

The CO-OP ASSOCIATION

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 Florida Legislature Considers Major Changes to Mobile Home Act, Governing the Relationship of a Cooperative Association With Non-Member Home-owners on Rental Lots

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 Associations 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 *Co-Op Directors' Digest*, we discuss both existing and proposed laws which impact Cooperatives for better or (worse). Navigating the legal minefield is not always easy but it helps to have skilled and experienced counsel by your side.

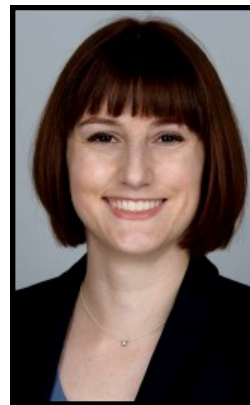
We hope that this information proves to be useful, and perhaps interesting, in addressing the needs of your community.

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.



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2023 Legislative Preview

There are not many bills filed in the 2023 Florida Legislature which affect Cooperative Associations.

SB 154 and **HB 1395** amend Chapter 719, as well as Chapter 718, the Condominium Act, to address some of the problems in 2022's legislation in the wake of the condominium building collapse in Surfside, Florida. However, because the law — which provides for building inspections and mandatory reserves — is generally limited to buildings three stories and higher, it affects few cooperatives in this region, which tend to be manufactured home parks. Any Co-op Association which has residential buildings of three stories or more, however, should consult with legal counsel about this law.

SB 1378 and **HB 751** would amend Chapter 723, Florida Statutes. That law governs the Association's relationship with homeowners who rent lots owned by the Association but are not proprietary leaseholders. That often exists in mobile home parks which were converted to Cooperatives, during which lots were left where the tenants chose not to buy into the Co-op as shareholders. Among the proposed changes are the following:

Regulation would be switched from the Division of Florida Condominiums, Timeshares and Mobile Homes to the Florida Attorney General.

As to the rental lots, new obligations would be imposed on the Association, as follows:

- Maintain improvements located on the lot for which the park owner is responsible in a good state of repair and in a good state of appearance, safety, and cleanliness.
- Provide park residents and their guests and homeowners' associations and other homeowner-organized groups or entities with use of and access to the common areas, including buildings and improvements thereto, at all reasonable times and without requiring an additional fee or

requiring additional insurance coverage if the use is already covered by an existing insurance policy held by the mobile home park owner.

- Refrain from enforcing any park rule or regulation not adopted in accordance with s. 723.037.
- Refrain from collecting any lot rental increase that is the subject of pending mediation or litigation.

Creates an expanded mediation process for disputes arising under the Mobile Home Act.

Creates liability for damages for violations of the Mobile Home Act, including in treble (triple) damages if so requested and awarded by the court in its discretion.

Expands the authority of a tenants' organization, referred to as a "homeowners' association", to sue on behalf of all tenants beyond the current subject of maintenance, management, and operation of the park property to "matters of common interest to most or all" tenants, including but not limited to disputes arising out of the Mobile Home Act.



State Outlaws Some Development Limits



Some 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

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, communities surrounded by only residential zoning need not be concerned. It’s residents 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 originally bargained for.



Caution: In 2021, the Florida Legislature amended Chapter 719 to create a statutory form notice of late assessments that must be delivered to the unit owner before the Association can require the payment of attorney fees related to past due assessments. The notice must specify the amount owed and allow the unit owner at least 30 days to pay the past due assessments without paying additional attorney fees. A sworn affidavit by a Board member, officer, or agent of the Association, or a licensed manager, attesting to the mailing will establish a rebuttable presumption that the association complied with these notice and delivery requirements for the notice of late assessments.

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 719. 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.

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 a Cooperative Association. 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.



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Associations and Owners 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 and Associations 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

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

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.

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 prohi-

bition of advertisements of rentals which violate them.

Vacation rentals also can pose a problem on neighboring properties.

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 as to transiency within the Cooperative would generally prove unsatisfactory. As such, sufficient restrictions and enforcement by the Association is key to regulating unwelcome transient rentals.





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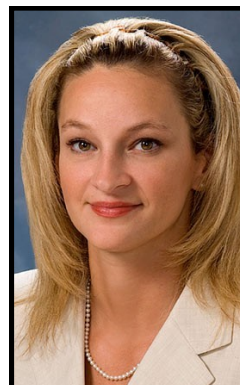
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