



New HOA Bill Filed Requiring Regulation by DBPR-- CALL Alert for February 28, 2014

This week felt like the “calm before the storm.” With no committees meeting and the members of the legislature back in their home districts, Tallahassee was rather quiet. But starting next Tuesday, on March 4, 2014, the City of Tallahassee will be transformed and the hustle and bustle of the 2014 legislative session will begin.

The big news this week is that Sen. Hays filed a bill relating to homeowners' associations (HOAs) which will require that HOAs be regulated by DBPR, very similar to how condominiums and cooperatives are currently regulated. The bill also requires all HOA parcels to pay \$4.00 per year in order to fund the new regulatory program. There are a number of other new provisions in the bill which I will explain further below.

Regarding flood insurance, it was expected that the U.S. House of Representatives would vote this week on a bill to delay flood insurance premium hikes. However, the vote has been delayed another week. Even if the House votes on the bill next week, the House bill and Senate bill are different. Therefore, additional negotiations will have to take place in order to reconcile the two versions. In the meantime, Governor Scott has called on President Obama to delay the premium hikes through his executive powers. President Obama has not indicated that he will do that, and appears to be waiting on Congress to act.

New HOA Bill Summary: [SB 1348](#), Relating to Homeowners' Associations by Senator Hays, is 122 pages long, but the substantive changes are on pages 1-35 of the bill. The rest of the bill (pages 36-122) amends numerous Florida Statutes to add “Homeowners' Associations” to the Division's name, so that it will be called the “Division of Condominiums, Homeowners' Associations, Timeshares, and Mobile Homes.” Note that as of this writing, no House companion bill has been filed. Last year, Senator Hays filed a similar bill, which never got a House companion and was never heard in any committees. If SB 1348 does get scheduled to be heard in any committee, I will be sure to let you know so that you can let the committee members know what you think of the bill.

The following is a summary of the main impacts of the bill:

- Provides that regulatory oversight of HOAs is necessary to ensure compliance with federal and state laws and local ordinances and to make sure there is a system of “checks and balances” in order to prevent abuses by “governing authorities.”
- Provides that Chapter 720 is not intended to impair contract rights created before June 14, 1995. (Therefore, contract rights created after June 14, 1995 can be impaired).
- Gives Division jurisdiction to enforce compliance with Chapter 720 and the “adopted rules” relating to HOAs.
- Gives Division the authority to investigate complaints when the association is still under developer control as well as after the association has been turned over to the owners. After turnover, the Division’s jurisdiction is limited to financial issues, elections, and official records access.
- Gives the Division the authority to levy civil penalties against the developer, the association, and individual officers and board members.
- Effective January 1, 2015, requires a \$4.00 per unit fee in order to fund the new regulatory program. Beginning on January 1, 2016, the Division may increase the fee to reflect changes in the cost of living under s. 401(a)(17) of the IRS.
- Requires 14 days notice by mail of the board meeting at which special assessments, “increases in assessments, or amendments to governing documents” will be considered, regardless of contrary notice requirements in a governing document.
- Provides that fines may only be levied if the association was authorized by its “original governing documents to impose fines.”
- Removes the provision which allows a lien to be filed if the fine is \$1000 or more. In other words, it removes any ability of an HOA to file a lien for fines.
- Unless otherwise provided by the governing documents or by law, the articles of incorporation and bylaws may be amended by two-thirds of the voting interests of the association, and the declaration may be amended by “the affirmative vote of parcel owners representing two-thirds of the voting interests of the affected parcels.”
- If bylaws are silent, the annual meeting and all other member meetings shall be held within 45 miles of the association property.
- Prohibits general proxies for most homeowners’ association votes (for example, votes to waive or reduce reserves, votes to waive the financial reporting requirements, votes to amend the declaration, articles and bylaws) and requires a “condo-style” two-notice, two-envelope secret ballot election process (for HOAs of 10 or more parcels).
- Voting interests or consent rights allocated to a parcel owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise.

- Requires majority approval for two-year staggered terms (even if two-year staggered terms already provided in the bylaws).

Removes the provision currently in the law that states that the turnover provisions do not apply to an HOA in existence of the effective date of Chapter 720. In other words, the turnover provisions will apply to all HOAs regardless of when they came into existence.

Enjoy your weekend and get ready for the 2014 Legislative Session!

Very Truly Yours,

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