

Legislature Tackles Aggressive Agenda

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The Florida Legislature has reached the approximate half-way point in its annual sixty day session. Pundits claim that during election years, the Legislature rarely tackles anything controversial.

As noted in the past several editions of this column House Bill 1223/Senate Bill 2498, the proposed condominium statute “reforms,” certainly seem to be an exception to that rule.

Today, we will look at some other proposals pending before the Legislature, which are a bit more on the mundane side:

HB 411/ SB 1184; Miscellaneous Community Association Issues: As reported previously (Law Offers Liability Protection, February 12, 2004) this Bill would provide additional immunity to associations which provide automatic external defibrillators. Further, the Bill would tighten up notice procedures for homeowners’ associations. Under the new law, if passed, HOA boards would be required to give fourteen days actual notice (both mailed and posted) to homeowners before special assessments could be levied, or before rules could be enacted regarding use of the parcels. This is similar to the condo law. Finally, HB 411/ SB 1184 would provide associations who respond to “lender information requests” with immunity from liability, provided that the associations’ response is made in good faith and after reasonable diligence.

HB 1663/ SB 1990; Q&A Sheet: Several years ago, the Florida Legislature deleted the requirement that the “Question and Answer Sheet” be used as a required disclosure document in condominium unit re-sales. Apparently feeling that this was a

mistake, the Legislature has now proposed to institute the requirement for the Q&A Sheet.

HB 589/ SB 1438; MRTA: The intention of this proposed law is to address the severe effects felt by some communities when they learn that their covenants and restrictions have been extinguished by Florida’s Marketable Record Title Act. Unless a vote has been taken to extend the covenants against MRTA extinguishment, many communities can no longer enforce restrictions after a period of thirty years. The new law would permit associations which have covenants that have been terminated by MRTA be able to take a vote to re-instate them.


SB 2984; HOA Task Force: This column has reported on the recommended legislation from the Governors Task Force on Homeowners’ Associations. This proposed legislation would implement those recommendations. I am told that a similar measure will be introduced in the House of Representatives, as a “Committee Bill,” which should soon bring the Task Force’s proposed legislation up for debate in both chambers of the Legislature.

HB 747/ SB 1938; Fire Sprinkler “Opt Out” Vote: This is a “glitch bill,” intended to address certain items enacted by the Legislature in 2003. This law has to do with high-rise buildings (those defined as seventy-five feet or higher) which are required to retrofit fire sprinklers by the year 2014. One change would allow the use of proxies when the “opt out” vote is taken.

HB 1017/ SB 1728; Guard Rails: This Bill would permit unit owners in a condominium to vote not to retrofit the condominium property with handrails and guardrails.

HB 1507/ SB 298; Condominium Construction Litigation: Although the currently-filed version of the proposed law goes overboard, sponsors have recently submitted an amendment which will limit the effect of the Bill. Basically, the new law would require any condominium association making a claim against a developer to rely on an opinion from a licensed professional, such as an architect, engineer, or licensed consultant, before a suit for construction defects could be brought.

At mid-term in the Legislature, it is nearly impossible to predict how these Bills (and several others affecting community associations) will fare. It appears that some are headed for smooth sailing, others for a brick wall.

Those with an interest in community association legislation can stay up to date, by the day, by reviewing the web-site of the Florida Legislature www.leg.state.fl.us/. 

Condo Owner Advised to Pay Tax Bill, Plus Interest

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QUESTION: Recently we received an invoice for the 2004 fees and charges for our condominium association. Included were 2004 property taxes. We submitted payment in full for all fees and charges except the 2004 property taxes, since they are billed in arrears by the County, and are not due until the end of the year. We received a phone call demanding we pay, and then an invoice that invoked a late fee and interest for the amount withheld? Is this legal and can a condominium association force owners to prepay property taxes? J.L. (via e-mail)

ANSWER: In general, condominium associations do not own property, and therefore do not pay real estate taxes. The only exception I am aware of is timeshare condominiums, where the association actually collects and remits the taxes on the individual time-share interests.

Apparently your association owns some property for which it pays real estate taxes. In that case, the taxes are an operating expense, like any other expense of the association. Even though they may not be due until the end of the year, many taxpayers do pay prior to the end of the year, since early payment discounts are available. Thus, assuming the association is properly paying (and therefore collecting) taxes in the first instance, this would appear to be an appropriate operating expense, and you should pay it. It is no different than an insurance bill which may not become due until November or December.

If my assumptions are correct, then your best bet is to also pay the interest and late fees. Otherwise, you risk this matter escalating, including attorney involvement and a possible lien.

QUESTION: Four years ago, my wife and I purchased a condo unit in Florida. We put the title in my wife's name, for family estate and tax reasons. Two years later, I was asked to serve as a member of our board, and agreed to do so. One of the unit owners has now complained that I should not be on the board. Although my wife's name is on the deed for financial reasons, we are both the "true" owners of the property. Please advise. R.S. (via e-mail)

ANSWER: In order to be eligible to serve on an association board, it is not necessary under Florida law that you be a record title holder.

However, many condominium documents provide that only record owners are entitled to stand for election for or serve on the board. If your association's documents contain such a provision, you are not qualified to serve on the board, and should immediately resign.

QUESTION: Our condominium maintenance fees are different for each unit, based upon the square footage of the units. Our manager uses this formula for all expenses, including maintaining the streets, pool, and landscaping. This does not make sense to me. While I understand that the maintenance of our homes should be keyed to the size, we all put equal strain on the pool, streets, and other common elements. M.O. (via e-mail)

ANSWER: In condominiums, maintenance fees (technically known as "common expenses") can only be allocated in one of two ways. First, the declaration of condominium may provide that all owners pay equally. The other option is for common expenses to be shared on a weighted basis, based upon size of the unit. Your developer apparently chose the latter option.

The so-called “weighted” method of allocating common expenses must be applied to all expenses of the association, which would include street and pool maintenance. Unless your documents are very unusual, the allocation of common expenses can only change with unanimous approval of all unit owners and lienholders (such as mortgagees), which is usually a political impossibility.

QUESTION: We live in a gated community where we are required to pay a monthly maintenance fee, and are governed by a seven-member board. Our financial records have never been audited and the current board is not in favor of an audit. The bylaws do not require an audit. Is there anything we homeowners can do to force an audit. V.S. (via e-mail)

ANSWER: The law applicable to homeowners’ associations only requires a minimal year-end financial report. Accordingly, unless your bylaws require an audit, your board is under no obligation to obtain an audit (not to say that an audit from time to time is not a good idea, I think it is).

Your bylaws presumably contain a petition process for amendment. I would recommend that you review the bylaws and if you feel a sufficient number of your neighbors would support an annual audit, petition for a bylaw amendment to that effect.

QUESTION: If a husband and wife reside in the same unit, and both serve on the board, do they both have the right to vote on an issue that comes before the board? We have two married couples serving on our board, and they vote on all issues, giving them four of nine votes on the board. K.C. (via e-mail)

ANSWER: The Florida Condominium Act does not prohibit multiple representatives from a unit serving on the board simultaneously, including husband and wife. Accordingly, if your owners have elected two married couples to serve on its board, they get four votes.

QUESTION: In one of your columns, you mentioned that a transfer approval fee is limited to \$100.00 per transaction. The country club community where we reside charges a “transfer of privileges” fee of \$150.00 when a unit is rented. We rent the unit from our children, who are the title-holders. If such a fee legal under Florida law? B.V. (via e-mail)

ANSWER: The \$100.00 limitation only applies to condominium associations. Most master facility associations are governed by the law applicable to homeowners’ associations (Chapter 720 of the Florida Statutes) which does not prohibit such a fee. Therefore, if the fee is authorized by the governing documents, it is likely valid. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.

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