

The HOA

March 23, 2023

DIRECTORS' DIGEST



A Publication of the Law Offices of Lobeck & Hanson

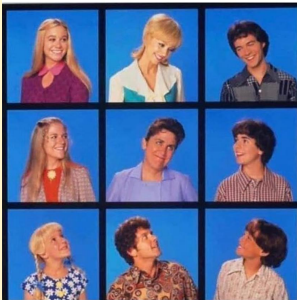
LEGAL UPDATE

Also In This Issue:

Regulating Vacation Rentals



Are Zoom-Only Meetings Legal?



**2023
Legislature
Poses
Challenges
for HOA's**

As we emerge from a successful battle with an international pandemic, Directors are faced with both continuing and new challenges to balance budgets, enforce restrictions and otherwise maintain and improve your communities.

Throughout it all, The Law Offices of Lobeck and Hanson stands ready to assist HOA's to understand and apply the law in pursuit of cost-effective solutions to meet the needs of their neighborhoods. We appreciate those who partner with us in that goal.

In this edition of the *HOA Directors' Digest*, we discuss both existing and proposed laws which impact HOA's for better or (all too often) for worse. Navigating the legal minefield is not always easy but it helps to have skilled and experienced counsel by your side.

We hope that this information proves to be useful, and perhaps interesting, in addressing the needs of your community.

WE ARE PLEASED TO INTRODUCE OUR NEWEST ATTORNEYS



Kimlyn Walker joined our firm in 2022 and assists our clients in a broad range of matters, including land use and litigation. Prior to obtaining her law degree, for 18 years Kimlyn worked for the Hillsborough County Planning Commission as a land use planner, including in a principal and senior capacity.

Additionally, Kimlyn has effective public presentation skills and is adept at working with both the public and governmental agencies. Kimlyn has presented myriad times before local governments, both county and city, and a variety of intergovernmental agencies. She has counseled and advised clients on development issues in both unincorporated county and city municipalities. With an extensive history in real estate, as well as condominium and HOA legal services with a major local firm before joining Lobeck and Hanson, Kimlyn is skilled in research, analysis, negotiating, drafting, and other legal services.



Caitlin Dreher joined our firm shortly after passing the July 2022 Florida Bar exam. She graduated from the University of Florida and Stetson University College of Law. While attending law school, Caitlin worked as the Litigation Operations Manager at BLG Association Law PLLC, where she became well versed in Condominium and HOA lien foreclosures, as well as acting as the foremost legal blogger on the firm's website. Caitlin also has previous experience as an editor and a project manager, developing skills in editing, research, and drafting. Caitlin serves our clients principally in litigation matters, including lien foreclosures, legal research and other services.



Lobeck & Hanson

Your Association Attorneys



The only law office in the region with three Florida Bar certified specialists in Condominium and Planned Development Law

2023 Legislative Preview

Several bills filed in the 2023 Florida Legislature are of interest to Chapter 720 Homeowners Associations. They include the following:

Enforcement Fines

SB 872 and **HB 545** would reduce the maximum HOA enforcement fine — unless otherwise provided in the governing documents — from \$1,000 to \$500. Also, a lien may not be filed for less than \$500, down from \$1,000 in the present law.

Electronic Voting

SB 316 would allow a unit owner to consent to HOA electronic voting “electronically” as an alternative to consenting “in writing”, as at present.

First Responder Flags

HB 437 adds to the flags which a homeowner may fly despite provisions in the HOA governing documents a “first responder flag”, which “recognizes and honors” any or all of the following: law enforcement officers, firefighters, paramedics or EMT’s, correctional officers, 911 telecommunicators, nurses and search and rescue participants. This is added to protection for United States, Florida, military services and POW-MIA flags. The protected flags must be portable, removable and not more than 4 1/2 feet by 6 feet. The legislation would expand from one to two the number of flags a homeowner may display on his or her property. Current law protecting a flagpole up to 20 feet high on that property remains, with the first responder flag added to the options for a flag to add to the United States flag.

Digital Copies of HOA Records

HB 788 would provide that before October 1, 2023, the HOA must provide to every Association member, and to every new member thereafter, “a digital copy of the association’s rules and covenants.” Also, the bill would require an HOA upon amending



the “rules or covenants”, to provide an “updated copy” of those documents to all members. The legislation (inconsistently) does not require that the updated copy be provided in digital form but leaves the manner and timing up to an HOA rule.

Associations Can’t Defend Themselves

In the annals of absurd bills which seek to advance the animus of some owners against their Associations, this one takes the cake. **HB 919**, titled the “Community Associations Bill of Rights,” prohibits the use of Association funds to pay for attorney’s fees to defend a civil or criminal proceeding or an administrative or arbitration proceeding.

There are very many other changes in this legislation, some of which add provisions of the Condominium Act to the HOA Act which expand the fiduciary duty of Directors and connect certain improper conduct by an officer or Director to existing criminal statutes.

Other measures would require that all parcel use restrictions be in the governing documents and not HOA Rules, give the Division of Florida Condominiums, Timeshares and Mobile Homes authority over complaints of “criminal activity” in HOA’s and make numerous changes regarding fines, records, owner payments and otherwise. Fortunately, this bill is not given much chance of passing the 2023 Legislature.



State Outlaws Some Development Limits



Some Homeowners Associations seeking to preserve neighborhood compatibility now face a daunting new challenge.

The 2023 Legislature is passing a bill, dubbed the “Live Local Act”, to strip local governments of their ability to limit the density and height of new development in many regards, on the false excuse of aiding affordable housing.

The legislation requires that certain portions of the protected development (as low as 10% in some instances) include “affordable housing”. However, the definition of that term qualifies housing which is affordable (costing not more than 30% of income) to those earning not more than 120% of the “area median income.” In the Sarasota-Bradenton-North Port area, for example, 120% of the area median income for a family of four is \$108,480. (That’s from about one year ago and the annually updated number for 2023 will be much higher). As such, developers get the new benefits while doing nothing for those truly in need.

Indeed, studies show that the City of Sarasota for

example, has a surplus of housing to serve those with 120% area median income, and that the need exists for the workforce and others in the range of 80% to 60% of area median income.

Where applicable, the county or city may not limit density lower than the highest allowed elsewhere in the jurisdiction. The same goes for height, within one mile, or three stories whichever is greater.

Most of the loosened development rules apply to areas zoned for commercial, industrial or mixed-used development. As such, neighborhoods surrounded by only residential zoning need not be concerned. It’s homeowners next to property zoned mixed-use, commercial or industrial, now or in the future, who may face much taller and denser development next door than they bargained for when they bought their homes.

Space Force Flags Are Finally Legal



While the 2022 Florida Legislature — for better or worse — did not pass any other amendments to Chapter 720, Florida Legislature, one notable bill did become law.

The United States Space Force Flag has been added to the other armed forces flags which owners may fly on certain patriotic holidays, to a certain maximum size and in a respectful way.

Are Zoom-Only Meetings Legal?

With the pandemic behind us and social distancing with it, many Associations still find meetings by Zoom, which became a popular precaution, to remain convenient.

Board meetings by teleconference, including Zoom, have always been legal for Homeowners Associations, so long as there is a means of observing and speaking for owners, at a physical location (or, at some legal risk, by a noticed link or other means to join the meeting).

A Zoom-only membership meeting is more problematic, particularly since HOA emergency powers went away with the ending of the COVID-19 state of emergency.

However, a hybrid form of Zoom plus attendance in person for those who so choose remains a viable option under the law.

Such participation is supported by a provision of the Florida Nonprofit Corporation Act, which applies to HOA's to the extent not in conflict with Chapter 720. Section 617.0721(3), Florida Statutes, provides:

If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, members and proxy holders who are not physically present at a meeting may, by means of remote communication:

- (a) Participate in the meeting.
- (b) Be deemed to be present in person and vote at the meeting if:
 1. The corporation implements reasonable means to verify that each person deemed present and authorized to vote by means of remote communication is a member or proxy holder;
 2. The corporation implements reasonable

measures to provide such members or proxy holders with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members . . .

Note that this provides for attendance, participation and voting by members and proxyholders "who are not physically present at a meeting." It does not explicitly do away with the option of a member to attend a physical meeting when such form of meeting is required by statute or the governing documents.



Section 720.306(2), Florida Statutes provides similarly for HOA's, as to the "place" of the annual meeting, but without a reference to a default location within 45 miles. In any event, the Association Bylaws typically state a place of the annual meeting or require the Board of Directors to provide for one.

Voting for Directors via Zoom would not be allowed in an HOA where the documents provide for election by mailed secret ballots. However, while the opening and counting of the ballots must be done at a physical meeting location, it could be streamed in a Zoom meeting – perhaps in a split screen if it is desired to conduct the counting while other business proceeds.

So again the best approach is a hybrid meeting, with attendance allowed -- and any secret ballot election conducted -- at a physical meeting but participation available by Zoom as well as by proxy.

Association representatives should work with their attorney to draft a resolution and rule to establish the protocols for membership meetings by Zoom, including those required by s. 617.0721(3), Florida Statutes, if that is desired to be used for membership meetings.



The Law Offices of Lobeck and Hanson is pleased to provide Instant Real-Time Access To All of Your HOA's Collection Accounts With the Firm

Just email us at law@lobeckhanson.com for your user name and password to use on our website

Homeowners Face Insurance Crisis

According to the Insurance Information Institute, property insurance premiums in Florida are expected to increase an average of about 40% in 2023, despite actions taken in two recent special sessions of the Florida Legislature. Some homeowners have seen even worse, at times being put in doubt of even being able to obtain coverage.

Legislators say it could take up to two years for their “reforms” to reduce premiums, but it remains unknown what effect they will have, if any.

Some risk of insurers fleeing Florida has been reduced by \$2 billion that the state will make available to insurance carriers through 2023 for “reinsurance”, that is insurance for insurance companies against not being able to pay claims.

Other measures may help consumers a bit. One provides that if an insurer denies coverage for a roof because it is more than 15 years old, you are able to overcome that with a professional building inspection showing that the roof still has five or more useful years remaining. (That law is being attacked in court by the roofing industry on technical grounds, because it delays roof replacements).

But most of the Legislature’s approach has been to incentivize insurers to hold the line on premiums by measures which will hurt consumers in other ways.

Also, the Legislature is discouraging lawsuits by consumers against their insurance companies for refusing to pay what the insurance policy provides.

Towards that end, the Legislature is limiting the right to recover attorney’s fees by a consumer prevailing in such a legal action.



Also, the Legislature is making it more difficult for consumers to obtain coverage from Citizens Property Insurance Corporation, Florida’s “insurer of last resort.” If a consumer can buy insurance from an authorized private insurer at a rate not more than 20% higher than Citizens’ premiums, it must do so.

The real solution, advocated by some years ago but killed by insurance industry lobbyists, is to have the state take over hurricane insurance while leaving other lines of insurance to the private industry.



The Challenge of Vacation Rentals

Homeowners Associations are being called upon to deal with unregulated short-term rentals in communities which are not designed for them.

Increasingly, owners have been turning to online services such as Airbnb, VRBO, Homeaway, Flipkey and others to arrange short-term rentals of their homes, at times renting rooms while the owner is in residence and often when the owner is away — perhaps even as a full time business.



This can cause problems with excessive parking on lawns and elsewhere, loud noise and other nuisances from partying, security concerns and a general degradation of the residential nature of the community.

Of course, the first line of defense is to adopt and enforce rental restrictions, such as minimum length and maximum frequency, prohibition of renting individual rooms, occupancy number limits (perhaps calculated per bedroom) and Association screening and approval. Existing restrictions should be examined and strengthened as desired.

However, under Chapter 720, Florida Statutes, amendments to impose increased restrictions on rentals adopted after July 1, 2021 only apply to a parcel owner who acquires title to the parcel after the effective date of the amendment or to a parcel owner who consented to, or voted to approve, the more restrictive rental regulation. The exception is that the creation of a six month minimum rental term or a maximum rental frequency of three times a year will apply to all parcel owners.

Often, an Association will seek to enforce a restriction against transient rentals based on an

ad on Airbnb or another service. A lesson on this may be learned by a Circuit Court case in which Sarasota County was denied the right to enforce its 30-day minimum rental term in most areas based on such an ad, whereupon it amended its Zoning Code to also prohibit advertising for a rental less than the minimum term allowed by the Code. Accordingly, Associations concerned about transient rentals should be sure to include in their restrictions not only rental limits but also a prohibition of advertisements of rentals which violate them.

While local ordinances may address some problems of vacation rentals, and several cities and counties have 30-day rental minimums, section 509.032(7), Florida Statutes prohibits any new ordinance after June 1, 2011 from prohibiting vacation rentals or regulating their duration or frequency.

Bills pending in the 2023 Florida Legislature, **SB 92** and **HB 105**, specifically allow a local ordinance which requires vacation rental owners or operators to provide the local government with contact information for someone who must be available to respond to complaints of renter conduct at a publicly listed phone number.

In any event, reliance on rental term code enforcement by local governments usually proves unsatisfactory. As such, sufficient restrictions and enforcement by the Association is key to regulating unwelcome transient rentals.





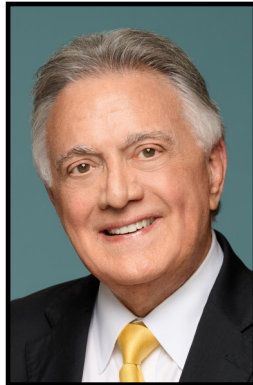
Law Offices

Serving Southwest
Florida and Beyond

Lobeck & Hanson

P.A.

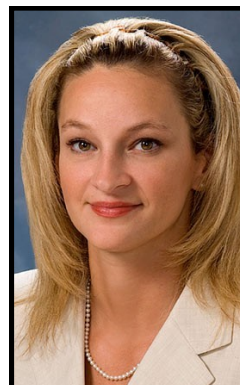
**A Full Service Law Firm With an Emphasis on Representing
Condominium, Cooperative and Homeowners Associations**



Dan Lobeck



Mark Hanson



Michelle Rowe



Leah Ellington



Kimlyn Walker



Caitlin Dreher

**Assessment
Collections
Rules
Enforcement
Construction
Defect Claims
*Neighborhood
Protection*
Document
Revisions
Contracts
Association
Meetings
*Legal Advice***

**Also: Land Use, Estates,
Personal Injury, Family
Law and Other Services**

2033 Main Street, Suite 403, Sarasota, Florida 34237

(941) 955-5622

law@lobeckhanson.com

Check Out Our Website at www.lobeckhanson.com

Legal Advertisement