Good News for HOAs: Courts Clarify Deadline for Governing Document Lawsuits

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Homeowner association board members and their attorneys can breathe easier now that two Florida appeals courts have clarified the deadline for challenging an association's governing documents. Through an affirmative defense based upon time limitations, associations should see quick, concise, and more cost-effective resolution of lawsuits brought by condominium owners and homeowners who question the validity of the governing documents of their communities.

The recent court rulings establish that any challenge to the governing documents must be brought within five years of their recording or, in certain situations, five years from the date in which the challenger takes title to the property, if subsequent to the recording.

Florida's First District Court of Appeal brought clarification to this issue in February 2016. A husband and wife had sued their HOA in July 2013 challenging the validity of amendments to the HOA's restrictive covenants that were passed in 2001 and 2005. The trial court ruled the amendments were not properly voted on and invalidated both.

Subsequently, another homeowner entered the case and appealed to the First DCA, claiming that the lawsuit was filed long after the five-year time limit on both amendments had expired. Interestingly, the HOA did not present that defense at trial. It became an issue only when the trial judge allowed the other homeowners to intervene.

The appeals court found that the time limitation had in fact expired. Its rationale was founded in part on a section of Florida statutes which provides that "legal or equitable action on a contract, obligation, or liability founded on a written instrument… shall be commenced within five (5) years." The decision was also based on one of its opinions issued in 2015 regarding the statute of limitations and on a 2014 ruling by the Fourth District Court of Appeal.

In the case resulting in the 2015 opinion, a developer had recorded an amendment to the restrictive covenants in December 2000. In March 2009, the HOA challenged the validity of the amendment. The court held the association had failed to act within the five-year time limit. It said that whether one is a condominium association governed by Florida Statutes Chapter 718 or a homeowners' association governed by Florida Statutes Chapter 720, is determined by the association's governing documents, including declarations, bylaws, articles of incorporation, including any amendments. Once a governing document or amendment is recorded, the clock starts to run on a challenger's ability to contest the validity of its controlling instrument.

The 2014 4th DCA ruling further solidifies the foundation on which HOAs and others can turn back challenges to their governing documents based on the time limit. The 4th DCA held the five-year statute of limitations barred a homeowner from contesting the validity of the association's membership requirement.

In that case, the individual purchased a home in 2006 in a community that had an HOA for its neighborhood and a master property owners'

association (POA) in a development that had a mandatory membership requirement in a golf and country club. In 2005, the HOA sued the POA over the latter's new requirement that every homeowner join the club and pay dues. The country club joined the lawsuit and a settlement in 2010 required those who bought a home within the HOA after 2004 join the club and pay dues retroactive to their closing date.

That did not sit well with one HOA member, who later sued on three counts, including that the membership amendment was improperly enacted. The POA argued the statute of limitations had expired and the trial court agreed, saying the clock began ticking when the amendment was recorded in 2004 yet the lawsuit was not filed until 2010.

The homeowner appealed to the 4th DCA, which affirmed the trial court's ruling after a rehearing. The opinion stated in part that "the statute of limitations with respect to such a challenge began to run from the 2004 date the amendment was recorded in the public records."

Both sides had agreed that the Florida statute regarding the five-year limit applied. The appeals court rejected the argument that the clock started when the home was purchased. It cited a 2nd DCA ruling involving financing of road improvements in which the appeals court ruled that the clock runs either from the date the assessments were created or the date they were approved.

The 4th DCA also looked back to one of its prior opinions involving a condominium development dispute, in which the court had written, "Parties engaging in transactions regarding real property must rely on the recorded instruments affecting title to property. Where, as here, an amendment submitting property to the condominium form of ownership has been recorded, it is a notice to the world that the property is subject to all of the provisions and regulations of the declaration."

HOAs and their attorneys can learn several lessons from the First and 4th DCA opinions. First, the start date is critical to any defense that the time limit has expired. Second, documents need to be properly recorded so that there can be no ambiguity as to that date. Armed with a precise calendar, associations can defeat claims challenging the validity of their governing documents regardless of their merit.

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