alteration, an owner cannot reasonably rely upon an officer or director's oral permission.

This decision does not mean that key association personnel cannot waive enforcement rights regardless of their conduct. Officers, directors, and managers should still take great care as to how they communicate association initiatives. Correspondingly, boards of directors must take care, using their reasonable business judgment to select officers and managers with abilities to serve.

Notice of Meetings: Is It Always Required?

What happens when the association is in the middle of an annual meeting and realizes that there are not enough votes to carry an important issue, especially when those present overwhelmingly favor the proposition? Can the association delay the meeting to a later date? Maybe so, if the proper procedure is followed.

A Florida appellate court recently ruled that a homeowners association was not required to send additional notice of a reconvened annual meeting because the annual meeting was properly adjourned. In *Lake Forest Master Community Association, Inc. v. Orlando Lake Forest Joint Venture*, 34 Fla. L. Weekly D692 (Fla. 5th DCA, April 3, 2009), a homeowners association sued the developer of its subdivision alleging construction defects in improvements located on the common areas. The trial court granted summary judgment for the developer on the grounds that the association failed to provide proper notice of the meeting at which authorization to bring the lawsuit was obtained.



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A FIRE PUSH MEMBER

The facts of Lake Forest indicated that notice of the association's annual meeting to be held January 9, 2007 was mailed to each lot owner. The election to fill vacancies on the board of directors was held at the meeting, but the election of the Architectural Review Committee could not be conducted because not enough homeowners attended the meeting. The annual meeting was reconvened on February 13, 2007, to elect the ARC. The annual meeting was again reconvened on March 13, 2007, at which time the members voted to file a lawsuit against the developer.

The appellate court noted that Florida Statute §720.306, which governs meetings of homeowners associations, provides:

(2) Annual meeting.—The association shall hold a meeting of its members annually for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws....

(4) Notice of meetings.—The bylaws shall provide for giving notice to members of all member meetings, and if they do not do so shall be deemed to provide the following: The association shall give all parcel owners and members actual notice of all membership meetings, which shall be mailed delivered or electronically transmitted to the members not less than 14 days prior to the meeting....

(7) Adjournment.—Unless the bylaws require otherwise, adjournment of an annual or special meeting to a different date, time, or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to s. 720.303(2). Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date


for the adjourned meeting is or must be fixed under s. 617.0707, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

The developer argued that the association's bylaws required written notice of the reconvened meetings.

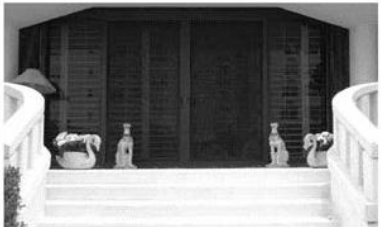
The appellate court disagreed, noting that written notice was not required so long as the meetings were properly adjourned to another time and date. The association's secretary testified that the association's president at the first meeting announced the date, time, and place for the reconvened February 13, 2007, meeting. In essence, because the first meeting was properly adjourned, the court concluded that further notice of the March 13, 2007, meeting was not required.

This decision illustrates the importance of Florida associations taking care to follow closely the rules regarding meetings which are set forth in Florida Statute, the association's bylaws and when indicated by the bylaws, *Robert's Rules of Order*. If an association needs more time to gather enough proxies to vote on a particular issue, make certain that the procedures for a "recess" or "adjourning to a specific time, date, and location" are followed.

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