



ROSS EARLE BONAN & ENSOR, P.A.

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REB LAW REVIEW

ROSS EARLE BONAN & ENSOR, P.A. NEWS

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On September 1, 2015, the firm opened a second office in Vero Beach, Florida. The office is located in the Transocean Office Building on the corner of Highway A1A and the 17th Street Causeway. This new office is more conveniently located for our Indian River County and northern St. Lucie County clients. We have had a wonderful first year in Vero and thank you for your support!

In June 2016, the firm welcomed new associate attorney, Audra Creech. Audra is a 2015 graduate of Emory University School of Law in Atlanta, Georgia and a Stuart native. We are pleased to welcome her as a part of the REBlaw team!

On April 11, 2016, associate attorney, Michael Bonan, and his wife, Genevieve, welcomed a healthy baby boy, Marc David Bonan. First time grandma, Elizabeth Bonan, is over the moon!

Jacob Ensor and his wife, Attorney Lori Steger, are expecting their fourth daughter in mid November, 2016. Jacob is very blessed..... and out numbered!

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LEGISLATIVE CHANGES AFFECTING COMMUNITY ASSOCIATIONS EFFECTIVE JULY 1, 2016

CONDOMINIUM ASSOCIATIONS

Pursuant to Fla. Stat. 718.112(2)(l), residential condominium associations who wish to forego retrofitting to install fire sprinkler systems, which may become mandatory in the future, must vote to opt-out of such retrofitting requirements by December 31, 2016. The necessary approval to opt-out is a majority of all members, which can be achieved by written consent or by a vote at a membership meeting.

Due to recent clarification from the Division and the State Fire Marshal, our firm is recommending that all residential condominium associations – including those associations less than four stories or 75 feet in height – that wish to opt-out of any future retrofitting requirement, obtain the majority vote to opt-out and record a certificate attesting to such vote by the December 31, 2016 deadline. If your Association would like to proceed with the retrofitting opt-out vote, please contact our office for the applicable forms and guidance.

COOPERATIVE ASSOCIATIONS

Pursuant to Fla. Stat. 719.1055(5), residential cooperative associations who wish to forego retrofitting to install fire sprinkler systems, which may become mandatory in the future, must vote to opt-out of such retrofitting requirements by December 31, 2016. The necessary approval to opt-out is a majority of all members, which can be achieved by written consent or by a vote at a membership meeting.

Due to recent clarification from the Division and the State Fire Marshal, our firm is recommending that all residential cooperative associations – including those associations less than four stories or 75 feet in height – that wish to opt-out of any future retrofitting requirement, obtain the majority vote to opt-out and record a certificate attesting to such vote by the December 31, 2016 deadline. If your Association would like to proceed with the retrofitting opt-out vote, please contact our office for the applicable forms and guidance.

HOMEOWNERS ASSOCIATIONS

There were no changes of note in the laws affecting homeowners associations.

ITEMS APPLICABLE TO ALL COMMUNITY ASSOCIATIONS

Tenant Applications must be decided within 7 days if Applicant is a “Service Member” as Defined by Florida Statute 250.01

A new law that became effective July 1, 2016, will affect the application process for those associations that require approval of prospective lessees before the transaction becomes effective. The new bill requires that community associations process and decide on rental applications for “Service Members” within 7 days after submission of the application. A “Service Member” is defined as “any person serving as a member of the United States Armed Forces on active Duty or State active duty and all members of the Florida National Guard and United States Reserve Forces” Florida Statute § 250.01(19). Within this seven day period after submission of the rental application, the association must notify the service member in writing of the applications approval or denial and, if denied, the reasons for such denial. If no timely denial is made to the applying service member, then the association must allow the owner to lease the unit or parcel to the service member and the landlord must lease the unit or parcel to the service member as long as all other terms of the lease application are complied with. This 7 day requirement and the consequences of an untimely decision on the lease application cannot be waived or modified by vote or any other mechanism.

HUD Guidance Warns Against Use of Criminal Background Information as Basis for Denying Sale or Lease Application

It has become commonplace for associations throughout Florida to consider the results of a criminal background check when determining whether to approve or disapprove rental and sale applications. However, as of April 4, 2016, when the U.S. Department of Housing and Urban Development (HUD) published its “Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” (“Notice”), it became clear that use of such information must be done with caution and with the understanding that doing so may open the door to claims for discrimination under Fair Housing laws.

HUD’s April 4, 2016 Notice warns that an arrest record in itself is not a valid basis for disapproving a prospective tenant or purchaser. HUD reasons that an arrest record does not indicate that a person was guilty of criminal activity or wrongful conduct. Rather, it only indicates that a person was suspected of committing an offense. This is a significant problem because many arrests result in a plea deal without a conviction.

While an arrest may be considered under certain circumstances, we strongly recommend you consult with legal counsel prior to making any decision to disapprove an application due to a criminal background check. It is important to examine each application on a case by case basis and consider factors such as the nature and severity of the crime, how long ago it occurred, whether it resulted in a conviction, and whether there were other convictions. This will help avoid discrimination claims and make a denial based on criminal record information more supportable.

Requirements of Implementation of Electronic Voting By Community Associations

In 2015, the Florida legislature authorized electronic voting for community associations. In order to implement electronic voting, the board of directors must:

- (a) Obtain written consent from the owner for online voting;
- (b) Establish a method to authenticate the owner's identity;
- (c) Establish a method to confirm, at least 14 days before the voting deadline, that the member's electronic device can successfully communicate with the online voting system;
- (d) Adopt a resolution to implement electronic voting at a duly called meeting noticed at least fourteen (14) days in advance.

In addition, the association must use an online voting system that is able to:

- (a) Authenticate the member's identity;
- (b) Authenticate the validity of each electronic vote to ensure that the vote is not altered in transit;
- (c) Transmit a receipt from the online voting system to each member who casts an electronic vote;
- (d) Permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific member. . . .
- (e) Store and keep electronic ballots accessible to election official for recount, inspection, and review purposes.”

While the implementation of electronic voting has been slow, there are a number of providers now offering electronic voting services. If you are interested in implementing electronic voting, we strongly recommend you consult with these providers as well as your legal counsel to ensure that you implement it correctly. If you would like the names of providers, please feel free to contact us.