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Legislative Update--House Adjourns Sine Die: CALL Alert for April 28, 2015

In a surprise move, the House of Representatives adjourned "sine die" today. The 2015 Legislative Session was scheduled to last until Friday of this week, although we knew that there would be a special session or an extended session because of the impasse between the House and Senate over the budget and Medicaid expansion. By adjourning "sine die", all bills that still require House action are "dead."

The Senate is continuing to meet and as of this writing, they have not made a statement about the House adjournment. It is possible that the call of the special session could include pending bills, but the most likely scenario is that the special session will deal only with the budget.

The House action means that **HB 611 (Rep. Woods)/SB 736 (Sen. Stargel), Relating to Residential Properties is dead for this session**. These are the "estoppel certificate" bills that I have been updating you on throughout the session. CALL has been opposed to these bills throughout the process and is still opposed. I spoke in opposition to the bills at committee meetings in the House and Senate, and also met personally with the House and Senate sponsors and members of the House and Senate committees that heard the bills. Some of the changes that were made to the bills as a result of CALL's advocacy, and the advocacy of management companies and community association groups who have been lobbying the Legislature on these issues, are:



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(1) The bill originally provided that the estoppel certificate had to be provided within 10 days of receipt. The current bill changed this to 10 "business" days.

(2) The bill originally included a very harsh waiver provision that would have prohibited the association from collecting ANY amounts due to the association if the estoppel certificate was not timely provided. This language was modified to provide that the association may not collect the estoppel certificate fee if the estoppel certificate is not timely provided.

(3) The bill originally limited the estoppel certificate fee to \$100 if the unit owner was not delinquent, with an additional \$100 if the unit owner was delinquent. These amounts were increased to \$200 if the unit owner is not delinquent, with another \$200 if the unit owner is delinquent. The association could also charge an additional \$100 if the estoppel certificate is requested on an expedited basis and the association delivers the certificate within 3 days. In addition, the revised bill also included a provision allowing these maximum amounts to be increased every 3 years based on increases to the Consumer Price Index (CPI).

Notwithstanding the changes that were made to the bill, CALL remained opposed because of concern about the fee caps and the prohibition on the association's ability to require the fee to be paid as a condition for delivering the certificate. No other closing fees are capped, and the vast majority of managers and associations charge a reasonable estoppel certificate fee, and therefore, the caps are an unnecessary regulation on associations and managers. Further, requiring that the estoppel certificate fee be paid to the association from the proceeds at closing could be a significant burden to associations, especially in those cases where sales fall through and the association has to produce a number of different estoppel certificates for the same unit. If the association has to delay collecting fees until the deals close, it will add cost to the process by having to monitor the deals and chase after the fees. The current procedure, which works very well, is that the fee is paid at the time the work is done.

While the bill is dead for this session, it is expected that the bill will be filed again for the 2016 legislative session. The supporters of the bill are the realtors and the title agents and it is therefore important that CALL members remain engaged and educate themselves on the impacts of the bill so that we may continue to advocate on behalf of associations.

Bills that Have Passed

SB 748 (Sen. Ring)/HB 791 (Rep. Moraitis), Relating to Residential

Properties: HB 791 passed both the House and Senate and are now headed to the Governor. The bill impacts condominiums, cooperatives and homeowners' associations. Note that the provisions of **HB 1211** by Rep. Fitzenhagen regarding electronic notice and online voting were incorporated into HB 791. Some of the provisions in HB 791 are:

- Allows proxies to be faxed or emailed to association
- Removes requirement that electronic notice be authorized by bylaws
- Allows associations to implement online voting through a board resolution
- Clarifies that partial payments may be applied to outstanding amounts
- Provides that the role of the fining committee is to confirm or reject the fine levied by the board
- Clarifies that if voting rights are suspended, the voting interest allocated to the unit is subtracted from the total number of voting interests
- Suspension of voting rights or right to use common elements applies to member and tenants and guests, regardless of number of units owned by the member
- Extends the "Distressed Condominium Act" (i.e. the "bulk buyer law) until 2018
- Amends official records "catch-all" provision to include "written" records (already in HOA statute)
- Names Chapter 720 the "Homeowners' Association Act"
- Provides that the "governing documents" of an HOA includes

- rules and regulations
- The failure to provide notice of recording amendment in an HOA does not affect the validity of the amendment.

HB 643 (Rep. Sprowls)/SB 1172 (Sen. Latvala), Relating to Termination of a Condominium Association: These are the "condominium termination" bills that change the voting requirements and procedures for optional termination of condominiums. The bills provide that optional termination cannot be used until 5 years after the recording of a declaration of condominium, unless there is no objection to the plan of termination. If a bulk owner owns 80% of the units and terminates the condominium, dissenting owners would be entitled to 100% of the fair market value of the unit, but original purchasers from the developer are entitled to at least the purchase price of the unit. HB 643 passed the House and Senate unanimously and is now headed to the Governor.

HB 71 (Rep. Smith)/SB 414 (Sen. Altman): HB 71/SB 414 deal only with "service animals" and not "emotional support animals." The bills, among other things, provide that a person who knowingly and fraudulently represents himself or herself through conduct or verbal or written notice as requiring the need for a service animal or as being the trainer of a service animal is guilty of a misdemeanor in the second degree punishable in the same manner as other second degree misdemeanors, and requiring the performance of 30 hours of community service, to be completed in not more than 6 months. HB 71 was approved unanimously by the House and Senate and will next be considered by the Governor.

HB 87 (Rep. Passidomo)/SB 418 (Sen. Richter): HB 87 and SB 418 deal with construction defect claims. SB 418 and HB 87 were amended to address CALL's initial concerns. HB 87 passed the House unanimously and the Senate by a vote of 35-4 and will now be considered by the Governor.

Stay tuned for additional updates on all pending bills.

Very truly yours,



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