

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

Chapter 1 : AVILA SOUTH CONDOMINIUM A | So.2d () | so2d | calendrierdelascience.com

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may adopt, by rule, a standard form for such notice and may require the notice to include any additional relevant information.

Citing Case So. Supreme Court of Florida. Attorney s appearing for the Case Alan S. Becker and Jeffrey E. Richman and James D. Petitioners stated several counts in a complaint, which was met with a motion to dismiss. The trial court dismissed with prejudice the first, fifth, seventh, and eighth counts, and ordered the class action allegations stricken as to the remaining counts. In striking the class action allegations, the trial court ruled Section Still pending here after this partial remand are the questions whether Counts V, VII, and VIII should have been dismissed; whether the class action allegations should have been stricken; and certain other matters raised by cross-assignments of error. V, Section 3 b 1 , Florida Constitution. In granting the motion to dismiss as to Count V, the trial court ruled that Section Division of Beverage v. Insofar as the order appealed is interlocutory in nature, we have treated the appeal papers as a petition for certiorari. Seaboard Coastline Railroad Co. Because of the importance of the class action question, and because the trial court ruled Section Membership in the Association, which is a nonprofit corporation charged with managing the Avila South Condominium in Dade County, is limited to owners of the condominium units which comprise the Avila South Condominium. Also named as plaintiffs were four individual members of the Association, who sued in their own right and on behalf of all other persons similarly situated. The three corporate defendants were alleged to have been "owners and developers of the tract, building, and appurtenances submitted to condominium as the Avila South Condominium," and the same corporations were alleged to own certain recreational facilities which they leased to the Association. The complaint alleged that the individual defendants Wolofsky and Schuster had been the "original incorporators and directors of the Association" and had contracted the recreational lease with the corporate defendants on behalf of the Association, but also that Wolofsky and Schuster were officers and directors of the corporate lessors. In eight counts, the complaint assailed the legality of the recreational lease. Of the various theories underlying the several counts of the complaint, half were rejected by the trial court and appealed here; and the defendants cross-assigned as error the failure to dismiss the remaining counts. Before us for decision are questions touching the sufficiency of the entire complaint with the exception of the first count, which has been remanded to the trial court. In Count II the plaintiffs sought a declaratory judgment as to the ownership of the condominium units, which are leased by the corporate defendants to the Association for recreational purposes. Although when a proper party brings suit, "declaratory judgment is Florida National Properties, Inc. This doctrine, although traceable to the feudal tenures, when the connection between landlord and tenant was much more intimate than it is at present, is not merely technical, but is founded in public convenience and policy, because it tends to encourage honesty and good faith between landlord and tenant. As has been said in this connection, a person entrusted with the possession of property shall not betray that possession. The property in controversy is leased by the corporate defendants to the plaintiff Association. Rolling Green Condominium Association, Inc. The Association, which is a corporation not for profit, cannot confer on its members any greater rights as against third parties than the Association itself has. Where a lessee has no standing to sue, any sub-lessee must also lack standing, a fortiori. The named, individual plaintiffs sued not only as members of the Association, but also in their capacity as unit owners. Accordingly, we affirm the dismissal of count two. The trial court decided that counts three and four stated a cause of action as to the named, individual plaintiffs but ruled that "a class action is not appropriate for the counts [III and IV] sounding in fraud and deceit. The contention that the premises were "affirmatively accepted" goes to the question whether the contracts were subsequently ratified, even if their inducement was fraudulent. Ratification is an affirmative defense to a contract action, however, and should be pleaded as such; it need not be negatived in the complaint. It is also unnecessary, in alleging fraud in the inducement, for the

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

plaintiff to plead that he was "precluded" from discovering the truth as to the misrepresented facts, so long as the complaint alleges reasonable reliance on material misrepresentations of existing fact. The fifth count of the complaint is grounded on Section Any grant or reservation made by a declaration or cooperative document, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable. Plaintiffs allege that the recreational lease is unfair and unreasonable in various particulars, all in violation of Section The trial court dismissed Count V because Section Alternatively, the trial court ruled that Section Because we agree that Section In support of the contention that Section But a statute "is not to be given retrospective application unless it is required by the terms of the Statute or it is unequivocally implied" *Keystone Water Co.* The title of the enactment did not give notice of retroactivity, see *Chiapetta v.* In affirming the dismissal of the count alleging violations of Section In the sixth count, plaintiffs complain of an alleged violation of the homestead exemption provisions of the Florida Constitution. From the pleadings and exhibits, it appears that the Association, which is obligated under the recreational lease, looks in turn to its members, the unit owners, for money with which to pay the lease obligations. The effect of these arrangements, appellants urge, is that homestead property is subject to forced sale for failure to pay for recreational facilities, in contravention of the strong state policy in favor of protecting the homestead against certain creditors. In order to avail himself of the homestead exemption, however, a debtor must establish the homestead character of his property as of the time the lien attaches. The complaint in the present case fails to allege facts that would qualify any unit as homestead property, as of the time of the creation of the liens. For that reason, we conclude that Count VI fails to state a claim for relief. The seventh count alleges self-dealing by the individual defendants Wolofsky and Schuster, who were the original incorporators and, subsequently, officers and directors of the Association. As officers and directors of the Association, Schuster and Wolofsky are alleged to have contracted the recreational lease between the Association as lessee and the corporate defendants as lessors. The complaint charges that Schuster and Wolofsky "willfully and knowingly entered into the Point East One Condominium Corp. The Point East case decided that a condominium association could not prevail in an action for rescission of a contract "merely because it arose from the dealings of the developers with themselves while they constituted all of the members of," So. The plaintiff associations in Fountainview sought not only to avoid a contract between themselves and a developer-controlled corporate lessor, but also to require the individual officers who contracted on behalf of the association to disgorge profits accruing to them under the contracts. Deciding in favor of the developers, the Third District explained: The defendants contend that because they were the sole officers and directors of the associations at the time the transactions took place, they were not liable to the associations because there were no other members actually belonging to the associations at that time This is not a case of first impression in Florida. If it were, we might be inclined to the view espoused by the appellants. *B[ir]d, supra*, disposes of the question. Because of the great precedential importance which the decision in *Lake Mabel Development Corp. Bird, supra*, has assumed, it deserves close scrutiny, notwithstanding its relative antiquity. In the course of foreclosure proceedings, *Bird* was substituted for his predecessor in title, *W. Marshall*, who sought to foreclose on a mortgage given to him by the *Lake Mabel Development Corporation Lake Mabel*, as security for a portion of the purchase price of land, which *Marshall* and the other organizers of *Lake Mabel* had sold to the corporation. *Lake Mabel* admitted the indebtedness, but set up as a defense to the foreclosure the fact that *Marshall* had profited from the sale of land to the corporation he had organized. There is no averment in the pleadings or showing made by the record that any stock was ever issued or sold by the corporation to the public. A corporation cannot, while its promoters own all its outstanding stock, avoid in equity a purchase of property sold to it by its promoters at a large profit, represented by stock of the corporation issued to such promoters, since the corporation thus has full knowledge of the facts and the rights of innocent purchasers of stock have not arisen. The Court did not pass on the "rights of innocent purchasers of stock" and expressly stated that it was not faced with a situation where ownership interests were "ever issued or sold by the corporation to the public. Transactions in which a

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

corporate fiduciary derives personal profit, either in dealing with the corporation or its property, or in matters of corporate interest, are subject to the closest examination, and the form of the transaction will give way to the substance of what has actually been brought about. Personal dealings with the corporation or transactions with the corporation in which the director has some personal interest may be avoided, unless good faith and fairness are shown. While occupying such a fiduciary relation, the officers and directors of a corporation are precluded from receiving any personal advantage without the fullest disclosure to, and assent of, all concerned. The Florida rule as to recovery on behalf of the corporation from officers or directors, by a party who later acquires stock, was applied in *News-Journal Corp.* In that case, R. Gore, a minority stockholder, recovered for the benefit of the corporation certain moneys which the other two stockholders had caused themselves to be paid by the corporation; each of the majority stockholders drew a salary from the corporation. The Third District there held that a condominium association could not recover from former officers and directors even when they were guilty of undisclosed self dealing "upon inflated terms. Insofar as is revealed by the opinion, this decision was based entirely on a misapprehension as to the reach of the *Lake Mabel* case, as we have undertaken to demonstrate, ante pp. Neither the Third District nor this Court articulated any basis in public policy for the *Fountainview* decision, and it is difficult to conceive of any. Certain public interests may be served by leaving to developers the possibility of self dealing; such flexibility may facilitate financing of some phases of some projects, with resulting economies that can be passed on to the public. But there is absolutely nothing to recommend a rule of law which encourages persons in positions of trust secretly to betray their trust for inordinate personal gain, at the expense of those to whom they owe a fiduciary duty. We now reaffirm our decision in *News-Journal Corporation v. Gore*, supra, and hold that any officer or director of a condominium association who has contracted on behalf of the association with himself, or with another corporation in which he is, or becomes substantially interested, or with another for his personal benefit may be liable to the association for that amount by which he was unjustly enriched as a result of his contract. However, no director or officer shall be required to return any portion of moneys paid by the association where it is shown that he received the funds with the consent of the association or with the consent of a substantial number of the individuals comprising the association. After careful consideration of the facts in each case, based upon specific findings, the trial judge, in his discretion, shall grant such relief as equity dictates. The eighth and final count of the complaint alleges a violation of Section 718.01(2)(b). On remand, the plaintiffs have available the theories stated in counts three, four, and seven, and the possibility of amending counts five and six to state a cause of action. We turn now to question of standing with respect to each of these claims. At the outset we concur with the trial judge that Section 718.01(2)(b) is a substantive right. As so aptly stated by Mr. Justice in *Pratt v. City of Miami*, "practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution. Measured by the quoted standard we can only conclude that the statutes in question deal with matters of procedure and not substantive rights. Essentially the statutory sections seek to define the proper parties in suits litigating substantive rights. Clearly this has to do with "the machinery of the judicial process as opposed to the product thereof.

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

Chapter 2 : Condo & HOA Expo | Property Management Expo & Seminars | Orlando, Florida

Florida Condo Association Advisor was established by two Florida condominium owners. Our goal is to help other owners and association Board members by freely sharing our knowledge and experience through our blog.

Further, most association Governing Documents allow for Boards of Directors to establish additional reasonable rules and regulations through a Board vote at a properly called meeting so long as they do not conflict with anything in the Governing Documents. The Governing Documents are often very long, a bore to read, and confusing for many homeowners. While there is no specific Florida Statute that outlines how rules and regulations adopted by the Board must be communicated, I strongly recommend that each association consider a method for routinely and thoroughly communicating the rules to homeowners and other residents. My preferred method of accomplishing this is by drafting a comprehensive Rules and Regulations document that is accompanied by a Violation Policy, outlining how violations are identified, the consequences of a violation, and the means of appealing a violation. We will go into more detail about the Violation Policy later in the post. There are several reasons why drafting a current Rules and Regulations document with an associated Violation Policy is so important: Residents are more likely to follow rules if they know them. Residents are more likely to follow rules if there are consequences associated with violating them. For associations that are professionally managed, the Violation Policy provides a clear outline for the management company to follow when identifying violations, sending violation letters, etc. This transfers the control of rule enforcement from the manager to the Board, which is essential as management companies often fail to customize policies such as these to each property they manage. Components of the Violation Policy At a minimum, the Violation Policy should include the following sections: Fines Associated with Rule Violations: Often, Boards will choose to have increasing fines for multiple infractions. Certain Governing Documents do not allow for fines or have specific rules regarding the issuance of fines. According to Florida Statute Corrective Action Time Frame: If a violation requires corrective action on the part of the resident e. Further, the policy should outline the action the association may take if a violation requiring corrective action continues for an extended period of time e. How a violation must be identified and documented should be detailed. A detailed and consistently implemented violation identification process reduces the likelihood of appeal. Sometimes the Governing Documents, often for violations relating to pets or noise, will have a process pre-established; however, in most instances this is not the case and it is up to the Board to create reasonable guidelines. Here are a few recommendations: For visible violations e. I personally recommend that only the property manager or a Board member be allowed to identify visible violations. For noise violations e. If this is not possible, written confirmation of the noise should be obtained by TWO persons i. The policy should specify how violations are handled when they are committed by non-homeowner residents e. It is my recommendation that the policy clarify that all non-homeowner residents are required to abide by the rules and regulations of the Association and may be assessed fines if they fail to do so. To encourage homeowners to thoughtfully select non-homeowner residents, and to encourage homeowners to inform them of the rules and regulations, the policy should specify that homeowners are ultimately responsible for any unpaid fines incurred by their non-homeowner residents. The policy should outline the process homeowners must follow to request an appeal of a violation. This process should include whether or not non-homeowner residents are entitled to request an appeal or if requests must be made by homeowners. An Appeals Committee must be established for the purpose and no Board members may be on the committee. If the Appeals Committee does not agree with the proposed fine, the association may not impose it. To ensure consistency, the Board of Directors may wish to draft a violation letter that the property manager, administrative assistant or Board member responsible for issuing violations should use to communicate all violations. Failure to Pay a Fine: The consequences for failure to pay a fine should be outlined in the policy. Per Florida Statute Further, the association may choose to use a collections agency to collect past due fines. Lastly, so long as the Governing

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

Documents do not prohibit such action, the association may prevent the homeowner from renting their unit if past due fines have accrued. Pursuant to Chapter These suspensions must be approved at a Board meeting and the homeowner must be notified in writing of the suspension. Once the association has begun issuing violation letters and associated fines, the association should maintain a violation log to keep track of violations, fines, appeal status, fine due date, and date of fine payment. I hope this information has been helpful.

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

Chapter 3 : Condo & HOA Issues | Association Alert

(1) Any other provision of this chapter or any other provision of the Florida Statutes to the contrary notwithstanding, the procedure for the exercise of eminent domain with respect to the taking of a portion of the common elements of a condominium shall comply with the provisions of this section.

Every condominium created and existing in this state shall be subject to the provisions of this chapter. Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be used in a contract for purchase and sale of a unit, a lease of a unit for more than 5 years, or a prospectus or offering circular only where required by law. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. A unit may be in improvements, land, or land and improvements together, as specified in the declaration. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium. All persons who have record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the declaration. Upon the recording of the declaration, or an amendment adding a phase to the condominium under s. Upon recording the declaration of condominium pursuant to this section, the developer shall file the recording information with the division within calendar days on a form prescribed by the division. Failure of the survey to meet the standards of practice does not invalidate an otherwise validly created condominium. The survey, graphic description, and plot plan may be in the form of exhibits consisting of building plans, floor plans, maps, surveys, or sketches. If the construction of the condominium is not substantially completed, there shall be a statement to that effect, and, upon substantial completion of construction, the developer or the association shall amend the declaration to include the certificate described below. The amendment may be accomplished by referring to the recording data of a survey of the condominium that complies with the certificate. A certificate of a surveyor and mapper authorized to practice in this state shall be included in or attached to the declaration or the survey or graphic description as recorded under s. Completed units within each substantially completed building in a condominium development may be conveyed to purchasers, notwithstanding that other buildings in the condominium are not substantially completed, provided that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving such building, as set forth in the declaration, are first completed and the declaration of condominium is first recorded and provided that as to the units being conveyed there is a certificate of a surveyor and mapper as required above, including certification that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving the building in which the units to be conveyed are located have been substantially completed, and such certificate is recorded with the original declaration or as an amendment to such declaration. This section does not, however, operate to require development of improvements and amenities declared to be included in future phases pursuant to s. Notwithstanding the requirements of substantial completion provided in this section, this paragraph does not prohibit or impair the validity of a mortgage encumbering units together with an undivided interest in the common elements as described in a declaration of condominium recorded before the recording of a certificate

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

of a surveyor and mapper as provided in this paragraph. In the declaration of condominium for residential condominiums created after April 1, , the ownership share of the common elements assigned to each residential unit shall be based either upon the total square footage of each residential unit in uniform relationship to the total square footage of each other residential unit in the condominium or on an equal fractional basis. Defects or omissions in the bylaws shall not affect the validity of the condominium or title to the condominium parcels. All easements for ingress and egress shall not be encumbered by any leasehold or lien other than those on the condominium parcels, unless: Any such lien is subordinate to the rights of unit owners, or 2. The holder of any encumbrance or leasehold of any easement has executed and recorded an agreement that the use-rights of each unit owner will not be terminated as long as the unit owner has not been evicted because of a default under the encumbrance or lease, and the use-rights of any mortgagee of a unit who has acquired title to a unit may not be terminated. In addition, the degree, quantity, nature, and extent of the timeshare estates that will or may be created shall be defined and described in detail in the declaration, with a specific statement as to the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be created with respect to any unit. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration for the purpose of allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units. At that time, the clerk shall pay to the person presenting the amendment to the declaration the sum of money deposited, without making any charge for holding the sum, receiving it, or paying out, other than the fees required for recording the condominium documents. If the association does not record the certificate within 90 days after the clerk has given the notice, the clerk may disburse the money to the developer. Amendments to declarations of condominium providing for the transfer of use rights with respect to limited common elements are not amendments that materially modify unit appurtenances as described in s. However, in order to be effective, the transfer of use rights with respect to limited common elements must be effectuated in conformity with the procedures set forth in the declaration as originally recorded or as amended under the procedures provided therein. This section is intended to clarify existing law and applies to associations existing on the effective date of this act. An easement in airspace which is vacated shall be terminated automatically. He or she is entitled to use the common elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other unit owners. Nothing in this subsection shall interfere with the access rights of the unit owner as a landlord pursuant to chapter The association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of association property and common elements otherwise readily available for use generally by unit owners. This subsection does not prohibit a governmental entity from enacting regulations governing activities taking place on the beach. However, a condominium association may not vote to forego the retrofitting in common areas in a high-rise building. In no event shall the local authority having jurisdiction require retrofitting of common areas with handrails and guardrails before the end of 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. 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. 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. Except as to those matters described in subsection 4 or subsection 8 , no declaration recorded after April 1, , shall require that amendments be approved by more than four-fifths of the voting interests. 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

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

following language: 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. 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. A declaration recorded after April 1, , 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. 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. 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. 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. 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 certificate of a surveyor and mapper pursuant to s. 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. Accordingly, and notwithstanding any provision to the contrary contained in this section: Those matters described in subsections 4 and 8. 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. 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. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage. 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. 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. This is a clarification of existing law. However, any association which

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

was in existence on January 1, , need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback is subject to a civil penalty pursuant to s. However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium. A director of the association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes. An officer, director, or agent shall be liable for monetary damages as provided in s. Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. An officer or director charged by information or indictment with a crime referenced in this paragraph must be removed from office, and the vacancy shall be filled as provided in s. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available. An association may not hire an attorney who represents the management company of the association. For purposes of this paragraph, a unit is presumed to be abandoned if: The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or b. No tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s.

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

Chapter 4 : Condominium Association Practice and Procedure in Florida : Peter M. Dunbar :

Laura J. Rayburn, community association attorney and co-author of Condominium Association Practice and Procedure, wrote in the St. Petersburg Times: "The interesting thing about these cases is.

Many, if not all, condo associations prohibit for-sale signs. I believe that is an unconstitutional restriction of the First Amendment. What do you think of this issue? You are entitled to your opinion. I will quote from two legal writers. Jay Steven Levine wrote in the Managers Report: Rayburn, community association attorney and co-author of Condominium Association Practice and Procedure, wrote in the St. Deed restrictions are not considered local laws, but rather are treated as private contracts relating to the ownership of real property. The same signs that local governments cannot interfere with can, however, be prohibited by homeowner and condominium associations. A friend and neighbor in our condo lives in Florida only four months of the year. The other eight months he is out of town and gives me permission, in writing, to use his assigned parking spot because it is closer to the building than my own. For years this arrangement has worked fine. This year, a new board of directors says that each unit is entitled to the exclusive use of one parking space; that each space is a limited common element; and that title to it cannot be transferred by the unit owner, so the practice must stop. Limited common element or not, as long as you and the association have been notified by the unit owner in writing that you can use the space, I see no reason why it should stand vacant. Regardless of who is using the space, it remains a limited common area assigned to the specific unit. It cannot be sold or given away separate from that unit unless permitted by the governing documents. The act, in its entirety, is too much for me to copy and mail in a little envelope. I suggest you contact your state legislator or association attorney for a full copy. As an alternative, I will send you a four-page summary of the HOA legislation passed this year, amending the act, basically bringing it up to the standards of the Condominium Act. Our unit condo is having all the outside door locks re-keyed, including the elevators. For security purposes, the new nonduplicable keys are being used. Each unit will get two keys only. The board is adamant that we cannot get an extra key for an emergency, a friend or a guest. What do you think of this? I have never heard of a complex being quite that strict, but I believe it can be. I agree, it would be useful to have an extra key for the use of a guest, even if you have to pay a deposit for it. Jack Holeman is an author and consultant on condominium issues. Write to him in care of The Orlando Sentinel, P. Box , Orlando, Fla.

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

Chapter 5 : Owner Questions Condo's Rules On For-sale Signs - tribunedigital-orlandosentinel

(2) If a condominium association, as defined in chapter , a cooperative association, as defined in chapter , or a homeowners' association, as defined in chapter , requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's control to complete a rental application before residing in a rental unit or parcel, the association must complete.

C , provide specific processes and procedures relating to condominium association Board member elections. These rules have been established to ensure fair elections and to provide all unit owners interested in running for a seat on the Board the opportunity to do so. Failure to follow these procedures not only creates unit owner distrust of the Board but may also result in fines pursuant to FAC Rule 61B Further, the association may be required to repeat the entire election process. This post will outline the Board election process and provide guidance on issues including search committees and campaigning. These rules generally do not apply to timeshare condominiums. Condominiums with less than 10 units are not obligated to follow these procedures. Regular Board elections to fill vacancies created by the expiration of a Board term must be held at the annual meeting of the membership regardless of whether a quorum is present. Any Board vacancies not filled by an election e. This notice may be part of another unit owner communication such as a routine newsletter. There is no specific format in which this notice must be given but the notice should include, at a minimum: Unit owners may send a letter certified mail or regular mail , an email, a fax, or hand-deliver a written statement. The information sheet must be a one-sided, 8. Associations may use two-sided printing when distributing the information sheets discussed below to reduce paper usage. Further, felons that have not had their civil rights restored for at least 5 years are not eligible. There is no specific format required for this notice but I recommend that it include: Details surrounding how to cast a vote in the Board member election discussed below Details surrounding how to fill out and submit the annual meeting limited proxy Explanations of any specific items e. Voting in the Election To cast a vote in the election, a unit owner must write their name, unit number and signature on the outside of the outer envelope. They must select their chosen candidates using the ballot nothing else is to be written on the ballot, no write-in candidates are allowed and place the ballot in the inner envelope. Unit owners may cast their votes using the same process at the annual meeting up to the point that outer envelopes begin to be opened. Once a ballot is submitted, it cannot be rescinded or changed. C has specific rules for voting machines. Counting Votes The vote count must be conducted at the annual meeting in a location that is visible to all attendees. Once all ballots have been collected, the names and unit numbers listed on the outer envelopes will be checked against a list of eligible voting by an impartial committee i. Once completed, all inner envelopes should be removed from outer envelopes and placed in a separate receptacle by the impartial committee. The inner envelopes will then be opened. The results should be announced at the annual meeting. If not achieved, the association must begin the election process again. All previous voting and vote counting procedures must be followed. Election Official Records The first notice, second notice, intents to run, information sheets, envelopes, and ballots including those marked as DISREGARDED are considered official records of the association and must be maintained for at least one year from the date of the election. Search Committees and Campaigning The F. That being said, there is no reason why a Board can not put together a search committee responsible for identifying unit owners that may be good Board members and discussing with them the possibility of running for the Board. Further, there is nothing prohibiting current Board members or the association manger from encouraging certain unit owners to run for the Board. Campaigning for Board elections is allowed per the FAC and the Florida Statutes; however, it is in the best interest of the Board so set up some guidelines regarding campaigning. For example, the Board may identify certain areas e. If your manager is telling unit owners how to vote in an election, consider submitting a complaint to the DBPR regarding their behavior. If you have any questions about the above process, do not hesitate to comment or send me an email. Templates for any of the notices or forms discussed above are

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

available upon request. Emily Emily Shaw is a condominium homeowner in Tampa, Florida and a Director of VERA Property Management , a firm providing full-service community association management in the Tampa Bay Area as well as consulting, financial and legal services to all Florida community associations.

DOWNLOAD PDF CONDOMINIUM ASSOCIATION PRACTICE AND PROCEDURE IN FLORIDA

Chapter 6 : Chapter 83 Section - Florida Statutes

The Florida Statutes, in combination with the Florida Administrative Code (F.A.C), provide specific processes and procedures relating to condominium association Board member elections.

Named the 9 fastest growing education company in the United States. Thank you for your support! Supreme Court of California P. When the condominium association defendant the Association learned of the cats, it demanded their removal. Nahrstedt sued the Association, arguing that the restriction was unreasonable as applied to her cats, which were kept indoors and not free to roam any common areas. The Association appealed to the Supreme Court of California. Rule of Law Alert The rule of law is the black letter law upon which the court rested its decision. To access this section, please start your free trial or log in. Issue Alert The issue section includes the dispositive legal issue in the case phrased as a question. Holding and Reasoning Kennard, J. Alert The holding and reasoning section includes: A "yes" or "no" answer to the question framed in the issue section; A summary of the majority or plurality opinion, using the CREAC method; and The procedural disposition e. What to do next! Unlock this case brief with a free no-commitment trial membership of Quimbee. Quimbee is one of the most widely used and trusted sites for law students, serving more than 97, law students since Some law schools—such as Yale, Vanderbilt, Berkeley, and the University of Illinois— even subscribe directly to Quimbee for all their law students. Read our student testimonials. Quimbee is a company hell-bent on one thing: Read more about Quimbee. Written by law professors and practitioners, not other law students. The right amount of information, includes the facts, issues, rule of law, holding and reasoning, and any concurrences and dissents. Access in your classes, works on your mobile and tablet. Massive library of related video lessons and high quality multiple-choice questions. Easy to use, uniform format for every case brief. Written in plain English, not in legalese.

Chapter 7 : Advisory Legal Opinion - Condominium Ombudsman's powers

Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. , the theft or embezzlement of funds of a condominium association is punishable as provided in s. , and the destruction of or the refusal to allow inspection or copying of an official record of a condominium.

Chapter 8 : Nahrstedt v. Lakeside Village Condominium Ass'n, Inc. Case Brief - Quimbee

Florida Rules of Civil Procedure 3 RULE MAGISTRATES RULE GENERAL MAGISTRATES FOR RESIDENTIAL.

Chapter 9 : Peter M. Dunbar | Open Library

With regard to what changes are considered material alterations or substantial additions to the Common Elements or association property, the seminal case in Florida is Sterling Village Condominium Association, Inc. v. Breitenbach, which was decided by the Fourth District Court of Appeals in In Sterling Village, the Court stated that a.