



FLORIDA LEGISLATIVE SESSION WEEK 3 UPDATE-- CALL ALERT FOR MARCH 22, 2013

The hot topic this week for those of us that follow community association bills was the proposed bill, [BPR S3](#), filed by the Business and Professional Regulation Subcommittee dealing with homeowners' associations (HOAs). I posted a [summary](#) of the bill on the Florida Condo & HOA Law Blog. The most significant parts of the bill are: (1) it does not include regulation of HOAs by the Department of Business and Professional Regulation (DBPR); (2) it requires all HOAs to report to the DBPR by November 22, 2013 the name of the association, the FEIN number, the mailing and physical address, the number of parcels, and the annual revenues and expenses; (3) it deletes the requirement for pre-suit mediation and replaces it with an internal dispute resolution process; and (4) it adds some additional triggers for turnover of control of the association from the developer to the non-developer owners.

Some of our main concerns with the House HOA bill are as follows:

DBPR Reporting Requirement: The bill requires the association's community association manager (CAM), or a director if not managed by a CAM, to report certain information to DBPR. While there are certainly some benefits to knowing how many HOAs there are in the State (this information does not currently exist), the concern is that it will lead to regulation by the State later on down the road. Also, the proposed changes may not result in good data because there is no enforcement or consequences for an association that does not provide the information. The proposed change basically relies on HOAs finding out about the new law on their own and voluntary reporting the information if the HOA is not represented by a CAM. Another concern is that it is a level of regulation that is not needed and will be a burden on CAMs and voluntary board members.

Pre-suit Mediation: The bill deletes the pre-suit mediation requirement that has been in effect for over ten years. The mandatory mediation provisions in the HOA Act were the result of recommendations made by the HOA Task Force that studied this issue and listened to hours of testimony and ultimately determined that mandatory mediation was the best way to resolve disputes in an HOA. Mediation has been used by the courts in Florida to resolve disputes for over 30 years. The reason mediation works is because there is a neutral, third party,

trained mediator who encourages and facilitates the resolution of a dispute. It is an informal and non-adversarial process. The mediators are trained in how to build consensus and get the parties to reach an agreement.

The bill replaces the pre-suit mediation with an “internal dispute resolution process.” The bill would require associations to adopt an internal dispute resolution process as an amendment to the bylaws. This could be problematic for associations that have high thresholds for amendments to the bylaws and will result in a non-uniform dispute resolution process for every association. If the association does not adopt an internal dispute resolution process as an amendment to the bylaws, then the internal dispute resolution provision in the statute will apply. Our concerns with the proposed internal dispute resolution procedure include: (1) there is no limit to the types of disputes that have to go through this internal dispute procedure; (2) there is no limit to how many of these written requests an owner can submit; (3) it is not balanced because the owner can refuse to meet, but the association can not refuse to meet; (4) it requires a written response within 5 business days, which is not a sufficient amount of time for the board to meet (requires 48 hours notice) and designate a member to meet with the owner and respond to the owner; (5) if the Board designates one person to meet, that one board member will not have the authority to bind the rest of the Board. So any agreement entered into would not be effective; (6) it requires the parties to meet at a mutually convenient time and place to explain their positions and confer in good faith within 30 days. However, without a neutral third party mediator, the success rate is going to be very low, and may cause more problems especially when the issues are heated or emotional; (7) it provides that the member cannot be charged a fee to participate in the procedure, which puts the burden on the other association members to bear any costs associated with this procedure; (8) it provides that a “resolution of the dispute which is not in conflict with the law or governing documents, shall bind the association and is judicially enforceable.” Does this bind the owner too, or just the association? Does the reference to “resolution” mean a resolution adopted by the Board, or a general resolution by the parties which has not been reduced to writing?; (9) it provides that a “written agreement signed by the parties, which is not in conflict with the law or governing documents” shall bind the parties and is judicially enforceable. Is the “written agreement” different than the “resolution” referred to in the previous sentence? How can a written agreement signed by only one member of the Board bind the association?

CALL’s position on the alternative dispute resolution provisions is that the mandatory mediation procedures should remain in the statute, and if there are specific problems with it, those problems should be addressed. If the mandatory mediation provisions are to be replaced, it should only be replaced with another established method of alternative dispute resolution that has been proven to work.

Here are some other highlights of Week 3 of the 2013 legislative session:

SB 286 (Sen. Negron), Relating to Design Professionals. This bill was heard on the floor of the Senate on “second reading.” On second reading, the Senate does not vote on the bill itself, but rather, on any amendments that are filed. Sen. Soto filed an amendment, supported by CALL and other stakeholders, which would have required the design professional’s contract to disclose the level of insurance, if any. The amendment was not approved, but Sen. Soto has filed it again and it will again be considered on “third reading.” On third reading, any amendments have to be approved by a two-thirds vote.

SB 1666 (Sen. Latvala), Relating to Mortgage Foreclosures. This bill was approved by a vote of 7-3 in its first committee of reference, the Senate Banking and Insurance Committee. It has three additional committees that it must go to: Judiciary, Appropriations, and Rules. At this week’s committee meeting, much of the discussion focused on a new provision (not in the House version) that allows the notice of the foreclosure sale to be published on an internet website instead of a newspaper. Advocates for newspapers and senior citizens argued that it will reduce the chance the notice will be seen. This bill is important for associations because it will allow associations to move stalled mortgage foreclosure cases by filing for an expedited order to show cause procedure. The bill balances the right of the associations to move these bills forward, while also providing certain consumer protections to the persons in foreclosure and persons who buy a foreclosed home. For a summary of this bill, and the House companion [HB 87](#), please see my blog post from [January 18, 2013](#).

HB 1339 (Rep. Moraitis), Relating to Residential Properties. This bill was approved by a 7-5 vote in its first committee of reference, the House Civil Justice Subcommittee. It includes a number of changes that will affect condominiums, cooperatives, and homeowners’ associations, including: (1) permits the association to enter an abandoned unit and take certain action such as making repairs, turning on the power, etc.; (2) provides for criteria to determine whether a unit is abandoned; (3) provides that the association may petition a court of competent jurisdiction for the appointment of a receiver and may rent an abandoned unit for the benefit of the association to offset the association’s costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements; (4) provides that a unit owner is jointly and severally liable with the previous unit owner for all unpaid assessments, late fees, interest, and reasonable costs and attorney fees (the current law only refers to “assessments”); (5) provides that the liability of a first mortgagee for the unpaid assessments, interest, late fees, and reasonable costs and attorney’s fees, is limited to 12 months past due assessments or 1% of the original mortgage debt, whichever is less; (6) strikes the word “superior” from the section involving an association’s liability for assessments due to another association; and (7) makes similar changes to the Cooperative Act and Homeowners’ Association Act.

SB 120 (Sen. Latvala), Relating to Condominiums. This bill passed unanimously in its last committee of reference. The bill, and its companion [HB](#)

[175](#), are an initiative of the Real Property Section of the Florida Bar and are intended to make the Condominium Act consistent with the Interstate Land Sales Acts (ILSA). Specifically, the bills change the requirements relating to the circumstances under which a declaration of condominium or other documents are effective to create a condominium.

[SB 342](#) (Sen. Thrasher), Relating to Rental of Homestead Property. SB 342 passed unanimously in the Senate Appropriations Committee. This bill provides that a homestead property may be rented for up to 30 days per calendar year without being considered abandoned or losing the homestead exemption on the property. If the homestead is rented for more than 30 days, the property can lose its homestead exemption, and any such rental is subject to state sales tax.

[HB 813](#) (Rep. Passidomo), Relating to Civil Remedies Against Insurers. This bill was set to be considered by the House Civil Justice Subcommittee on Monday, March 18th. However, it was temporarily deferred (not considered). The bill provides that before a person may bring a civil action against an insurer pursuant to Section 624.155 or based on the common-law claim of bad faith, certain condition precedents must be met including: (1) 60 days written notice of the violation to the Department of Financial Services and the authorized insurer; and (2) the notice must be on a form provided by the department and must specify certain information including the amount of money the insurer failed to pay. The bill also provides that no action shall lie if the insurer tenders either the amount demanded in the notice or the applicable policy limits. The bill also addresses third-party liability claims and what happens if two or more third-party claimants make competing claims arising out of a single occurrence.

[HB 573](#) (Rep. Hooper), Relating to Manufactured and Mobile Homes. This bill was approved unanimously at the Government Operations and Appropriations Subcommittee. It requires Citizens to offer coverage on mobile homes or manufactured homes for a minimum insured value of at least \$3,000 and specifies the procedure for requesting and obtaining funds from the Florida Mobile Home Relocation Trust Fund to pay for the operational costs of the Florida Mobile Home Relocation Corporation and the relocation costs of mobile home owners.

[HB 903](#) (Rep. Davis and Rep. Waldman), Relating to Adverse Possession. This bill was approved unanimously by the House Finance and Tax Subcommittee. The Senate companion has not yet been heard in any committees. The bill amends the adverse possession statute to require that the adverse possessor "control" the real property for 7 years. The current law refers to "occupying" the real property for 7 years. The bill also requires actual control through maintenance or improvement of the exterior of any structure or land. It also provides that the adverse possessor may not enter any structure on the

possessed property until the end of the adverse possession period and after a deed has been issued to the possessor.

Next week will be a slow week—because of the Passover and Easter holidays, the House and Senate will only meet on Wednesday and Thursday.

Have a great weekend and I will update you again next week!

Very Truly Yours,

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