

Developer's Challenge to Notice of Meeting Not Proper Defense to Construction Defect Claim

CONSTRUCTION DEFECT CASE RULING IN FAVOR OF HOA

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Clarification of Homeowners Association Voting Requirement as a Pre-Requisite to Filing a Lawsuit Against the Developer for Construction Defects: [Lake Forest Master Community Association, Inc. v. Orlando Lake Forest Joint Venture, et al., Case No. 5D08-2096](#).

Background

Lake Forest Master Community Association, Inc. ("Lake Forest") filed a lawsuit for construction defects against the Developer, after the membership voted in favor of doing so as required by Section 720.303(1), Florida Statutes.

The Developer claimed that Lake Forest shouldn't be permitted to continue its lawsuit since it failed to properly notice the meeting. The trial court agreed, and entered Summary Judgment against Lake Forest.

[Section 720.303\(1\), Florida Statutes](#), provides, in relevant part:

After control of the association is obtained by members other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained.

Lake Forest appealed the ruling. While it could have re-filed, re-filing would have impacted its case tremendously due to a change in [Section 95.11\(c\)\(3\), Florida Statutes](#), which is the statute of repose. The statute of repose changed from 15 to 10 years. Re-filing the lawsuit would have

eliminated any claims associated with latent construction defects that existed in excess of ten (10) years.

Appellate Court Evaluates Annual Meeting Procedures

The Appellate Court evaluated the procedures utilized by Lake Forest to call the annual meeting, as well as the procedures utilized to recess and reconvene the meeting. The court noted:

- Notice of the annual meeting was furnished by mail to all owners and posted as required by law. The mailing included a general proxy;
- Minutes of the annual meeting indicated that the members agreed to recess the meeting and reconvene it for specific date. There was testimony indicating that the President likewise announced the time and place for reconvening the meeting;
- At the reconvened meeting, the President announced the annual meeting would be reconvened again at a specific date, place and time. That information is reflected in the minutes;
- A Motion was made, seconded and the majority of members participating voted in favor of filing legal action against the developer when Lake Forest reconvened the meeting the second time.

The Court relied on both Section [720.306\(7\)](#), Florida Statutes, and the Association's bylaws when concluding it was not necessary for Lake Forest to send written notice of reconvening the meeting to the entire membership since the date, time and place were announced before it went into recess.

Moreover, the Court also concluded that dismissal of the case by Summary Judgment was not appropriate, even if the Association failed to comply with technical procedural rules. Rather, it said the case should have been abated for a period of time to enable the Association to correct procedural deficiencies.

The Opinion was filed April 3, 2009. This case clarifies several important points of law for Florida community associations.