

NOVEMBER 2011 MONTHLY COLUMN

NEW LAWS GOVERNING SUSPENSION OF VOTING RIGHTS MAY AFFECT ASSOCIATION QUORUM REQUIREMENTS AND OTHER VOTING REQUIREMENTS

Effective July 1, 2011, the Florida Legislature clarified both a condominium and homeowners association's authority to suspend voting rights of any owner who is delinquent for more than ninety (90) days in the payment of any monetary obligation due to the association. However, one of the key components of the new legislation is how the suspension of voting rights may affect the establishment of a quorum as well as the voting requirements for other membership issues.

Section 718.303(5), Fla. Stat., was amended to state as follows:

A voting interest or consent right allocated to a unit or member which has been suspended by the association may not be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws.

The Homeowners Association Act, at Section 720.305(4), Fla. Stat., provides almost identical language. Although there has been some uncertainty as to exactly what this language means, the new statutory language has recently been interpreted by the Division of Condominiums, Time Shares and Mobile Homes to mean that the number of members required to establish a quorum, to conduct an election or to approve any membership action, shall be reduced by the number of owners who are delinquent and have had their voting rights suspended at a duly called Board meeting. For example, let's assume a condominium has 100 units, and 10 unit owners have their voting rights suspended at a duly called Board meeting. Let's also assume, for the sake of this example, that the association's quorum requirement pursuant to the documents is 51%. Under normal circumstances, a quorum would be established upon 51 out of 100 owners attending the membership meeting in person or by proxy. However, under the new statutory language, the total number of voting interests would be reduced by the 10 suspended owners, such that the quorum would now require 46 out of the 90 remaining owners to attend the meeting in person or by proxy.

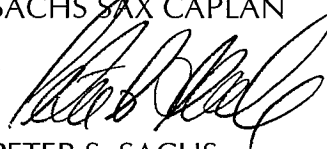
Of course, if you are a homeowners association, then your quorum requirement pursuant to statute is 30% unless a lower number is provided in the governing documents. Therefore, using the above numbers as an example, under normal circumstances, a homeowners association quorum requirement would be 30 out of the 100 owners attending in person or by proxy. Arguably based on the new statutory language, you would then reduce the total number of homes by the 10 suspended owners, and your quorum requirement would then become 27 out of the 90 remaining owners.

Please note that there has been some debate among practitioners as to whether or not the above referenced statutory language actually accomplishes the purposes for which it was intended. As of this date, the Division is taking the position that the intent of the statute was to reduce the number of voting interests that would be necessary to establish a quorum or take such other actions as identified above. In fact, the Florida legislature

appears to recognize the ambiguity and there is currently pending legislation which was recently filed which would seek to clarify this language to make it clear that the intent of the statute is to reduce the number of voting interests necessary to establish a quorum or take such action. Of course, we will keep you posted on any changes in the pending legislation.

In this regard, it is very important to make sure that suspensions of voting rights are handled in accordance with the procedures and requirements under the Florida statutes. Should you have any questions or require further clarification as to the authority to suspend voting rights and its effect on the establishment of a quorum or other membership votes, we strongly suggest you consult with association counsel.

SACHS SAX CAPLAN

A handwritten signature in black ink, appearing to read 'Peter S. Sachs', written in a cursive style.

PETER S. SACHS