



CALL ALERT FOR MAY 3, 2011- COMMUNITY ASSOCIATION BILL PASSES LEGISLATURE AND IS HEADED TO GOVERNOR

As previously addressed in our prior CALL Alerts, many portions of SB 530 (the “glitch” bill) were primarily drafted by CALL, at the request of members of the Legislature, to clear up some of the confusion that arose from SB 1196 (the 2010 community association bill that became law). SB 530 was originally accompanied by HB 1035, and later by HB 1195. We are pleased to announce that HB 1195 passed out of the Legislature today and will now be sent to the Governor for action. We have no reason to believe the Governor will veto the bill, but final confirmation normally takes a matter of 3 or 4 weeks. We will keep you posted.

Here is a summary of the issues CALL worked on and drafted language for which are contained within this bill:

- **Official Records (Condominiums and HOAs)**
 - Will clarify that owners are permitted to consent in writing to the disclosure of their protected contact information.
 - Will clarify that although personnel records are not available for inspection by owners, the owners will be permitted to inspect employment agreements and budgetary and financial records that indicate the compensation paid to employees.
- **Open Meetings (Condominiums)**
 - Will permit condominium boards the right to hold closed meetings (not open to unit owner observation) for “personnel” matters. Legal counsel need not be present. (This is already the law in the homeowners’ association context.)
- **Attachment of Rents (Condominiums, Cooperatives and HOAs)**
 - Will clarify that “future monetary obligations” includes all rent due from the tenant to the unit or parcel owner and must be paid to the association until all delinquent accounts are paid in full.
- **Director Certification (Condominiums)**

- Will provide that condominium association directors may submit proof of educational course attendance (in lieu of signing the certification form) and such course must have been completed within 1 year before or 90 days after the date of the election or appointment.
- The written certification is valid as long as the director serves on the board without interruption.
- **Suspensions (Condominiums, Cooperatives, HOAs)**
 - Will allow suspension of common element use rights for non-payment (no hearing is required) and for bad acts (hearing is required).
 - Will clarify that if voting rights are suspended, the suspended vote will not count towards quorum or vote required to approve an action.
 - Suspensions for non-payment will not require hearing, but will require board approval at properly noticed meeting.

The Bill also contains some provisions that were primarily advocated through other constituents and groups:

- **Collection of Rent from Tenants (Condominiums, Cooperatives, HOAs)**
 - Will provide a form letter to be sent to tenants explaining the tenant's obligation to pay rent to the association.
 - Will provide tenant with immunity from any claim by the landlord related to the rent timely paid to the association after the association has made written demand.
- **Elections and Staggered Terms (Condominiums)**
 - Will clarify that board member terms do not expire at the annual meeting if all of the member terms would expire at the annual meeting but there are no candidates.
 - In those cases where the board member terms expire at the annual meeting, the board members may stand for reelection unless prohibited by the bylaws. (This suggests that term limits may be permitted, if provided in the bylaws).
 - Will clarify that a candidate must be eligible to serve on the board at the time of the deadline for submitting a notice of intent (i.e., 40 days before the election) in order for his or her name to be listed as a proper candidate on the election ballot or to serve on the board.
- **Termination (Condominiums)**
 - Will provide for "partial" termination of condominiums and that amendments

providing for same are not subject to s. 718.110(4).

- Plan of termination in a partial termination must reflect the remaining interests in the non-terminated portion of the condominium.
- Modifies distribution protocol and mortgagee participation to reflect partial termination.
- Will allow for termination because of economic waste or impossibility if a condominium includes units and timeshare estates where the improvements have been totally destroyed or demolished. Will require a plan of termination be filed in court by a unit owner seeking equitable relief.

- **Membership Agreements (Condominiums)**

- Will provide for association acquiring membership agreements by vote of a majority of entire voting interests instead of reference to declaration and s. 718.113(2).

- **Management Fee Collection (Cooperatives)**

- Will remove provision from 2010 statute allowing cooperative associations to lien for collection services for which the association has contracted.

- **Homeowners' Associations/Bulk Television/Internet/Information (HOAs)**

- Will create s. 720.309(2) to basically mirror condominium statute, as amended in 2010, regarding bulk purchase of information or internet services.
- Will prohibit homeowners' associations from denying individual service to any resident from certificated or franchised provider.

- **Bulk Buyers/Bulk Assignees (Condominiums)**

- Will amend definition of "bulk assignee" and "bulk buyer" to mean a person who acquires more than 7 condominium parcels in "a single condominium."
- Will provide that bulk assignee is not liable for warranties under 718.203(1) or 718.618, except "as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser," or for design, construction, development or repair work performed by or on behalf of the bulk assignee.
- Will provide that if, at the time the bulk assignee acquires title to the units and receives an assignment of developer rights, the developer has not relinquished control of the board, for purposes of determining the timing of transfer of control, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until

the condominium parcel is conveyed to an owner who is not a bulk assignee.

- Will require filing with the division and certain disclosures to purchasers and lessees if bulk assignee or bulk buyer is offering “more than seven units in a single condominium” for sale or for lease for a term exceeding 5 years.
 - Will provide that bulk assignee or bulk buyer are not required to comply with the filing or disclosure requirements if all of the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction.
 - Will provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012.
- **Homeowners’ Association Board of Directors Eligibility and Meetings (HOAs)**
 - Will carry over the provisions in the Condominium Act regarding board eligibility. A person delinquent in the payment of any monetary obligation to the association for more than ninety (90) days, and convicted felons will not be eligible to serve on the board.
 - Will allow members of a homeowners’ association to speak at meetings of the board with reference to all designated agenda items, and will no longer require a petition of the voting interests to speak at a board meeting.
- **Manual Fire Alarms (Condominiums and Cooperatives)**
 - Will clarify that a condominium, cooperative or multi-family residential building that is less than four stories in height and has an exterior corridor providing a means of egress is exempt from installing a manual fire alarm system. This corrects the glitch from last year when two different bills adopted different language. One bill referred to buildings less than four stories in height, and another bill referred to condominiums one or two stories in height.
- **Hurricane Protection (Condominiums)**
 - Will clarify that an association is permitted to install impact glass or other code compliant windows as hurricane protection.
- **Joint and Several Liability (Condominiums and HOAs)**
 - Will provide that an association that acquires title to a unit through foreclosure is not liable for unpaid assessments that came due before the association’s acquisition of title in favor of any other condominium association or homeowners’ association which holds a superior interest on the unit.

We will notify you as soon as Governor Scott takes action on this Bill. In the meantime, we encourage all of our CALL members to contact the Governor and urge him to sign HB

1195 into law. Governor Scott's contact information is listed below:

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Very truly yours,

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