



Florida Law on Pre-Turnover and Post-Turnover Community Association Contracts

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FLORIDA LAW ON PRE-TURNOVER AND POST-TURNOVER COMMUNITY ASSOCIATION CONTRACTS

Written by [Hans C. Wahl, Esq.](#) – 2/4/19

Community associations are businesses. Not only are they corporate entities, but they collect revenue (i.e., owner assessments) and incur expenses planned for through a yearly budget. Just like any other business, community associations find themselves in unfavorable contractual relationships with other entities. Unique to community associations, these entities often find themselves in undesirable contracts entered into by the developer prior to the owners having any say in the agreement or its terms. This article will provide an overview of the community association members' options and rights concerning pre-turnover contracts and post-turnover contracts.

Pre-Turnover Contracts By the Developer

Pre-turnover contracts and other documents established by the developer for condominium and homeowners' associations must be "fair and reasonable." Fla. Stat. § 718.302(4); Fla. Stat. § 720.309(1). For condominium associations, members have the authority to cancel any grant or reservation of right made by a contract, lease, or other document entered into by the developer on behalf of the association prior to turnover, which provides for

the association's operation, maintenance, or management. Fla. Stat. § 718.302(1). The option for cancellation is available pre-turnover when the non-developer members own seventy-five (75%) percent or more of the voting interests in the condominium. Fla. Stat. § 718.302(1)(a). Once that threshold is met, the grant, reservation or contract may be canceled by the concurrence of the owners of not less than seventy-five (75%) percent of the non-developer voting interests. *Id.*

"The legislature has simply determined that when 75 percent of the units in a condominium complex are non-developer owned, those units owners should be free to reject operation, maintenance, and management contracts previously made by the developer-controlled association. . . . The intent of the legislature to confer upon unit owners other than the developer cancellation rights in addition to rights they would have under ordinary contract law is apparent." *Tri-Properties, Inc. v. Moonspinner Condominium Ass'n, Inc.*, 447 So.2d 965 (Fla. 1st DCA 1984).

The same threshold requirements apply to multi-condominium associations pre-turnover. In multi-condominiums, if the non-developer members own at least seventy-five (75%) percent of the voting interests in any of the condominiums operated by the association then the members have the right to cancel such contracts. Any grant, reservation, or contract for the maintenance, management, or operation of buildings containing the units in that specific condominium or of improvements used only by members of that specific condominium may be canceled

by concurrence of the owners of at least seventy-five (75%) percent of the non-developer voting interests. Fla. Stat. § 718.302(1)(b).

If the members of units in a condominium have the right to use property in common with owners of units in other condominiums and those condominiums are operated by more than one association, then it is a little more difficult to cancel pre-turnover contracts. No grant, reservation, or contract for maintenance, management, or operation of the property serving more than one condominium may be canceled until non-developer members have assumed control of all of the associations operating the condominiums that are to be served by the recreational area or other property. Fla. Stat. § 718.302(1)(d). At that time, cancellation may be effected by concurrence of the owners of not less than seventy-five (75%) of the total non-developer voting interests in those condominiums. *Id.*

If a grant, reservation, or contract is canceled by the members prior to turnover, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the non-developer voting interests in the condominium. Fla. Stat. § 718.302(1)(a). Any grant, reservation or contract entered by the developer prior to turnover that requires the association to purchase condominium property or to lease such property to another party is deemed ratified unless rejected by a majority of the non-developer voting

interests within eighteen (18) months after turnover. Fla. Stat. § 718.302(2).

The public policy is to allow the members an opportunity to terminate without cause any grants, reservations or contracts entered by the developer which the members do not like. *Breakers of Fort Walton Beach Condominiums, Inc. v. Atlantic Beach Management, Inc.*, 552 So.2d 274 (Fla. 1st DCA 1989). Within eighteen (18) months from the date of turnover, the members can terminate such contracts without having to prove that the contract was breached by the other party or that it is unfair and unreasonable. *Tri-Properties, Inc.*, 447 So.2d at 967. Developers cannot force members to waive their cancellation rights. See *Ainslie at Century Village Condominium Ass'n, Inc. v. Levy*, 626 So.2d 229 (Fla. 4th DCA 1993).

The ability for homeowners' associations to cancel pre-turnover contracts is not the same as it is for condominium associations. The HOA Act simply does not provide the same express rights as the Condominium Act. However, a homeowners' association may be able to seek relief if a contract is not "fair and reasonable." See Fla. Stat. § 720.309(1).

Post-Turnover Contracts By the Owner-Run Board

Post-turnover, the members do not enjoy the same ability to cancel contracts entered into by an owner-run board. Any grant, reservation, contract or other document that provides for the operation, maintenance, or management of the association must not conflict with the powers and duties of the association or the

rights of the members. Fla. Stat. § 718.302(3). All contracts that are not to be fully performed within one year for the purchase, lease or renting of materials or equipment, and all contracts for the provision of services, must be in writing. Fla. Stat. § 718.3026(1); Fla. Stat. § 720.3055. If any post-turnover contract violates these provisions then that contract is likely voidable as a matter of law.

Any bulk services agreement entered into by the board of directors of a condominium or homeowners' association may be canceled by a majority of the voting interests present at the next regular or special meeting of the association following the making of the contract. Fla. Stat. § 718.115(1)(d)1.; Fla. Stat. § 720.309(2)(a). Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority approving vote, such contract shall be deemed ratified for its term. *Id.*

A party contracting to provide maintenance or management services to a condominium association may not purchase a unit at a foreclosure sale resulting from the association's foreclosure for unpaid assessments. Fla. Stat. § 718.3025(5). If fifty (50%) percent or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to the association, the contract can be canceled by a majority vote of the members other than the contracting party. *Id.* If your association has questions concerning its contractual rights and obligations in light of the above-

referenced statutes and case law, it should consult with an attorney experienced in community association matters.

For more information on the topic of community association contracts and developer turn-over, read these additional blog articles:

- <https://www.jimersonfirm.com/blog/2019/01/community-association-bulk-services-agreement-cable-and-internet-service/>
- <https://www.jimersonfirm.com/blog/2017/02/condo-owners-developer-turnover-part-2/>

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