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Legislative Update for Week 5 - CALL Alert for February 15, 2016

Dear Clay Witt:

Happy Presidents Day! Week 5 was fairly quiet in terms of legislation impacting community associations. And this year, that is a good thing! The bill to keep an eye on this week is **HB 1357, Relating to Community Associations, by Representative LaRosa**. It MAY be heard in the House Judiciary Committee on Thursday at 9:00 a.m. CALL is opposed to the bill and we ask that you contact Chair Charles McBurney and ask him to NOT HEAR THE BILL IN JUDICIARY THIS WEEK. Chair McBurney's email address is:
charles.mcburney@myfloridahouse.gov

Significantly, the bill requires condominium associations with 500 or more units and homeowners' associations with 7500 or more parcels to post many of its official records on a website. The revised bill also includes provisions changing the current procedure for collections and foreclosures, which we believe will unreasonably slow down the collection process and add administrative costs to the process.

CALL's main concerns with **HB 1357** are as follows:

1. HB 1357 requires condominium associations consisting of 500 or more units, and HOAs with 7,500 or more parcels, to post its official records on a website.
Comment/Concern: This will be expensive and time consuming and should not be



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mandated by the Legislature. It should be optional for associations that wish to take on that burden. Further, many official records (i.e., unit owner accounts, association financial records, contracts, insurance policies, etc.) include sensitive and/or confidential information that should not be posted on a website. In our experience, it will take almost a full-time person to be responsible for the website and the records. In addition, this is a slippery slope and once it is in the statute, it will be more likely that the threshold number will be reduced, which will impact more and more associations.

2. HB 1357 requires directors and officers to disclose any activity that may "reasonably be construed as a conflict of interest." The bill includes certain activities that create a rebuttable presumption of a conflict of interest.

Comment/Concern: This conflicts with the current conflict of interest provisions in the current statutes, which are not being removed and which will result in conflicting provisions in the statutes. The bill creates a presumption that a conflict occurs if the board member or a "relative" enters into a contract with the association. It also presumes a conflict if the director or relative has "an interest" in the company that is proposing to do business with the association. The terms "relative" and "interest" are not defined, which makes the bill language vague and difficult to enforce. The bill also provides that if the Board votes "against" the contract, the director has to vacate his seat on the board. Why would the board member have to resign if there is no contract between the association and the board member? The bill doesn't say what happens if the Board votes in favor of the contract.

3. HB 1357 prohibits homeowners' associations from enforcing traffic laws provided in chapter 316 or criminal laws provided in chapters 775-896.

Comment/Concern: Many HOAs own their roads and enforce traffic regulations and parking through fines and other legal means. Also, many HOAs have provisions which

prohibit persons from using the home unlawfully or renting or selling to convicted felons. What if the residents are selling drugs or creating a nuisance? The bill will prohibit associations from addressing those situations through fines and/or through injunctive relief in the courts.

4. HB 1357 provides that an amendment may not prohibit a homeowner from renting his or her home, alter the duration of a rental term, or limit the number of times a homeowner may rent his or her home during a specified period, unless the owner consents or unless the amendment is applied to persons who purchase after the effective date of the amendment.

Comment/Concern: We believe that HOAs should be allowed to determine whether the community will allow rentals, the rental term, etc. and that an owner who purchases in an HOA is on notice that the declaration may be amended, and the owner should be bound by all properly adopted amendments. The proposed change to the law will allow a small minority of owners to override the will of a majority of the owners in the community and will create two classes of owners.

5. HB 1357 requires associations to provide a payment plan to all owners before it can collect past due assessments. The owner must be given at least 6 months to pay the delinquency.

Comment/Concern: This is over-regulation of the operation of the association and will place a significant burden on the ability of associations to pay their bills. This will also encourage owners to delay paying their assessments on time. If this had been the law during the foreclosure crisis, many associations would have gone bankrupt.

For a complete list of the main bills that CALL is tracking, including the status, [click here](#) for our 2016 CALL Bill Report.

Very truly yours,



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