

enforcement of such restrictions as long as they are for a lawful purpose reasonable,⁷⁷ and clearly expressed in the covenants.⁷⁸ When a covenant places an unreasonable restriction on the sale of property, however, it is considered an “improper restraint on alienation” and is not enforceable in the courts.⁷⁹

7.10 Amendments to the Governing Documents. Because the governing documents establish the character and scheme for the community and the rights of those owning property in the community, there are restrictions on how the documents may be changed. Traditionally, the restrictions and the required vote for approving amendments to the articles of incorporation,⁸⁰ bylaws,⁸¹ and the declaration of covenants⁸² are contained within the documents.

Where it is unclear from the documents whether an amendment can be adopted by the board of directors or requires approval by the membership, membership approval has been deemed necessary.⁸³ When the governing documents do not set forth the vote required for amendments, the law requires that an affirmative vote of two-thirds of the voting interests in the association be obtained.⁸⁴ If the proposed amendment materially or adversely alters an owner’s voting interests or increases the percentage by which a parcel shares in the common expenses, the owner and the record owners of liens on the affected parcel must join in the execution of the amendment.⁸⁵ When the required approval of the association membership specified in the documents and the law is attained, the amendment is recorded in the public records and validly enacted.⁸⁶ Any lawsuit seeking to challenge an amendment to the covenants because the amendment was not properly adopted by the membership must be filed within five (5) years of the date that the

76 *Aquarian Foundation, Inc. v. Sholom House, Inc.*, 448 So.2d 1166, 1168 (Fla. 3d DCA 1984).

77 *Indian River Colony Club, Inc. v. Bagg*, 727 So.2d 1143 (5th DCA 1999); *Chianese v. Culley*, 397 Fed. Supp. 1344 (USDC Fla. SD 1975).

78 *Aquarian Foundation, Inc. v. Sholom House, Inc.*, supra note 76.

79 *Camino Gardens Ass’n, Inc. v. McKim*, 612 So.2d 637 (Fla. 4th DCA 1993); *Inglehart v. Phillips*, 383 So.2d 610 (Fla. 1980).

80 §617.0202 (2) (b) and §617.1002, F.S.

81 §617.0206, F.S.; see also *Westwood Community Town Ass’n v. Lewis*, 687 So.2d 296 (Fla. 4th DCA 1997) holding that an amendment to bylaws cannot supersede provisions of the recorded covenants.

82 *Holiday Pines Prop. Owners v. Wetherington*, 596 So.2d 84 (Fla. 4th DCA 1992); see also *Palma v. Townhomes of Oriole Ass’n, Inc.*, 610 So.2d 112 (Fla. 4th DCA 1992) and *Isle of Catalina Homeowners Ass’n, Inc v. Pardee*, 739 So.2d 664 (Fla. 5th DCA 1999).

83 *Palma v. Townhomes of Oriole Ass’n, Inc.*, supra note 82.

84 *Pudlit 2 Joint Venture LLP v. Westwood Gardens Homeowners Ass’n*, 169 So.3d 145 (Fla. 4th DCA 2015).

85 §720.306 (1) (b) and (c), F.S.

86 *Holiday Pines Prop. Owners v. Wetherington*, supra note 82; see also *Zerquera v. Centennial Homeowners’ Ass’n, Inc.*, 721 So.2d 751 (Fla. 3d DCA 1998).

amendment was recorded.⁸⁷

Within thirty (30) days after the recording, the association is required to provide copies of the amendment to the members of the association unless a copy of the proposed amendment was provided to the members prior to the vote and the amendment was not changed before the vote. In that circumstance, the association may provide notice of the recording with the official recording information in lieu of providing an actual copy of the amendment. After receiving the notice, any member may request a copy of the amendment in writing and the association must provide the copy at no charge.⁸⁸

If the developer has reserved the power in the declaration of covenants to amend or modify the restrictions governing the community, the power must be exercised in a reasonable manner so as not to destroy the general plan of development.⁸⁹ The developer may not use the “reserved power to amend” to increase the burdens on other members⁹⁰ or prejudice the rights of parcel owners to use and enjoy the benefits of the common property without the consent of the owners.⁹¹ Further, without the consent of all affected parcel owners, neither the developer⁹² nor the association⁹³ is permitted to radically change the community scheme⁹⁴ or reduce the size of the common area or limit the access of owners to it.⁹⁵ Any lawsuit seeking to challenge an amendment to the covenants because it was not properly adopted must be filed within five (5) years of the date that the amendment was recorded.⁹⁶

7.11 Revival of the Governing Documents. The governing documents in some Florida homeowners associations provide for an expiration of the community covenants after a specified number of years. Community covenants may also expire by operation of law by terms of the Marketable Record Title Act.⁹⁷ Residents in these communities have the option to extend the covenants (see 7.3) or revive the governing documents after the expiration date by following the procedural steps

⁸⁷ *Hilton, et al v. Pearson and Paradise by the Sea Property Owners Ass'n, Inc.*, 208 So.3d 108 (Fla. 1st DCA 2016).

⁸⁸ §720.306 (1) (b), F.S.

⁸⁹ *Flescher v. Oak Run Associates, Ltd.*, 111 So.3d 929 (Fla 5th DCA 2013); *Nelle v. Loch Haven Homeowners' Ass'n*, 413 So.2d 28,29 (Fla. 1982).

⁹⁰ *Id.*

⁹¹ *Blue Reef Holding Corp., Inc. v. Coyne*, 645 So.2d 1053 (Fla. 4th DCA 1994).

⁹² *Id.*

⁹³ *Lewis v. S & T Anchorage, Inc.*, 616 So.2d 478 (Fla. 3d DCA 1993).

⁹⁴ *Klinow v. Island Court at Boca West Property Owners' Ass'n, Inc.*, 64 So.3d 177, 180 (Fla. 4th DCA 2011).

⁹⁵ *S & T Anchorage, Inc. v. Lewis*, 575 So.2d 696 (Fla. 3d DCA 1991).

⁹⁶ *Hilton v. Pearson and Paradise by the Sea Property Owners Ass'n, Inc.*, 208 So.3d 108 (Fla. 1st DCA 2016).

⁹⁷ Chapter 710, F.S.