



2010 Community Association Leadership Conference

**Staying Afloat: Strategies for
Helping Your Community in
Difficult Economic Times**

This conference is approved for two (2) continuing education credits in Insurance and Financial Management for Community Association Managers. (Course #9625735). Becker & Poliakoff's Provider Number is 0000811.

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NOTE: THIS MATERIAL IS FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE MISCONSTRUED AS LEGAL ADVICE.

THE ECONOMIC CRISIS FACING FLORIDA'S COMMUNITY ASSOCIATIONS

I. INTRODUCTION

“Picture this: the biggest road out of town. Now imagine it is rush hour. In a thunderstorm. Add that it is also a hurricane evacuation. A lane is closed due to construction delayed by budget impacts. Imagine the traffic jam.”

Those are the words used by a task force commissioned by Florida’s Supreme Court to study the impact of the foreclosure crisis and following recession on Florida’s court system. At press time for this writing, there were just over two million current foreclosure filings nationwide. Nearly five hundred thousand of them right here in Florida. 2008 presented unprecedented foreclosures in our State. Florida’s statewide figures at the close of the third quarter of 2009 showed nearly a 24% increase from the close of the third quarter in 2008. One out of every fifty-six homes in Florida is currently in some stage of foreclosure. Every indication is that the foreclosure crisis is not letting up, and that Floridians should not expect a sustained recovery of property values until 2013.

What this means to community associations is obvious. As tough as it has been, it is not over yet and will not end in the near future. Associations must continue to understand the laws that govern assessment collection and the forces at work that dictate what recovery can be made and when it is most likely. This presentation will begin with what for most of you is a review of the collection and foreclosure process. Later in the program we will discuss more advanced topics and will also have a question and answer forum designed to get you thinking about economic decisions facing your community.

II. PURPOSE AND ASSESSMENT AUTHORITY

A. THE PURPOSE OF AND NEED FOR COLLECTION OF ASSESSMENTS

It has often been said that the life blood of a community association is its ability to assess its members for the costs of maintaining the shared or owned amenities. If assessments are not collected, the association cannot meet its budgetary requirements and cannot provide the services necessary to maintain and operate the community.

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B. ESTABLISHING ASSESSMENT AUTHORITY

1. The Governing Documents

A community association's right to assess for common expenses and enforce the assessment obligation by recording a lien against the property and foreclosing the lien is based upon both contract and statutory law. The starting point in determining the scope of an association's authority is the declaration of condominium for condominium associations, the declaration of covenants, conditions and restrictions for non-condominium homeowners' associations or the articles of incorporation or by-laws of cooperative associations.

2. The Condominium Act (Chapter 718.116 F.S.); the Cooperative Act (Chapter 719.108 F.S.); and the Homeowners' Associations Act (Chapter 720.3085 F.S.)

In addition, condominium associations, cooperative associations and homeowners' associations are governed by, and derive assessment authority from, the provisions of the Condominium Act (Chapter 718) and the Cooperative Act (Chapter 719), and the Homeowners' Associations Act (Chapter 720), respectively. As long as the association has complied with the requirements in its governing documents and the applicable statutes, once the owner becomes delinquent in the payment of assessments, the association can commence the collection process.

C. AUTHORITY TO PREPARE A BUDGET AND LEVY SPECIAL ASSESSMENTS

1. The Governing Documents

The governing documents and applicable statutes discussed above also define the Board's authority to prepare a budget for the association, allocate common expenses among the units and levy regular and special assessments. The association must follow the procedures set forth in its governing documents and the applicable statutes or there may be problems in the collection and foreclosure process as the owner may have defenses or counterclaims.

2. The Condominium Act (Chapter 718.116 F.S.); the Cooperative Act (Chapter 719.108 F.S.); and the Homeowners' Associations Act (Chapter 720.3085 F.S.)

In addition, condominium associations, cooperative associations and homeowners'

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associations are governed by, and derive the authority to prepare a budget and levy special assessments from, the provisions of the Condominium Act (Chapter 718), the Cooperative Act (Chapter 719) and the Homeowners' Associations Act (Chapter 720), respectively.

D. ASSOCIATION'S RIGHT TO RECOVER INTEREST, LATE CHARGES, COSTS AND ATTORNEY'S FEES IN THE COLLECTION AND FORECLOSURE PROCESS

The governing documents and applicable statutes are also the source of the association's authority to recover interest, late charges, costs and attorney's fees in the collection and foreclosure process. Late charges may only be imposed if there is authority for late charges in the association's governing documents, and even then, the amount of the late charge is limited as provided by statute (the greater of twenty-five dollars or five percent of the delinquent installment). The authority to assess a late charge must be in the association's declaration or bylaws.

E. JOINT AND SEVERAL LIABILITY OF SUBSEQUENT OWNERS

Both Sections 718.116(1)(a) (condominium associations) and 720.3085(2)(b) (homeowners' associations) provide that an owner is jointly and severally liable with the previous owner for all unpaid assessments that came due at the time of transfer of title. This simply means that the current owner is liable for any and all assessments that were not paid by the previous owner when the transfer of title occurred. An exception, explained later, applies to first mortgagees who acquire title to a unit or lot through foreclosure or by taking a deed in lieu of foreclosure. Pursuant to Section 719.108(1), Florida Statutes, joint and several liability for cooperative owners only applies in voluntary conveyances.

III. COLLECTION PROCESS

A. INITIATING THE COLLECTION PROCESS

1. Establish uniform collections procedure

Every community association should establish a uniform collection procedure which should be followed, without exception, in the case of owner delinquency. For example, the association might prepare a "reminder" letter to be sent to the owner when the assessment is ten (10) days past due. Once the association is entitled to add interest and late charges, these amounts must be included in the letter to the owner.

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When establishing any collection procedure, the association should keep in mind that applicable Florida Statutes require two written notices to the owner before the association can file a lawsuit for foreclosure. The first is required before the association records a lien against the property. If payment is not received, the second notice is required before the lawsuit is filed. For condominium associations, each notice is thirty (30) days. For homeowners' associations each notice is forty-five (45) days. Therefore, any procedures established by the association in addition to these notices will only add more time between the time the account becomes delinquent and the time a lien foreclosure lawsuit is filed if that is eventually required.

2. When account should be "turned-over" to legal counsel

The account should be turned over to counsel for collection no later than thirty (30) days after the account becomes delinquent. Bear in mind that a delinquent owner may also be falling behind on the first mortgage. The longer the association waits before commencing its collection procedure, the greater the likelihood that a first mortgage foreclosure will impact the association's ability to maximize its recovery of outstanding assessments.

B. LEGAL REQUIREMENTS

1. The Association's Notice of Intention to Record a Claim of Lien

Pursuant to Section 718.121(4), Florida Statutes, a condominium association must give an owner written notice of its intention to record a claim of lien against the unit thirty (30) day before recording a claim of lien for unpaid assessments. Section 718.121(4) was amended July 1, 2008, to introduce this requirement. Prior to the amendment, condominium associations were not required to give any prior written notice before recording a lien for unpaid assessments. Cooperative associations are likewise required to give a thirty (30) day written notice before recording a claim of lien. Homeowners' associations are also required to give written notice before recording a claim of lien against a lot. However, pursuant to Section 720.3085(4), Florida Statutes, a homeowners' association must give forty-five (45) days written notice before recording the claim of lien.

The notices for condominium and homeowners' associations are effective upon mailing and must be delivered as prescribed by the statutory sections cited above. It is advisable for the association's counsel to prepare and deliver this letter. Any errors in the preparation

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or delivery of this letter may prejudice the association’s ability to advance a later filed foreclosure action. This letter should set forth the exact amount due, including all delinquent regular and special assessments, interest, late charges, costs and attorney’s fees. The letter must specifically place the owner on notice that if full payment is not made within the prescribed time, the association intends to record a lien against the property.

2. The Claim of Lien

a. Purpose of and Necessity for Recording the Lien

The claim of lien is the document that perfects the association’s rights by notifying anyone perusing the public records that the association has a claim against a particular unit for unpaid assessments. The claim of lien is recorded in the public records in the county in which the community is situated in the same place and in the same manner as a deed or mortgage. Recording a claim of lien does not mean a lawsuit has been filed against the property owner. However, community associations must record a claim of lien before filing a foreclosure lawsuit.

b. Notice of the Association’s Intent to Foreclose the Lien

A community association must deliver written notice to the owner before commencing a foreclosure action in order to protect its ability to claim entitlement to attorney’s fees after the foreclosure action is filed. Therefore, simultaneous with recording the claim of lien, a letter is delivered to the owner advising the claim of lien is being recorded, setting forth the amount due, including interest, late charges, costs and attorney’s fees, and demanding payment within a specified time. For condominium associations, the letter notifies the owner that the association will commence a foreclosure action if the account is not paid in full within the thirty (30) day deadline. For homeowners’ associations the law requires a forty-five (45) day notice.

c. Early Resolution

A significant percentage of collection disputes are resolved without the need to record a claim of lien. The collections process may prompt an owner to tender full payment. If this does not occur, the Association may choose to accept a payment agreement that is proposed by the homeowner. The association should consult with counsel

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before agreeing to any payment arrangements other than those resulting in full and immediate payment.

IV. FORECLOSING THE CLAIM OF LIEN

A. THE FORECLOSURE LAWSUIT

A foreclosure lawsuit is the process through which the claim of lien is enforced. The outcome of a successful foreclosure lawsuit is a judgment ordering the clerk of the court sell the property at a public auction. There are many steps required before the sale ever occurs. Who the purchaser will be at the sale is determined by a number of factors, most importantly the priority of the association’s lien, the amount of interests against the property that are superior to the association’s lien, and the equity in the property, if any.

The most important part of the foreclosure lawsuit is extinguishing as many competing interests in the unit as the law allows. Some competing interests may be superior and others may be subordinate to the association’s lien. Competing interests in the unit may include, for example, mortgages, federal tax liens, construction liens, judgment liens, and leases. There is equity in property when the fair market value of the property is greater than the encumbrances against it. Equity can sometimes be created as a result of a foreclosure action if the foreclosing lien holder can extinguish subordinate interests in the property through the foreclosure.

The fewer superior encumbrances against the property and the greater the equity in the property at the time of sale, the easier it is to sell, because it is more attractive to potential purchasers at the foreclosure auction. A property with superior interests which exceed the fair market value of the property will likely not be sold to a third party at a foreclosure auction, resulting in the foreclosing lien holder taking title to the property subject to the rights of the superior lien holders.

The process of extinguishing competing interests in the property is accomplished by naming the holders of these competing interests as defendants in the foreclosure lawsuit and proving the association’s claim of lien is superior to these interests. The only interests that are always superior to the association’s claim of lien are real estate taxes and a first mortgage recorded prior to the association’s claim of lien. This means the buyer at the foreclosure auction will normally take title subject to the rights of the tax collector and the first mortgage holder. All encumbrances (competing interests) recorded after the association’s claim of lien are subordinate and will be extinguished by the association’s foreclosure lawsuit.

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1. Filing a Foreclosure Complaint

Filing a foreclosure complaint initiates the lawsuit. Before filing a foreclosure complaint, title to the property is reviewed to determine whether or not the competing interests are superior or subordinate to the association’s claim of lien. Remember, all holders of competing interests which are subordinate to the association’s claim of lien must be named as defendants in the foreclosure complaint in order for their interests in the property to be extinguished.

2. Delivery of the Foreclosure Complaint

The foreclosure complaint must be properly delivered to (or served on) the owner and other defendants before the case can proceed. Delivery of the complaint is called “service of process.” Proper delivery requires the sheriff or a licensed process server to locate and personally give each defendant a copy of the foreclosure complaint. The sheriff or process server then files an affidavit verifying he or she properly delivered the complaint. Each defendant has twenty (20) days from the date of delivery to file a response to the foreclosure complaint.

For proper delivery of the complaint to individuals, the law requires delivery to the individual or delivery at the individual’s place of abode to a person who is at least 15 years old who resides there. If an individual defendant cannot be found after diligent search, the complaint can be “delivered” by publishing notice of the foreclosure lawsuit in a local newspaper. The notice must be published for two (2) consecutive weeks. The deadline for the defendant to respond is thirty (30) days from the first publication of the notice.

B. LIKELY OUTCOMES

In most foreclosure lawsuits, there are a few likely outcomes:

1. The association will be paid (generally when there is equity in the property by either the owner, a third-party purchaser or an inferior lien holder).
2. The association will take title to the property at the public auction (when there is no equity in the property). As the foreclosing plaintiff, the association has the right to bid up to the amount of its foreclosure judgment at the auction without actually paying any

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money (except for the clerk’s nominal fee and documentary stamps). All other bidders must pay cash or pay in a form acceptable to the clerk.

3. If the owner is truly in dire financial straits, the bank that holds the mortgage on the property may ultimately foreclose as well. This may prompt the association to stop its own foreclosure action in midstream.

V. BANK FORECLOSURE AND LIABILITY FOR PRIOR OWNER’S ASSESSMENTS

A. FIRST MORTGAGE, LIABILITY AND SAFE HARBOR

The filing of a foreclosure lawsuit by the holder of the first mortgage may have a significant impact on the association’s ability to collect delinquent assessments, depending upon whether there is equity in the property, and whether the foreclosing mortgagee in fact holds a first mortgage. This is because the association’s lien is inferior to the first mortgage. Therefore, the first mortgage foreclosure lawsuit will extinguish the association’s lien, and the association will likely only recover a limited amount of the unpaid assessments from the foreclosing first mortgagee. Ordinarily, anyone that acquires title to a unit or lot in either a condominium owner’s association or a homeowners’ association is jointly and severally liable with the previous owner for all unpaid assessments. See Sections 718.116(1)(a) and 720.3085(2)(b), Florida Statutes, respectively. This liability is regardless of how the new owner acquired title. However, an exception applies if the new owner acquiring title is a first mortgagee, or its successors or assignees (hereinafter collectively “first mortgagee”), acquiring title as a result of its foreclosure of the first mortgage or as a result of taking a deed in lieu of foreclosure from the prior owner. If title is acquired under those circumstances, the first mortgagee’s liability for the previous owner’s unpaid assessments is limited, provided the first mortgagee has named the association as a defendant in the first mortgagee’s foreclosure action. Although, some exceptions may apply. This is commonly called the “first mortgagee’s safe harbor provision.” If the first mortgagee fails to name the association as a defendant in the action, it will be liable for all delinquent assessments incurred by the prior owner and will not be entitled to the safe harbor of limited liability for the prior owner’s unpaid assessments.

B. LIMITATION OF LIABILITY FOR CONDOMINIUM ASSOCIATIONS

If the first mortgagee is entitled to safe harbor, it is only obligated to pay the unit’s unpaid common expenses and regular periodic assessments which accrued or came due during the

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six (6) months immediately preceding it taking title, or one percent of the original mortgage debt, whichever is less. Payment is required to be made within thirty (30) days of the first mortgagee taking title. If the first mortgagee fails to timely pay, the association may record a lien against the unit. The mortgagee is always required to pay regular periodic assessments and special assessments which accrue while it owns the unit.

C. LIMITATION OF LIABILITY FOR HOMEOWNERS' ASSOCIATIONS

Section 720.3085, Florida Statutes provides if the first mortgagee is entitled to safe harbor, it is only obligated to pay the lot's unpaid common expenses and regular periodic assessments which accrued or came due during the twelve (12) months immediately preceding it taking title, or one percent of the original mortgage debt, whichever is less. Payment is required to be made within thirty (30) days of the first mortgagee taking title. If the first mortgagee fails to timely pay, the association may record a lien against the lot. The mortgagee is always required to pay regular periodic assessments and special assessments that accrue while it owns the lot. It should be noted that many mortgagees acquiring title to lots in homeowners' associations have challenged the validity of the statutes establishing their legal obligation to pay delinquent assessments of prior lot owners. Generally, their reasoning is the statutory liability only arose pursuant to amendments to Section 720.3085, Florida Statutes taking effect on July 1, 2007 and later amended July 1, 2008, and their mortgages were recorded prior to the effective dates of the amendments. Some also argue that some association governing documents are less onerous and have no such contractual liability for the prior owner's unpaid assessments. As of the date this writing went to press, none of Florida's District Courts of Appeal have ruled on the issue. Homeowners' associations should consult with counsel to determine if amendments to their governing documents may be appropriate.

D. THE ASSOCIATION AS DEFENDANT

It is extremely important that every condominium and homeowners' association notify counsel when it is served with a mortgage foreclosure complaint. Remember only first mortgagees are entitled to safe harbor and limited liability for the prior owner's assessments. Not every mortgagee holds a first mortgage. If the mortgagee is foreclosing a second mortgage which may not be superior to the association's lien, then the association is an improper party and may be prejudiced by the outcome of the action. The second mortgagee may be liable for all unpaid assessments, particularly if it is in the condominium association context. An association

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should always consult with counsel to ascertain the association’s rights in any foreclosure action; if it fails to do so it could miss out on an opportunity to collect all unpaid assessments from a party taking title.

E. CAREFULLY EXAMINE WHO TAKES TITLE

The foreclosure action may ultimately result in the Clerk of the Court selling the property to the highest bidder. When there is little or no equity in the property, the foreclosing plaintiff usually takes title to the property. It is important to remember that only the first mortgagee, its successors or assigns may take title to the property and claim entitlement to limited liability for assessments under the statutes’ safe harbor provisions. If any person or entity other than the first mortgagee, its successors or assigns takes title, the limited liability will not follow.

Some first mortgagees assign either their final judgments or their right to bid at the foreclosure sale to other entities which ultimately take title as a result of the sale. In the case of *Bay Holdings, Inc. v. 2000 Island Boulevard Condominium Association, Inc.*, 895 So.2d 1197 (Fla. 3rd DCA 2005), the foreclosing first mortgagee, Bank United FSB, assigned its final judgment of foreclosure to Bay Holdings, Inc., a wholly owned subsidiary. Bay Holdings, Inc. acquired title to the condominium unit as a result of the foreclosure sale. The Third District Court of Appeal upheld the trial court’s ruling that the statute clearly and unambiguously affords the safe harbor protection only to first mortgagees or “a subsequent holder of the first mortgage.” Because Bay Holdings, Inc. never held the first mortgage, it was ordered to pay all of the previous owner’s unpaid assessments.

F. THE MORTGAGE FORECLOSURE ACTION OR “INACTION”

A growing frustration for community associations is the length of time it takes for the foreclosing mortgagee to complete its foreclosure action and get the property to public sale. Every association has a vested interest in getting to a sale date as soon as possible because once the mortgagee or a third party takes title, there will be a new owner of the property that will be obligated to pay assessments going forward, and the association can recover some (or perhaps all) of the prior owner’s unpaid assessments from the new owner.

Associations need to understand that it is fundamentally advantageous for mortgagees to drag it out. The mortgagee avoids becoming the owner and having the obligation to pay

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assessments as they accrue. It also avoids whatever joint and several liability that may attach when it takes title. Mortgagees are actively encouraging owners in foreclosure (and who do not have equity in the property) to market the property for “short sale.” Short sale is simply a term that means the mortgagee will approve the sale and satisfy the mortgage for less money than is currently owed on the mortgage. In a short sale context, the mortgagee avoids assessment and tax liability it would otherwise incur if it became the owner. It also avoids having to market the property for sale, placing that burden on the owner.

A short sale to a third party can ultimately be advantageous to the association because a third party will be liable for all unpaid assessments owed by the prior owner. Many times the mortgagee will ask the association to take less than what it is owed by the current delinquent owner, or to take nothing at all, in order to “make the sale happen.” The mortgagee will represent that it is taking far less than what it is owed and that the association will at least have the benefit of a paying owner after the closing occurs. The association should consult with counsel to determine if it should consider such offers from mortgagees.

The overriding frustration, however, is a delay in the mortgage foreclosure process. The reason behind the mortgagee’s delay may be strategic and intentional as set forth above. It may be as a result of the very real “traffic jam” we imagined earlier. If the association has retained counsel to defend it in the mortgage foreclosure, there are a few options the association may consider to advance the mortgagee’s case.

If all the parties to the action have either answered the foreclosure complaint or been defaulted, the case may be noticed for trial by any party or the court. The effect of noticing the case for trial has its benefits and its drawbacks. The most significant benefit is the case will be placed on the court’s trial docket, thus bringing an end in sight. The drawbacks are that the court will likely enter orders that impose burdens on the parties to the lawsuit and may increase the expense to the association. Additionally, if the plaintiff mortgagee fails to comply with the pre-trial orders of the court, the court could dismiss the lawsuit. A dismissal of the mortgagee’s foreclosure action is most detrimental because it means the time in which a paying owner will arrive will now be much further away.

The association’s counsel may also file a motion for case management conference, which is a hearing before the judge where all parties are required to attend. The conference is for the purpose of establishing time frames for the case to be advanced and ultimately

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reach conclusion. Most judges are very receptive to advancing any case that is taking too long.

Some associations have also had success asking trial level courts to order mortgagees that are dragging out their foreclosure actions to immediately pay assessments, even prior to taking title. However, a recent decision of the Third District Court of Appeal has put an abrupt end to this remedy. In *U.S. Bank National Association v. Tadmire, deceased, et al.*, No. 3D09-9114 (Fla. 3rd DCA, December 2, 2009), the Court reversed a decision of the Miami-Dade County Circuit Court which had ordered the foreclosing mortgagee, whose foreclosure action had been pending for a year, to “diligently proceed with the [instant] pending foreclosure action... within thirty (30) days” or pay monthly maintenance fees on the condominium unit in foreclosure. The Court of Appeals noted that the bank was not contractually obligated to pay condominium maintenance fees on this unit, nor, as Section 718.116(1)(b), Florida Statutes (2009) confirms, is it legally obligated to do so before it obtains title. Pursuant to the statutory scheme, a first mortgagee’s liability for unpaid assessments does not arise until it takes title to the property. At that time, the first mortgagee is obligated to pay all assessments accruing while it owns the unit, and is only obligated to pay six months of condominium assessments accruing immediately prior to taking title. The Court rejected the notion that equity and fairness supports the order of the lower court. Since equity follows the law, it cannot be utilized to impose a current obligation for the mortgagee to pay assessments before title is acquired. Citing several Florida cases, the Court held that if an issue is clearly governed by established legal rules, equity may not interfere and disregard the controlling legal principles. A court of equity has no right or power under the law of Florida to issue an order it considers to be in the best interest of ‘social justice’ at the particular moment without regard to established law.

VI. RECOVERY OF UNPAID ASSESSMENTS

A. WHERE WILL OUR MONEY COME FROM?

This is the most critical question for the association, particularly when there is no equity in the property. Some associations are content to wait until the first mortgagee completes its foreclosure action. When the action is concluded, the association can be reasonably sure how much money will be recovered and when it will be recovered. Any uncollected assessments will be written

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off as bad debt. But as delinquencies mount, the need for greater recovery becomes more imperative. Additionally, just because an owner is not paying assessments, the association cannot always assume the owner is also not making mortgage payments. When there is no mortgage foreclosure pending, the association has little choice but to exercise its foreclosure rights.

If the association files its own foreclosure action and acquires title to the unit or lot, it is free to rent the property to recover unpaid assessments (if the association's governing documents permit rentals). Because mortgagees continue to delay their own foreclosure actions, many associations are filing their own foreclosure actions, and taking title to property for the purpose of placing their own tenant and recouping the rental income.

B. SEEKING THE APPOINTMENT OF A RECEIVER TO COLLECT RENT

Nothing is more frustrating to an association than an owner who fails to pay assessments, and nevertheless, places a tenant in the property for rental income. However, this can be very favorable for the association. Both the Condominium Act and the Homeowners' Association Act provide that if a unit or lot is rented during the pendency of a foreclosure action, the association is entitled to the appointment of a receiver to collect the rent.

A receiver is generally an individual authorized to act for the purpose of taking custody of property or funds that are the subject of litigation. In "rent receiverships," the asset being protected is the rent itself, which becomes the property of, and the responsibility of the court appointed receiver, who takes the rental funds for the benefit of the association. The receiver is independent of any party to the foreclosure action and is answerable only to the court. Some jurisdictions permit the appointment of the clerk of the court as the receiver. This can save the association expenses associated with the services of a traditional receiver. The appointment of a rent receiver is a matter of statutory right, which should be utilized by associations as a means of securing cash flow, during the pendency of a foreclosure action when there is a viable tenant to pursue rent against.

C. EXTRAORDINARY RECEIVER APPOINTMENTS

As set forth above, the statutory scheme for both condominium and homeowners' associations seeking the appointment of a receiver to collect rent first requires the filing of a foreclosure action. The statute specifically provides the association may seek the appointment of a receiver if the unit is rented during the pendency of the foreclosure action, and does not address any other circumstance in which a receiver may be appointed for the purpose of collecting rent. But some trial courts have granted relief beyond what the statute provides.

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In Seminole and Miami-Dade counties, trial court judges have granted what has been referred to as a “blanket receiver.” This type of receiver appointment is very different than the traditional receiver appointment pursuant to the statutory scheme. In these actions, the judges have granted the appointment of a receiver to make demands upon the tenants of delinquent owners, even when the association has filed no foreclosure action. In these actions, the association is the only party to the action, it is not a foreclosure action and no specific delinquent owners or tenants are parties to the action. The association seeks an order from the court appointing a receiver and empowering the receiver with the authority of the court to make demands directly upon the tenants. Such receiver appointments have been granted under extreme circumstances, for example, in condominium associations where one-third to more than half of all unit owners are delinquent. These associations face extreme economic hardship.

At the time of this writing, there is no Florida appellate court authority addressing these types of receiver appointments. Associations should consult with counsel concerning whether circumstances and conditions are appropriate to pursue such an action.

VII. EXTRA-JUDICIAL REMEDIES

A. DISAPPROVAL OF PROPOSED LEASE (CONDOMINIUMS ONLY)

The Condominium Act specifically states that if the association is authorized by the declaration or bylaws to approve or disapprove a proposed lease of a unit, the grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought. For homeowners’ associations and cooperatives, however, there is no specific statutory authority to disapprove proposed leases for non-payment. However, such authority is sometimes granted to the association in the governing documents.

Before making the decision to disapprove a lease on the grounds the owner is delinquent, the association should carefully consider the potential ramifications. The owner’s placing of a tenant may be the only way the owner can cure the delinquency. Therefore, the association may wish to grant approval conditioned upon the rental income being paid directly to the association until the delinquency is cured. The association should consult with counsel before entering into any agreement, as a carefully crafted agreement can be a powerful tool, but a poorly crafted one can present unintended problems for the association.

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B. DIRECTOR ABANDONS OFFICE (CONDOMINIUMS)

In 2008, the Condominium Act was amended to provide that in the event a director or officer is more than 90 days delinquent in the payment of regular assessments, he or she shall be deemed to have abandoned the office, creating a vacancy in the office “to be filled according to law.” The provision does not apply to delinquent special assessments, so a director or officer could be current on their regular assessments, but over 90 days delinquent on his or her special assessment for roof repairs, or installment thereof, and the director or officer can continue to serve. Neither Chapter 719, governing cooperatives, nor Chapter 720, governing homeowners’ associations, has a similar provision.

C. SUSPENSION OF USE AND VOTING RIGHTS (HOMEOWNERS’ ASSOCIATIONS)

In a homeowners’ association, an owner’s use rights and voting rights may be suspended for failure to pay assessments, under certain circumstances. Specifically, if the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member’s tenants, guests, or invitees, or all, to use common areas and facilities for violations of the governing documents (including the non-payment of any assessment, including regular, periodic assessments or special assessments). Associations should consult with counsel regarding notice and hearing requirements that may apply before such action can be taken. Suspension of common-area-use rights may not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

If the governing documents so provide, a homeowners’ association may suspend voting rights when a member is delinquent in the payment of regular assessments in excess of ninety (90) days. The suspension of voting rights is limited to non-payment of “regular annual assessments” and does not authorize suspension of voting rights for delinquent special assessments.

In the condominium context, a unit owner is entitled to use the common elements “in accordance with the purposes for which they are intended,” Section 718.106(3), Florida Statutes, and there is no express authority in the Condominium Act to suspend a unit owner’s use rights or voting rights. Likewise for cooperatives, Chapter 719 does not specifically authorize the suspension of use or voting rights and has similar language to the Condominium Act regarding access to the common areas.

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VIII. FACING THE ECONOMIC CRISIS – DISCUSSION POINTS

Many community associations today face a financial crisis. New, unproven legal theories and collection practices are being proposed and in some cases tried. Associations have considered self-help remedies which, as you can imagine, create legal risks for the association. Some of these ideas include:

- Cutting off utilities such as cable television, electricity and water
- Towing / Booting Vehicles
- Deactivating Gate Access FOBs

Many associations are also forced to take innovative steps to manage their finances, some of which are well-established and some of which are new and groundbreaking. Some of these include:

- Special Assessments
- Amending the Annual Budget
- Borrowing from Reserves
- Bank Loans
- Association Bankruptcy
- Legislative Proposals

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CASE LAW AFFECTING COMMUNITY ASSOCIATIONS

**I. *MITCHELL V. THE BEACH CLUB OF HALLANDALE CONDOMINIUM ASSOCIATION, INC.*,
17 So.3D 1265, (FLA.4TH DCA, 2009).**

A. FACTS:

Condominium unit owner Mitchell filed a petition for injunctive relief to prevent collection of a special assessment from him. Mitchell claimed that the Association had failed to give proper notice of the meeting at which the special assessment was levied, that the Association failed to establish a quorum at the meeting, and that the Association counted expired proxies to approve the special assessment. The Circuit Court dismissed the petition because the amount in controversy with respect to Mitchell was only \$4,194, which is below the monetary jurisdictional limit for the Circuit Court.

B. ISSUE:

Does the Circuit Court have original jurisdiction to hear petitioner’s claim for injunctive relief?
Does the petitioner’s claim meet the requirements for issuing an injunction?

C. HOLDING: Yes, as to both issues.

D. RATIONALE:

First, the Appellate Court ruled that both the County Court and Circuit Court have concurrent jurisdiction to hear and decide a petition for injunctive relief, regardless of the amount of money at issue.

Next, the Court held that the Department of Business and Professional Regulation’s mandatory non-binding arbitration requirement does not apply here because a dispute over the levy of an assessment is not subject to mandatory arbitration prior to being brought in court. (See 718.1255(1)(b), (4)(a), F.S. (2008)).

Finally, the Court ruled that the petition met the requirement of seeking permanent relief from the obligation to pay this particular special assessment and, therefore, an injunction is an appropriate remedy. The Court also noted that the requirement that Mitchell show

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irreparable harm in order to obtain an injunction was possible since he alleged a violation of the Condominium Act and a violation of the Act is itself a harm for which Section 718.303 authorizes injunctive relief. (See *Hobbs v. Weinkauff*, 940 So.2d 1151, 1153 (Fla. 2d DCA 2006)).

II. COMCAST OF FLORIDA, L.P. V. L'AMBIANCE BEACH CONDOMINIUM ASSOCIATION, INC., 17 So.3D 839, (FLA. 4TH DCA, 2009).

A. FACTS:

In 2002, the developer of the condominium entered into a broadband services agreement with Comcast, together with an easement to allow Comcast to install and maintain cable equipment, and a bulk services agreement for all residents to receive cable service at a discount and to pay the cost as a common expense of the Association. The agreement contained a provision that it “may be terminated prior to expiration of its term subject to conditions and regulations required under 718 of Florida Statutes...” Testimony established that the developer’s representative’s intent in requesting this language was for 75% of the unit owners to be able to later vote to terminate the agreement.

Following turnover of control of the Association to the unit owners, the Association served notice of termination upon Comcast in accordance with Section 718.302, F.S. This statutory provision allows a post-turnover association to terminate certain pre-turnover contracts at any time upon approval of 75% of the unit owners. Comcast brought an action for declaratory relief seeking to have the termination invalidated. Comcast argued that Section 718.302, F.S., does not apply to a broadband services agreement because that statutory provision only applies to an agreement for “operation, maintenance, or management of a condominium association or property serving that association.”

B. ISSUE:

Whether 718.302, F.S. applies to the termination of a broadband services agreement and a bulk rate addendum?

C. HOLDING: Yes.

D. RATIONALE:

Comcast installed wires and lock boxes to provide cable television services to all unit owners.

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Comcast operated and maintained the system. Section 718.115(1)(d), F.S. provides that the cost of bulk cable television services is a proper common expense, and common expenses are defined in the Condominium Act to include the expenses of operation, maintenance, repair, replacement, or protection of the common elements and association property. Therefore, Section 718.302, F. S. applies to this agreement and the addenda.

The Court also cited its prior decision in *Country Manors Association, Inc. v. Master Antenna Systems, Inc.*, 458 So.2d 835 (Fla. 4th DCA 1984), in support of this conclusion.

Importantly, the Court stated that it disagrees with the assertion that reference to bulk cable television contracts in 718.3025(4), F.S., another provision which permits termination of pre-turnover contracts on a more limited basis than 718.302, F.S., suggests that cable television is not within the “operation, maintenance, or management” described in 718.302, F.S. This reasoning is important because 718.3025(4), F.S. was enacted after the *Country Manors* decision cited above, and there was concern that the new statute may have changed the application of 718.302 to bulk cable contracts.

III. *HAWN V. SHORELINE TOWERS PHASE I CONDOMINIUM ASSOCIATION, INC., 2009 WL 3004036 (C.A. 11 FLA.)*

A. FACTS:

The condominium’s restrictions included a “No Animals Allowed” policy. Unit owner Hawn acquired a puppy in 2005 and wrote to the Association encouraging it to change the policy by arguing that the dog was as well-behaved as any child, and that the Association should give owners a chance to prove they love pets as much as any other family members. In 2006, Hawn wrote to the Association again and claimed a physical and psychiatric disability and asserted that the dog was a trained service animal that was necessary to live with him. Hawn’s letter included a letter from a chiropractor and a psychologist which were generic Medical Certification Forms.

In response, the Association requested additional information concerning the doctors’ qualifications, the nature of the disability and how it affects Hawn’s activities, and the need for a service animal. The Association concluded that, without this additional information, it must deny the request. The Florida Commission on Human Relations found cause to believe that the Association had discriminated against Hawn, and Hawn filed this lawsuit alleging that the Association discriminated against him by refusing to reasonably accommodate his

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disability. The District Court granted summary judgment in favor of the Association due to the Hawn’s failure to assert specific facts showing that there was a genuine issue for trial.

B. ISSUE:

Whether the Association violated the Florida Fair Housing Act and the federal Fair Housing Act by knowingly failing to reasonably accommodate Hawn’s disability?

C. HOLDING:

No. Based upon the information provided, the Association had no basis to know that Hawn’s disability met the statutory requirements or to know of the necessity of an accommodation by allowing the dog to reside with Hawn.

D. RATIONALE:

The duty to make a reasonable accommodation does not simply spring from the fact that the handicapped person wants such an accommodation made. The Association must instead have the ability to conduct a meaningful review of the requested accommodation. Since Hawn’s letter in 2006 included unclear explanations as to the nature and extent of his disability and was wholly inconsistent with the reasons he provided in his January 2005 letter for wanting his dog to be permitted, there is no genuine issue in this case that the Association knew of a disability and the necessity of an accommodation.

IV. *CURCI VILLAGE CONDOMINIUM ASSOCIATION, INC. v. SANTA MARIA*, 14 So.3d 1175 (FLA. 4TH DCA 2009).

A. FACTS:

Santa Maria purchased a condominium unit from the developer. Prior to turnover of control of the Association to the unit owners, the developer’s manager orally told Santa Maria that he “didn’t see a problem” with her putting decorative improvements in the rear of her unit. The minutes of board meetings did not reflect that approval of Santa Maria’s request had been discussed. However, the Declaration of Condominium specifically required written approval from the Board of Administration.

Shortly after turnover of control of the Association, the Board sent a demand letter to Santa Maria advising that the modifications were causing flooding to the common elements and were

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not installed with the proper approval. The Association filed a lawsuit seeking an order to have the landscape modifications removed. Santa Maria defended by alleging that she reasonably relied upon the oral approval of the prior manager, who was also a director and the President of the Association at the time. She also alleged that the demand to remove the landscaping modifications was arbitrary and capricious. The Circuit Court found in favor of Santa Maria.

B. ISSUE:

Whether Santa Maria was entitled to reasonably rely on the oral approval of the manager/director/president to modify the landscaping in the rear of her unit when the governing documents require written approval from the Board of Administration?

C. HOLDING: No. The Circuit Court decision is reversed.

D. RATIONALE:

A declaration of condominium must be strictly construed. Santa Maria did not dispute that she did not obtain or even ask for written consent prior to making the modifications. Instead, she argues that the Association is estopped from claiming that she violated the restrictions because she reasonably relied on a representation by the manager/director/president and that the Association's change in its position is detrimental to her. But the Court held that Santa Maria could not reasonably rely on oral approval when the Declaration clearly requires written approval from the Board.

V. *WENDT, ET AL. V. LA COSTA BEACH RESORT CONDOMINIUM ASSOCIATION, INC.*, 14 So.3d 1179 (FLA. 4TH DCA 2009).

A. FACTS:

The Association, a time share complex, sued three of its directors for allegedly misappropriating time share weeks. The directors filed a counterclaim and were ultimately awarded \$57,000, collectively. The directors then filed a separate action seeking contractual and statutory indemnification for having to incur attorneys' fees and costs to defend against the Association's lawsuit.

The trial court dismissed the director's lawsuit for indemnification due to the failure to state a claim. The directors appealed.

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B. ISSUE:

Are the directors entitled to indemnification based on provisions in the Declaration and statute, respectively, when they are sued by the Association for allegedly breaching their fiduciary duty?

C. HOLDING: No.

D. RATIONALE:

The directors cannot state an action for indemnification under the circumstances of this case because indemnity is a right in favor of someone who performs a duty owed by him, but which, as between him and another, should have been discharged by the other. In this case, the lawsuit against the directors was not due to some actions by the directors in the discharge of their duties as directors. The directors in this case do not allege that they performed a duty which the Association should have performed, or on behalf of the Association, or that they have been subjected to liability due to the Association's wrongful acts. Instead, the directors wrongly apply the indemnification provisions to attempt to recover prevailing party attorney fees in the case brought by the association for breach of fiduciary duty.

The Court did certify a conflict in its opinion with the decision of the First District Court of Appeal in *Turkey Creek Master Owners Ass'n v. Hope*, 766 So.2d 1245 (Fla. 1st DCA 2000). In that case, the Court held that the indemnification statute also provides for indemnification in a case where a corporation has sued its own agent.

VI. FLORIDA ATTORNEY GENERAL'S ADVISORY LEGAL OPINION, AGO 2009-34, JULY 6, 2009.

A. FACTS:

The Hillsborough County Property Appraiser sought the opinion of the Attorney General concerning the proper method of assessing taxes to limited common elements. Specifically, the inquiry involved the situation in which some, but not all, unit owners have limited common element garages appurtenant to their units.

B. ISSUE:

Are ad valorem taxes, benefit taxes, and special assessments by taxing authorities that are

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assessed with respect to limited common elements in a condominium to be assessed against only those unit owners who receive the exclusive benefit of each, such limited common element?

C. HOLDING: Yes.

D. RATIONALE:

Section 718.120, F.S. provides that ad valorem taxes, benefit taxes, and special assessments by taxing authorities with respect to condominium property shall be assessed against the individual condominium units, and not upon the condominium property as a whole. Since the unit owners legally own an undivided share of the common element property, the value of that property for purposes of taxation is included in the assessed value of each unit. Therefore, the Association will not receive a separate tax bill. However, the relevant statutes do not specifically address the assessment of limited common elements that are appurtenant to a unit and entitle the unit owner to exclusive use rights. Citing a prior Department of Revenue opinion that is consistent with the Attorney General’s opinion here, the Attorney General concludes that the value of limited common elements that benefit less than all units is properly assessed only against the unit which the limited common element benefits.

VII. LAKE FOREST MASTER COMMUNITY ASSOCIATION, INC. V. ORLANDO LAKE FOREST JOINT VENTURE, ET AL, 10 So.3D 1187 (FLA. 5TH DCA 2009).

A. FACTS:

Homeowners’ Association filed a construction defect lawsuit against the developer of the community due to alleged defects in the common areas. The Circuit Court entered summary judgment in favor of the developer based upon the failure of the Association to properly obtain the approval of its members prior to commencing the lawsuit, as required by statute. Specifically, the developer successfully argued that the notice of the continued members’ meeting at which approval was ultimately obtained was not proper. The Association had continued the meeting by announcing the date, time and place of the continued meeting at the adjournment of the prior meeting, but had not sent a new, written notice to all members. Also, the developer successfully argued to the trial court that the Association’s lawsuit should be dismissed due to the absence of valid, member approval to sue the developer. If the action were dismissed, as opposed to temporarily abated, the Association would lose the right to certain claims due to the application of the recently enacted 10 year Statute of Repose.

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B. ISSUES:

Does Section 720.306(7), F.S., in the absence of a contrary provision in the Association bylaws, permit the adjournment of Association meetings by announcing the date, time and place of the reconvened meeting at the time of adjournment?

C. HOLDING: Yes.

Does the failure of a homeowners' association to obtain member approval of a legal action seeking damages in excess of \$100,000, as required by statute, result in a dismissal of the action or a temporary abatement until approval is obtained?

HOLDING: Temporary Abatement.

D. RATIONALE:

Section 720.306(7), F.S., contemplates the temporary suspension of previously noticed meetings. The statute specifically recognizes the propriety and ability to adjourn a meeting without mailed notice of such adjournment if the date, time, and place are announced prior to the adjournment. In addition, testimony can be taken to fill in, or clarify, incomplete or ambiguous meeting minutes in order to establish compliance with the statute.

Also, the failure of the Association to obtain required member approval of litigation involving its claim in excess of \$100,000 does not constitute an affirmative defense for the defendant to defeat the claim. Instead, the member approval requirement relates to the Association's authority to commit resources of the Association to such a lawsuit and is solely for the protection of the members. Therefore, approval is not a condition precedent that runs in favor of the defendant. In this case, because the defendant developer still owns lots in the development, he does have standing to demand member approval be obtained before the action continues. At most, the defendant is entitled to abatement, not dismissal, of the action pending approval by the members.

VIII. SANZ V. FERNANDEZ, ET AL., 633 F.SUPP.2D 1356 (S.D. FLA. 2009).

A. FACTS:

The plaintiff was a tenant who became delinquent in his rental payments to his landlord. The landlord used the services of a realty company that provided management and debt

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collection services. The management company, in turn, used the services of Fernandez for debt collection. The defendants, Fernandez and the management company, sent demand letters to the tenant in an attempt to collect the rent, but none of the demand letters contained disclosures and language that is required by the Fair Debt Collection Practices Act (“FDCPA”). The defendants ultimately filed an eviction action against the defendant and sought to recover attorney’s fees, even though the defendants are not attorneys. The eviction complaint was signed by the owner/landlord. The tenant brought this action claiming that the defendants are “debt collectors”, as defined by the FDCPA and the Florida Consumer Collection Practices Act (“FCCPA”), and therefore, their demand letters constitute a violation of those statutes.

B. ISSUE:

Are the management company and its debt collection service provider considered “debt collectors” under the FDCPA such that their demand letters and activities constitute a violation of the FDCPA and the FCCPA?

C. HOLDING: Yes.

D. RATIONALE:

To establish a claim under the FDCPA, the plaintiff must show, 1.) that the plaintiff has been the object of collection activity arising from a consumer debt, 2.) that the defendants meet the definition of “debt collector” under the statute, and 3.) that the defendant has engaged in an act or omission prohibited by the FDCPA.

The first element, “debt collection activity”, has not been clearly defined by the courts. The Supreme Court has held that filing legal proceedings can constitute “debt collection activity”. See, *Heintz v. Jenkins*, 514 U.S. 291, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995). Another Court has held that the sending of correspondence by a non-creditor advising a consumer of the amount due can constitute debt collection activity. See, *Sandlin v. Shapiro & Fishman*, 919 F.Supp. 1564 (M.D. Fla. 1996). In the case at hand, the owner/landlord was the named plaintiff in the eviction action, but the facts alleged were that the defendants, Fernandez and the management company, prepared the eviction case. The Court held that the name on the complaint is not determinative of the issue of whether debt collection activity under the FDCPA has been performed by the defendants, but rather the actual party engaging in the

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activity is the key to analyzing this issue. The Court found the plaintiff's allegations of debt collection activity sufficient to allow the case to be heard by the trial court.

Next, the Court analyzed whether the defendants are "debt collectors" under the FDCPA, and under the FCCPA, which utilizes the same definition. A "debt collector" is defined as any person who uses interstate commerce or mail in any business where the principal purpose is the collection of debts, or any person who regularly collects debts owed to another. Originators of debt are not debt collectors, so the owner/landlord, if acting on his own behalf, is not required to comply with the FDCPA or FCCPA.

The defendants cited *Reynolds v. Gables Residential Services, Inc.*, 428 F. Supp.2d 1260 (M.D.Fla.2006) for the proposition that management companies cannot be "debt collectors". However, the key fact in *Reynolds* was that the management company in that case was an agent of the creditor who, by contract, had the fiduciary duty to collect the debt initially, before it was in default. Such fiduciaries are considered to be acting as, and not just on behalf of, the owner/creditor. There is no allegation here by the defendants that there was any prior, fiduciary duty to collect the rent initially, so the plaintiff has adequately alleged that the defendants are debt collectors.

Finally, the facts alleged demonstrate a violation of the FDCPA since required disclosures were not included in the demand letters. In addition, the defendants are not lawyers, but filed a complaint and attempted to recover fees for preparing and prosecuting the claim. The Court found that the defendants' actions constituted the unauthorized practice of law and that the complaint, with its claim for attorney fees, constituted a violation of the FDCPA.

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2009 LEGISLATION AFFECTING COMMUNITY ASSOCIATIONS

1. CHAPTER 2009-203, LAWS OF FLORIDA (CONSTRUCTION DEFECTS; CHAPTER 558 AMENDMENTS) EFFECTIVE OCTOBER 1, 2009

- The term “completion of a building or improvement” is now defined to include the issuance of a Certificate of Occupancy or equivalent, or substantial completion.
- Service of the Notice of Claim is to be by certified mail, hand delivery, or courier with evidence of delivery.
- If the statutory notice is not provided then the court shall stay, not abate, the action.
- Notice is not required for a project that has not been completed.
- The trigger for the dates of completion under the statute are service rather than receipt of the notice.
- No construction lien rights shall accrue for destructive testing unless the owner contracts for the work.
- Narrows what materials may be acquired during the 558 process. The words “mutual exchange” are deleted. Within 30 days of a written request all that can be acquired are: ***“design plans, specifications, and as-built plans; any documents detailing the design drawings or specifications; photographs, videos, and expert reports that describe any defect upon which the claim is made; subcontracts; and purchase orders for the work that is claimed defective or any part of such materials.”***
- Chapter 558 process applies unless the contract specifies in writing that the 558 requirements do not apply. The statutory language is as follows: ***“Unless a claimant and a potential defendant have agreed in writing to opt out of the requirements of this section, the provisions of this Chapter shall apply to any claim for legal relief for which the agreement to make the improvement was made after October 1, 2009, and for which the basis of the claim is a construction defect that has arisen after completion of a building or improvement.”***
- Allows the parties to agree in writing to ***“pre-action mediation or otherwise alter the procedure for the notice of claim process described in this chapter.”***

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- After October 1, 2009 all written contracts (unless the procedure is waived) must contain the following ***“ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.”*** However, failure to include language does not contain a penalty.

**2. CHAPTER 2009-243, LAWS OF FLORIDA (FLORIDA-FRIENDLY LANDSCAPING)
EFFECTIVE JULY 1, 2009**

- The previous statute addressed “xeriscaping” also known as “Florida-friendly landscape” which was described as landscaping that conserves water and is drought tolerant.
- “Florida-friendly landscaping” is now defined as: ***“quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection.”***
- The previous law stated that a deed restriction or covenant entered into after October 1, 2001 could not prohibit or be enforced so as to prohibit any property owner from implementing xeriscape landscape on his or her land.
- Under the new statute, a deed restriction or covenant ***“may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373 or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373.”***
- The previous law regarding xeriscaping applied to deed restrictions recorded after October 1, 2001 (which is the date that the previous xeriscaping law became effective). However, the new law is not limited to covenants recorded after the effective date of the law. Rather, the law will retroactively apply the Florida-friendly landscaping requirements to all covenants and restrictions, even those recorded prior to the effective date of the law, and specifically precludes the enforcement of covenants which prevent Florida-friendly landscaping.

3. CHAPTER 2009-205, LAWS OF FLORIDA (NOT FOR PROFIT CORPORATIONS)

NOTES:

EFFECTIVE OCTOBER 1, 2009

(a) Filings With Department of State

- Provides for electronic filings.
- Extends time for correcting defective documents from 10 business days to 30 days.

(b) New Definitions

- “Distribution” means: ***“the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers. ...”***
- “Mutual benefit corporation” means: ***“a domestic corporation that is not organized primarily or exclusively for religious purposes; is not recognized as exempt under s. 501(c)(3) of the Internal Revenue Code; and is not organized for a public or charitable purpose that is required upon its dissolution to distribute its assets to the United States, a state, a local subdivision thereof, or a person that is recognized as exempt under s. 501(c)(3) of the Internal Revenue code. The term does not include an association organized under chapter 718, chapter 719, chapter 720, or chapter 721, or any corporation where membership in the corporation is required pursuant to a document recorded in county property records.”***
- “Voting power” means: ***“the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote that is contingent upon the happening of a condition or event that has not yet occurred. If the members of a class are entitled to vote as a class to elect directors, the determination of the voting power of the class is based on the percentage of the number of directors the class is entitled to elect relative to the total number of authorized directors. If the corporation’s directors are not elected by the members, voting power shall, unless otherwise provided in the articles of incorporation or bylaws, be on a one-member, one-vote basis.”***

(c) Distribution of Income

- Permits community associations to make refunds to its members, give credits to its members, disburse insurance proceeds to its members, and disburse or pay settlements to its members, without violating the general statutory prohibition against distribution of income.

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(d) Membership Transfers

- Prohibits transfer of membership rights in mutual benefit corporations except as permitted by articles of incorporation or bylaws.
- Prohibits amendments restricting transfer rights of members in a mutual benefit corporation, except changes in such rights as are approved by the members of the corporation, as well as the affected members.

(e) Resignation, Termination and Purchase of Memberships

- Provides that resignation does not negate the member’s pre-resignation obligations to the corporation.
- Requires “*fair and reasonable procedure*” to terminate memberships. Notice of any such action must be given by certified or first class mail. One year statute of limitations to contest notice.
- An expelled or suspended member may still be responsible for dues or assessments.
- Permits mutual benefit corporations to purchase resigned or terminated memberships as set forth in the articles of incorporation or bylaws.

(f) Special Members’ Meetings

- Permits five percent of voting power to call a special members’ meeting. Not applicable to community associations.

(g) Action Without Meeting

- Expands deadline for notice to non-consenting members from 10 days to 30 days.

(h) Voting by Members

- Permits corporations to reject votes where there is a reasonable basis for doubting the validity of a signature.
- Permits members and proxy holders to telephonically participate in corporate meetings if authorized by the board, and appropriate guidelines have been adopted.

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(i) **Members' Derivative Actions**

- Requires derivative actions to be brought by current member or former member who was a member when the cause of action accrues.
- Provides for 90 day curative period by board before derivative suit can be brought.
- Permits dismissal of case if a majority of disinterested directors (or committee of board members) find that the action is not in the best interests of the corporation.
- Requires court approval for discontinuation of a derivative action.
- Provides for corporation's recovery of attorney's fees if derivative action was not brought in good faith.

(j) **Removal and Replacement of Directors**

- Permits directors appointed by the board to be removed by two-thirds of the directors, or a greater number if provided in the articles of incorporation or bylaws.
- Provides for removal of directors by classes of members or cumulative voting where class voting or cumulative voting is permitted by the articles of incorporation or bylaws.
- Permits a majority of the board to remove a director for missing a specified number of meetings if so provided in the articles of incorporation or bylaws.
- If a vacancy on the board occurs for a director elected by a class, only the members of that class, or directors elected by that class, may fill the vacancy.
- The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected (not for unexpired term anymore).

(k) **Mergers**

- Requires Plan of Merger to state the manner and basis, if any, of converting memberships of each merging corporation into membership or obligations of the surviving corporation.
- Permits merger of for-profit corporation and not-for-profit corporations if surviving corporation is not for profit.

(l) **Dissolved Corporations**

- Sets forth detailed procedures for disposition of both known and unknown claims of dissolved corporations.

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(m) Corporate Records

- Permits records to be produced “*at a reasonable location specified by the corporation*” (not just corporate office).
- Expands time-frame for corporation’s duty to produce records from 5 business days to 10 business days.
- Provides that in order for a member to be entitled to the corporation’s year-end financial report, the member must demand it in writing.

(n) Conflict With Housing Statutes

- Chapter 617 now provides: “In the event of any conflict between the provisions of this chapter and chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners’ associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile home owners’ associations, the provisions of such other chapters shall apply. The provisions of ss. 617.0605-617.0608 do not apply to corporations regulated by any of the foregoing chapters or to any other corporation where membership in the corporation is required pursuant to a document recorded in the county property records.”

4. CHAPTER 2009-133, LAWS OF FLORIDA (TIMESHARE RESORT TAXATION) EFFECTIVE JULY 1, 2009

- “Short-term products” as defined in s. 721.05 are subject to transient occupancy taxation.
- Transaction fee paid by a timeshare owner that does not provide right to occupy a specific unit is a “service charge” and not subject to taxation under s. 125.0104.
- Consideration paid for the purchase of a timeshare license in a timeshare plan is rent subject to taxation.
- Sellers of timeshare interests are permitted to sell “debt cancellation products.”
- Public offering statements for timeshare plans must contain a statement that the owner’s obligation to pay assessments continues for so long as he or she owns the timeshare interest.

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**5. CHAPTER 2009-142, LAWS OF FLORIDA (COMMUNITY DEVELOPMENT DISTRICTS)
EFFECTIVE JULY 1, 2009**

- Creates a CDD classification known as “compact, urban mixed use district.”
- Permits CDD to adopt rules for enforcement of deed restrictions for property inside or outside the district:
 - ◆ If property is outside of district, there must be an interlocal agreement.
 - ◆ If property is inside district, the applicable county or municipality must consent.
 - ◆ The district may contract with member-controlled homeowners’ association for covenant enforcement.
 - ◆ For residential districts, less than 25 percent of residential units can be in a homeowners’ association for the district to have authority.
- Property owners outside of a district are entitled to elect an “advisor” to the district board when the board is empowered to enforce deed restrictions.
- Numerous changes to procedures to expand or contract a district.

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2009 COMMUNITY ASSOCIATION BILLS THAT DID NOT BECOME LAW

1. SB 714 (VETOED)

(a) Condominium Insurance

- Reversed the 2008 change to the statute which mandates that condominium associations require unit owners to show proof of individual insurance and which gives condominium associations the option of “force placing” coverage if the owner fails to provide proof of the required insurance.
- Required that HO-6 policies, issued or renewed after July 1, 2009, must include “loss assessment coverage” of at least \$2,000, with a maximum deductible of \$250.
- Required that the insurance appraisal the condominium association is required to obtain at least every 36 months be based on the “replacement cost” of the property, amending the 2008 law that required an appraisal for the “full insurable value.”
- Eliminated the requirement for the notice of the board meeting where insurance deductibles are set to disclose the amount of the proposed deductible and potential assessments that may be adopted.
- Reversed the requirement that unit owner’s HO-6 insurance policy name the condominium association as a named insured and loss payee.

(b) Condominium Directors and Elections

- Co-owners of units would have been eligible for simultaneous board service if they own more than one unit and are not co-occupants of a unit.
- Stated that a director is disqualified from continuing on the board if they are more than 90 days delinquent in the payment of a fine, fee, or any type of assessment, whether regular or special.
- Eliminated the requirement for the condominium association’s first notice of annual meeting to include a form to be signed by candidates which certifies that the candidates have read and will enforce the provisions of the condominium documents

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and Florida law. However, directors would be required to certify in writing that they have read the condominium documents and will uphold them to the best of their ability. Alternatively, a newly elected director could submit a certificate of completion of an educational program administered by the State. Failure to timely file the written certification or educational certificate automatically disqualifies the director from service on the board.

- Would have exempted timeshare condominium associations from the law passed in 2008 which prohibits multi-year terms for directors.

(c) Life Safety

- Repealed Section 553.509(2) of the Florida Statutes requiring buildings of at least 75 feet in height to have at least one public elevator capable of operating on an alternate power source for emergency purposes.
- Pushed back the fire sprinkler retrofitting requirement applicable to certain high-rise buildings from 2014 to 2025.

2. SB 880 (DIED ON CALENDAR)

(a) Condominium Insurance:

- Required all HO-6 policies to include \$2,000.00 loss assessment coverage, which would include owner’s share of assessments for deductible under Association master policy.
- Changed all references from “hazard” insurance to “property” insurance.
- Required Association master policy to include “perils of fire, lightning, windstorm and hail.”
- Eliminated language regarding insurance of “improvements.”
- Provided that HO-6 insurance must contain minimum coverage of \$300,000.00 and insure unit owner “for losses to others resulting from conditions and occurrences within the unit or the limited common elements without regard to fault.”
- Eliminated requirement that Association be additional insured and loss payee on HO-6 policy.

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- Expanded “Plaza East” exemptions to state that unit owner is liable for damage caused by conditions or occurrences within the unit or limited common elements without regard to fault.

(b) Condominium Official Records:

- Limited director liability for destruction of official records to cases where there is intent to harm.
- Stated that association is not liable for unit owner misuse of information obtained from official records.
- Exempted employee records (disciplinary, health and personnel records) from ambit of official records.
- Exempted association computer security data from ambit of official records.

(c) Condominium Board Meetings:

- Stated that if board meeting is called by petition of 20% of voting interests, board has no obligation to take any action with respect to the item.

(d) Condominium Board Elections/Qualifications:

- Provided that board members are not automatically reappointed when no one runs for their seat.
- Precluded “co-occupants” (in addition to “co-owners”) from simultaneous board service and provide an exemption for multiple unit ownership.
- Added special assessments and fines to financial delinquencies which disqualify a director.
- Eliminated requirement that candidate certification form be sent out with second notice of meeting.
- Provided that a director must be accused of embezzlement by information or indictment before they can be removed from office.

(e) Condominium Common Expenses:

- Added “broadband or internet service” to bulk purchase rights of association.

NOTES:

(f) Condominium Foreclosures:

- Increased mortgagee liability to the lesser of 12 months unpaid assessments (including special assessments) or 20% of original mortgage amount.
- Provided that if a foreclosing mortgagee does not pay its statutorily prescribed obligation within 30 days of taking title, it is liable for all unpaid assessments.
- Provided that a subsidiary, parent or affiliate is considered a mortgagee for statutory liability cap purposes.

(g) “Distressed Condominium Relief Act”¹

- Defined:
 - ◆ “Bulk assignee” as a person who acquires more than 7 condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or all of the rights of the developer under specified recorded documents.
 - ◆ “Bulk buyer” as a person who acquires more than 7 condominium parcels but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.
- Relating to the assignment and assumption of developer rights, provided that:
 - ◆ A bulk assignee assumes all liability of the developer except for implied warranties for work not requested by the bulk assignee, the obligation to fund converter reserves for a unit not acquired by the bulk assignee, or the obligation to provide converter warranties on any portion of the condominium property except as provided in a contract for sale between the assignee and a new purchaser.
 - ◆ A bulk assignee is not liable for:
 - Providing the condominium association with a cumulative audit of the finances from the date of formation.
 - The developer’s failure to fund previous assessments or resolve budget deficits, but must provide an audit for the period in which the assignee elects a majority of the board members, except when the bulk assignee receives the assignment of rights of the developer to guarantee assessment levels and fund budget deficits.

¹ The presenter: summary of the “Distressed Condominium Relief Act” was taken, essentially verbatim, from the *Bill Analysis and Fiscal Impact Statement* prepared by the Professional Staff of the Community Affairs Committee of the Florida Senate, dated April 7, 2009, as revised April 14, 2009.

NOTES:

- ◆ An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider for purposes of fraudulent trading under s. 726.102(7), F.S.
- ◆ Development rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee.
- ◆ There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- ◆ If more than one acquirer receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.
- Relating to the transfer of control of the condominium board of administration.
 - ◆ Provided that for purposes of transfer of control of the condominium association board of administration to unit owners other than the developer, if a bulk owner is entitled to elect a majority of the board members, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a buyer, or to be owned by anyone other than the developer, until the parcel is conveyed to a buyer who is not the bulk assignee.
 - All items required under s. 718.301(4), F.S., must be delivered by the bulk assignee to the board of administration (includes, but is not limited to, the recorded condominium declaration and all amendments, certified copy of the association’s articles of incorporation, bylaws, minutes, financial records, association funds or control of such funds, association tangible personal property, plans and specifications used in the construction of the condominium, insurance contracts, and a common elements turnover inspection report under seal of a state licensed architect or engineer.)
 - If the bulk assignee is not in possession of such documents and materials during the period in which the assignee owned the majority of the condominium parcels, the assignee must undertake a good faith effort to obtain and deliver such documents and materials, and must certify in writing to the association an itemized list of

NOTES:

documents and materials that could not be obtained by the assignee. The delivery of the certified list relieves the bulk assignee of all responsibility to deliver such documents and materials.

- ◆ In a conflict between the provisions of the Relief Act and the requirements of s. 718.301, F.S., relating to transfer of association control, the provisions of the Relief Act prevail.
- ◆ If a bulk assignee or a bulk buyer fails to comply with the provisions of the Relief Act, all protections and exemptions provided in the act are lost.
- Relating to the sale or lease of units by a bulk assignee or a bulk buyer:
 - ◆ Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation:
 - Updated prospectus of offering circular, or a supplement, which must include the form of contract for purchase and sale;
 - Updated Frequently Asked Questions and Answers sheet;
 - Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
 - Financial information required under s. 718.111(13), F.S., (association financial report for preceding fiscal year), unless the report doesn't exist for the previous fiscal year prior to acquisition by bulk assignee or accounting records cannot be obtained in good faith, in which case notice requirements must be met.
 - ◆ Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee must file with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation, a disclosure statement that includes, but is not limited to, the following:
 - A description of any rights of the developer assigned to the bulk assignee;
 - A statement relating to the seller's limited liability for warranties of the developer; and

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- If the condominium is subject to conversion, a statement relating to the seller’s limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.
- ◆ Prior to the sale or lease of a unit for a term of more than 5 years, the bulk assignee or bulk buyer must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.
- ◆ The waiver of reserves or reduction of reserve funding and the use of reserve expenditures for other purposes is restricted unless approved by a majority of the voting interests not under the control of the developer, the bulk assignee, and the bulk buyer.
- ◆ A bulk assignee in control of the association board of administration must comply with the requirements imposed on developers to transfer control of the association as required under s 718.301, F.S.
- ◆ A bulk assignee or a bulk buyer must comply with the requirements of s. 718.301, F.S., regarding contracts entered into by the association during the period the assignee or buyer maintains control of the association board of administration.
 - Unit owners must be afforded all protection contained in s. 718.302, F.S., regarding certain agreements.
- ◆ A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.
- Provided a time limitation for classification as a bulk assignee or bulk buyer.
 - ◆ A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2011. Provisions are made for determining the date of acquisition.
- Provided that an assignment of developer rights does not release the developer from any liabilities under the condominium declaration or chapter 718, F.S.
 - ◆ The developer’s liability is not limited for claims brought by unit owners, bulk assignees, or bulk buyers for violations of chapter 718, F.S.
 - ◆ Nothing in the act waives, releases, compromises, or limits the liability of contractors, subcontractors, materialmen, manufacturers, architects, engineers,

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or any participant in the design or construction of a condominium for any claim brought by the association, unit owners, bulk assignees, or bulk buyers relating to the design, construction defects, misrepresentations, or violations of chapter 718, F.S., except as provided in the act.

(h) Flags in Homeowners' Associations:

- Stated that Parcel Owner right to erect flagpoles is subject to municipal restrictions.

3. H.B. 1397 (DIED IN COMMITTEE)

(a) DBPR Authority

- Empowered Division to examine books and records of associations without subpoena. The Division would be obligated to ensure "strict compliance" with the laws.
- Authorized DBPR to employ law enforcement officers with arrest authority. Such officers would have primary responsibility to investigate associations and enforce applicable laws.
- Required mandatory revocation of CAM licenses after five or more violations of the law.

(b) Condominium Insurance:

- Required HO-6 policies to contain minimum \$2,000.00 loss assessment coverage.
- Changed all references to "hazard" insurance to "property" insurance.
- Brought responsibility of air-conditioner/heating equipment insurance back to unit owner.
- Eliminated language regarding insurance of "improvements".
- Eliminated all references to, and requirements for, for mandatory HO-6 insurance.
- Eliminated association as named insured and loss payee on HO-6 policy.

(c) Condominium Board Procedures, Qualifications, Elections:

- Provided that notice of board special assessment meeting must include "actual" (instead of "estimated") amount of assessment.
- Phased in staggered terms, where permitted, by lot.

NOTES:

- Eliminated requirement for candidate certification form to be completed prior to running for election.
- Provided that if board can amend bylaws, that such amendments must be considered at two consecutive meetings at least one week apart, held between the hours of 6:00 p.m. and 10:00 p.m.
- Provided that an indictment or information must be issued before a director being charged with embezzlement is grounds for removal.
- Provided that only one co-owner per unit may serve on board.
- Required that within 30 days of election, director must certify that they have read and will attempt to uphold the condominium documents, certain sections of F.S. 718 and will discharge their fiduciary duty. The Division may order a director removed from the board if it finds that the director misrepresented that he has read the condominium documents or the law.
- Required that directors on post-turnover board must be unit owners.

(d) Hurricane Protection:

- Allowed association to install impact glass on areas maintained by the association.

(e) Condominium Foreclosures:

- Increased mortgagee liability to the lesser of 24 months of assessments or half the delinquent principal amount due.
- Required a mortgagee to pay the association all unpaid assessments and add those amounts to the mortgagee’s principal claim.
- Required tenant to pay rent directly to association during pendency of foreclosure.

(f) Mandatory Management For Community Associations:

- Required any association with reserves in excess of \$250,000.00 to have a licensed manager.

(g) Cooperative Act Changes

- Changed references from “unit owner” to “shareholder”.

NOTES:

- Amended numerous provisions of the Cooperative Act to essentially mirror the Condominium Act.

(h) HOA Changes

- Proposed amendment to HOA statutes raising foreclosing mortgagee assessment liability cap.
- Mandated OPPAGA to conduct a study as to whether homeowners’ associations should be regulated.
- Removed condominium, cooperative and homeowners’ association charges from current exclusion in law, which generally prohibits “transfer fee covenants”.

4. S.B. 998 (DIED IN COMMITTEE)

(a) Condominium Rental Amendments:

- Provided that “rental amendment grandfathering” only applies to rental prohibitions or minimum lease term changes.

(b) Condominium Official Records:

- Excluded unit owner e-mail addresses from ambit of official records.

(c) Condominium Board Qualifications:

- Eliminated candidate certification form.
- Provided for post election certification of intent to uphold condominium documents and discharge fiduciary duty.

(d) Foreclosures, Delinquencies and Default:

- Required mortgagee to foreclose within one year of filing action to enjoy statutory cap. Exception for owner-occupied units, and bankruptcy cases where stay relief is diligently pursued.
- Permitted association’s lien to secure management company collection letters at a maximum charge of \$50.00.
- Allowed transfer fees to be secured by lien.
- Permitted suspension of common element use right (with hearing) for misconduct, and without hearing for assessment delinquency.

NOTES:

- Permitted suspension of voting rights for delinquency in paying assessments.
- (e) **HOA Declaration Amendments:**
 - Basically followed current condominium amendment procedure, but generally banned mortgagee consent provisions, retroactively.
- (f) **HOA Foreclosures:**
 - Permitted association’s lien to secure management company charges for collection letters not to exceed \$50.00.
 - Incorporated same proposals as condominium proposals in this Bill that foreclosure must be completed within one year for mortgagee to enjoy assessment liability cap.
- (g) **HOA Official Records:**
 - Permitted HOA to comply with parcel owner records access request by making them available in computer format, as is the law for condominiums.

5. C.S./HB 27 (DIED ON CALENDAR)

- (a) **Condominium Elections/Candidate Certification:**
 - Required directors to certify within 30 days of election that they have read condominium documents, will endeavor to uphold them, and will otherwise discharge their fiduciary responsibility. Failure to comply results in disqualification.
- (b) **HOA Official Records:**
 - Required parcel owners to request official records by certified mail in order for association penalties to attach.
 - Allowed association to charge personnel or management company costs when copying official records requiring the production of more than 25 pages.
- (c) **HOA Reserves:**
 - Removed limits on “statutory reserve” funding by assessment increase provisions in governing documents.
 - Permitted termination of “non-statutory reserve” accounts by majority vote.

NOTES:

- Required disclosure of underfunded reserves in year end financial report.
- Allowed adjustment of reserves for doubtful accounts.

(d) HOA Director Compensation:

- Prohibited compensation of directors. Would permit reimbursement for expenses incurred and compensation authorized by governing documents, or approved by a majority of the members.

(e) HOA Fines:

- Permitted fines greater than \$1,000.00 to be secured by a lien.

(f) HOA Director Elections:

- Permitted use of “two envelope system” in electing directors when permitted by governing documents.
- Required directors to certify that they have read and will attempt to uphold the governing documents and exercise their fiduciary duty, same as condominium proposal in this Bill.

(g) HOA Covenant Enforcement:

- Created New Part IV of Chapter 720 called the “Home Court Advantage Dispute Resolution Act” which would encompass F.S. 720.501 through 508, and would:
 - Require pre-suit mediation of all “disputes” with a provision for election into arbitration.
 - Allow for suspension of ADR process to obtain emergency relief in court.
 - Toll statute of limitations during pre-suit ADR.
 - Require detailed notice from “aggrieved party” to “responding party.”
 - Provide responding party with 10 days to “resolve dispute.”
 - Allow aggrieved party to supply list of 5 acceptable mediators.
 - Provide 20 days for responding party to respond.
 - Require mediation to be held within 90 days of initial notice.
 - Require parties to split cost of mediation.
 - Permit responding party to opt out of mediation and demand arbitration.

NOTES:

- Impose penalty of loss of right to seek prevailing party attorney’s fees for failure to cooperate in statutory ADR process.
- Permit aggrieved party to also pursue pre-suit arbitration in lieu of mediation.
- Provide for prevailing party attorney’s fees to be awarded in pre-suit arbitration.
- Require that mediators and arbitrators be certified, and members in good standing of the Florida Bar.

III. WHAT TO EXPECT FOR 2010

- “Distressed Condominium Relief Act” (Bulk Purchaser Legislation)
- Rental Grandfathering Amendments.
- E-Mails as Official Records.
- Co-Occupant Service on Board.
- Candidate Certification and “Loyalty Oath.”
- Condominium Insurance Glitches.
- Personnel Records as Official Records.
- Foreclosure Relief.
- Protection of Unit Owner Privacy and Association’s Computer Security.
- Director Delinquencies.
- Suspension of Privileges or Services For Non-Payment of Assessments.
- Expanded Bulk Services (internet, wi-fi, telephone).
- Attachment of Rental Income.
- Procedures and Charges for Official Records.
- HOA Reserves.
- Director Compensation.
- HOA Election Procedures.
- HOA Acquisition of Country Club Memberships.
- Home Court Advantage Bill.

NOTES:

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