



FLORIDA LEGISLATIVE SESSION WEEK 6 UPDATE-- CALL ALERT FOR APRIL 12, 2013

Six weeks down, and three more to go until the end of session.

Week 6 started out with a flurry of activity, and then slowed down a bit towards the end of the week. Here are the highlights:

HOA Bills: The House HOA bill, [HB 7119](#) (Rep. LaRosa), and the Senate HOA bill, [SB 580](#) (Sen. Hays), each passed unanimously in their second committee of reference on Tuesday of this week. The bills are now very different than they were originally. The House bill was removed from its last committee, Regulatory Affairs, which means it could get heard by the full House without any further committee approval. The Senate bill must still be approved by the Rules Committee, and it is on the agenda for Wednesday, April 17 at 2:30. Of course, the differences between the two bills must still be resolved and the final language must be approved by the full House and Senate and signed by the Governor before the bills can become law.

At this week's committee meetings, a lobbyist for the developers spoke against the portions of the bill that impact developers' rights and responsibilities prior to turnover. Sen. Hays indicated he would be making some additional changes to address some of their concerns. In addition, there are significant differences between the House and Senate bill that will need to be addressed by the sponsors of the bills.

Please see my blog post from [April 9, 2013](#) for a complete discussion of the changes made to the bills and the major differences between the two bills. Notably, SB 580 and HB 7119 both still have the language which will require all HOAs to register with DBPR by November 22, 2013.

SB 1666 (Sen. Latvala), Relating to Mortgage Foreclosures. This bill was scheduled to be heard in the Senate Judiciary Committee on the afternoon of Monday, April 8. That morning, Sen. Soto (from Kissimmee, FL) held a press conference along with PICO United Florida to denounce the bill. Sen. Soto also filed a series of "unfriendly" amendments intended to add more time to the

foreclosure process and require banks to show more proof regarding ownership of the loans. Unfortunately, the Judiciary Committee did not take up the bill and it was not heard.

It is now on Judiciary's agenda for Monday, April 15, 2013 at 1:00 pm. Assuming it is approved by Judiciary, it must still be approved by two more Senate Committees (Appropriations and Rules). It is important that the bill be approved at Monday's committee meeting so that there is enough time for it to be approved by its last two committees and by the full Senate.

SB 1666 includes an important provision for associations that will allow associations to move stalled mortgage foreclosure cases by filing for an expedited order to show cause procedure. Opponents of the bill argue that it does not give owners in foreclosure enough due process. However, the bill does a very good job of balancing 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.

With regard to the order to show cause process, the bill specifically states that if the defendant (i.e., the owner in foreclosure) files a "motion, verified answer, affidavits, or other papers" or presents evidence at or before the hearing which "raise a genuine issue of material fact which would preclude entry of summary judgment or otherwise constitute a legal defense to foreclosure," such action will preclude the judge from entering a final judgment of foreclosure at the show cause hearing. Therefore, the bill gives more than adequate due process rights to the owners in foreclosures and will allow the entry of a final judgment when the defendant has not raised a valid legal defense.

Associations should keep in mind that while SB 1666 includes an important tool for associations, it is not a panacea for the troubles that associations are having in collecting past due assessments. Ultimately, the banks still control the documents, they will still get to choose when to file the complaint, how long to attempt service before resorting to publication, when to file the original note and mortgage, etc. However, SB 1666 will finally give the associations the ability to move along cases that are "ready" for final judgment.

SB 286 (Sen. Negron) and HB 575 (Rep. Passidomo), Relating to Design Professionals. HB 575 was approved in its last committee of reference, the House Judiciary Committee. HB 575, and its Senate companion bill, SB 286, provide that architects or engineers would no longer be personally liable for negligence arising out of their professional services if certain language is added to the contract. This would essentially limit people hiring these design professionals to breach of contract claims against the design professional's business entity. SB 286 has been approved by the Senate, and is now in House Messages, which means that it can be heard and approved by the House. This

very anti-consumer piece of legislation appears to be a “sure-thing” to pass, and only a veto by Governor Scott will prevent it from becoming law.

HB 279 (Rep. Hood), Relating to Rental of Homestead Property. 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. HB 279 was approved unanimously in the House Local & Federal Affairs Committee, but must still be approved in its final committee--the House Appropriations Committee. The Senate companion bill, [SB 342](#) by Senator Thrasher, has already passed the Senate and is in House Messages and can be taken up and considered by the House after HB 279 has been approved by all of its committees of references.

HB 277 (Rep. Rehwinkel Vasilinda), Relating to Assessment of Residential and Nonhomestead Real Property. This bill implements a constitutional amendment approved in 2008 which prohibits consideration of certain improvements in the assessed value of real property. Specifically, the bill provides that, in determining the assessed value of real property used for residential purposes, a property appraiser may not consider the increase in the just value attributed to the installation of renewable energy source device. Originally, the bill also provided that improvements made for the purpose of improving a property's resistance to wind damage would not be considered in the assessed value of the property. However, that language was removed from the bill. HB 277 has now been approved by all of its committees of reference, but the Senate companion bill, SB 1064 (Sen. Latvala) still has two more committee stops.

HB 883 (Rep. Boyd) and SB 1410 (Sen. Simmons), Relating to Fire Safety and Prevention. The current law provides that before the minimum fire safety codes can be applied to existing buildings, the local fire official must determine that a threat to life safety or property exists. HB 883 and SB 1410 originally included a provision which would have removed the requirement for a determination of the threat to life safety or property. The current versions of the bills restore the current language in the law and do not change the law with respect to the minimum fire safety codes and existing buildings.

SB 490 (Sen. Stargel), Relating to Landlords and Tenants. This is the companion bill to HB 77, which has already passed the House. Among other things, SB 490 includes a provision stating that landlords may not retaliate against a tenant if the tenant has paid rent to a condominium, cooperative, or homeowners' association after demand is made by the association in order to pay the landlord's obligation to the association. SB 490 was approved in Regulated Industries by a 6-3 vote, and next must be approved by its last committee of reference, the Senate Rules Committee.

Have a great weekend and I look forward to updating you again next week.

Very Truly Yours,

Yeline Goin, Executive Director

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