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Legislative Update--Webinar Update; Special Session Looms; Summary of Community Association Bill Sent to Governor: CALL Alert for May 22, 2015

Happy Memorial Day Weekend! Thank you to everyone who attended CALL's Webinar on the 2015 Legislative Session. Donna DiMaggio Berger and I enjoyed giving you a behind the scenes look at what happened in Tallahassee, while updating you on the bills that passed, and didn't pass, this session. If you missed the Webinar, it will be available for CALL members on CALL's website, www.callbp.com. You will need your CALL password to log into the "member's only" section of the website. Remember, your CALL password is your association's Becker & Poliakoff "matter" number. If you do not know your password or would like more information about becoming a member of CALL, you may email us at call@callbp.com.

We are also starting to get a better picture of the upcoming special session, which will begin on June 1. The Joint Proclamation issued by Senate President Gardiner and House Speaker Crisafulli provides that the only bills that will be considered during the special session are primarily related to the budget, health care, and tax cuts. And yesterday, the House released its special session calendar, which includes a workshop on Monday, June 1, on the Senate's plan to provide health insurance to



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low income Floridians, and a committee meeting on Tuesday, June 2, on the House tax cut package. Also yesterday, the Federal government signaled that it will give the state approximately \$1 billion in LIP funds, about half of last year's LIP money. This is a positive sign in that it lessens the divide between the House and Senate budget. The special session is scheduled to last until June 20, although it could be extended if a budget has not been adopted by then. While there has been talk of shutting down government on July 1 if a budget has not been adopted, yesterday's announcement from the Federal government makes that less likely.

The main community association bill from this session, HB 791 by Representative Moraitis, has been sent to the Governor and he must act by June 2, or allow it to become law without his signature. There is no reason to believe that the bill will be vetoed. If the bill is approved, it will be effective on July 1, 2015. The following is a summary of HB 791.

SUMMARY OF HB 791 BY REPRESENTATIVE MORAITIS

HB 791 impacts condominiums, cooperatives and homeowners' associations.

(1) Electronic Voting (Condominiums, Cooperatives, & Homeowners' Associations): The bill provides that associations may conduct elections and other membership votes by utilizing an electronic (internet-based) method. The bill also specifies the requirements necessary to establish an electronic voting method, including a board resolution. The bill requires that an owner consent to online voting, and if the owner does not consent, the owner is entitled to vote by paper ballot.

(2) Digital or Electronic Transmission of Proxies (Condominiums, Cooperatives & Homeowners' Associations): The current law does not specifically authorize owners to

transmit a copy of their proxy to the association (for example, by fax or a scan of the proxy sent via email). The intent of this language is to facilitate voting. Many owners are not available to be at meetings in person and may wish to bypass U.S. mail and send their proxy to the association in some other fashion. The proposed language is similar to language currently found in Section 607.0722(10), Florida Statutes, which governs corporations for-profit. The proposed language is being added to Section 617.0721, Florida Statutes, which governs corporations not-for-profit, and therefore, will also apply to condominium, cooperative, and homeowners' associations.

(3) Electronic Notice to Owners (Condominiums, Cooperatives and Homeowners' Associations): Currently, in order to provide notice to owners electronically, the bylaws must provide for electronic notice and the owner must consent in writing. The bill removes the requirement that electronic notice be authorized by the bylaws. Therefore, as long as the owner consents in writing, the association can provide the owner with electronic notice.

(4) Fines/ Penalties (Condominiums, Cooperatives, & Homeowners' Associations): The bill clarifies that it is the board of administration of the association that is responsible for levying any fines. Furthermore, the committee formed to hear cases regarding potential fines must be impartial and limited to that purpose. It also clarifies that the role of the fining committee is to confirm or reject the fine levied by the Board.

(5) Suspension of Voting Rights (Condominiums, Cooperatives, & Homeowners' Associations): The bill provides that if an owner or member's voting rights have been suspended for any reason, the total number of votes of the suspended member(s) must be reduced from the total number of voting interests of the association when calculating the vote needed for any

action. The bill also provides that the suspension of voting rights or right to use common elements applies to members and tenants and guests, regardless of number of units owned by the member.

(6) Application of Payment/Assessments (Condominiums & Cooperatives): Current law provides for a specific order in which payments received from a unit owner are to be applied (first accrued interest shall be paid, followed by any administrative late fees, then any costs and attorney's fees, and finally, the delinquent assessment). The bill amends sections 718.116(3) and 719.108(3), F.S. to clarify that the required distribution of delinquent assessment payments applies in spite of any purported "accord and satisfaction." This change is intended to overrule the case of *St. Croix Lane Trust & M.L. Shapiro, Trustee v. St. Croix at Pelican Marsh Condominium Association Inc.*, 144 So.3d639 (Florida 2nd DCA, 2014). In that case, the court held that if a check is tendered for less than the total amount of a disputed claim, the acceptance creates an accord and satisfaction if the tender is accompanied by an offer to settle for the tender amount. The case raised concerns as to whether an association could accept partial payment for a delinquent assessment. This legislative change puts to rest those issues and clarifies that the association may accept partial payments.

(7) Official Records (Condominiums and Cooperatives): The bill amends the official records "catch-all" provision which currently provides that "all other records of the association...which are related to the operation of the association" are official records. The bill clarifies that these "other" records are "written" records. This makes the condominium and cooperative statute consistent with the HOA statute.

(8) Extension of Distressed Condominium Relief Act (Condominiums): The bill extends the "distressed condominium relief act" also known as the "bulk buyer law" until July 18, 2018. Currently, the bulk buyer law

is set to expire on July 1, 2016.

(9) Insurance (Condominiums): The bill removes the provision that requires the association to be responsible for "uninsured losses". This is a glitch fix.

(10) Definition of Governing Documents (Homeowners' Associations): The bill provides that the "governing documents" of an HOA includes rules and regulations.

(11) Amendments (Homeowners' Associations): The bill provides that the failure to provide notice of recording an HOA amendment does not affect the validity of the amendment.

(12) Names Chapter 720, Florida Statutes (Homeowners' Associations): The bill names Chapter 720, Florida Statutes, as the "Homeowners' Association Act."

(13) Board Member Eligibility (Homeowners' Associations): The bill clarifies that a person who is delinquent on the last day that he or she could nominate himself or herself to the board, is not eligible to be a candidate and may not be listed on the ballot. A person serving on the board who becomes 90 days delinquent in the payment of any monetary obligation shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law.

We will be providing additional summaries of other bills of interest in our CALL 2015 Legislative Guide, which will be published soon. Stay tuned for additional information about how you can reserve your copy of the CALL 2015 Legislative Guide.

Very truly yours,



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