

# CALL Alert!



COMMUNITY ASSOCIATION  
LEADERSHIP LOBBY



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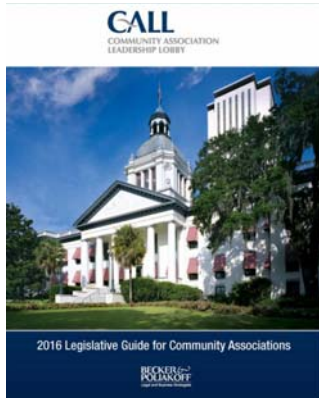
## Condo Criminal Penalties Bills

Senator Rene Garcia and Representative Jose Felix "Pepi" Diaz filed SB 1682, Relating to Condominiums, and HB 1237, Relating to Condominiums, respectively, which include board member term limits and criminal penalties against volunteer board members for certain violations, including failure to provide access to official records and fraudulent activities related to the election of directors.

While there is no doubt these legislators are rightfully seeking to correct the election fraud and financial crimes problems which were identified in the recent Miami Grand Jury Report, some of the provisions in these bills will create new problems in addition to the ones they are seeking to fix. It is too early to tell if online voting will help prevent some of the fraud which has been identified with the current paper voting system but that law was passed, in part, to do just that. Perhaps we should wait to see if last year's legislative fix has been effective before looking to criminalize actions related to elections.

Director term limits have been discussed for years but most people agree that the bigger problem is the lack of people interested in serving on community association boards, so preventing those who are willing to serve from doing so is not the most productive idea.

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In our opinion, it is not good public policy to criminalize violations of civil (real estate) laws unless a crime has been committed (e.g. theft or forgery). Unpaid volunteer board members should not be held criminally liable if, for example, they fail to turn over records within 10 days or if they incorrectly count a ballot that should have been disregarded. In many communities, these functions are not handled by board members but are delegated entirely to the professional manager. The over broad criminal penalties in the bills may have a chilling effect on the ability of associations to find qualified persons to serve on a board. It is important that any criminal penalties be narrowly drawn to deal with the extreme cases. Notably, while the bills seek to address many of the problems which stem from a lack of state resources, they do not address the fact that over the past 6 years, the State has "swept" over \$20 million from the Condominium and Cooperative Trust Fund for other State programs. Any reform of the laws governing condominiums must include a provision ensuring that the money that is sent to Tallahassee by condominium and cooperative unit owners is used for the benefit of the State's condominium and cooperative owners. For a full explanation of the bills, please see my Blog Post: [New Condo Bill Includes Criminal Penalties](#).

**HB 1237** is on the calendar for **Monday, March 20 at 3:30 p.m.** in the House Civil Justice and Claims Subcommittee, and **SB 1682** is on the calendar for **Wednesday, March 22 at 4:00 p.m.** in the Senate Judiciary Committee. The following are links to each of the committees that will hear the bills this week. If you click on the name of the committee, it will take you to the committee's page that includes the list of committee members. If you know any of them personally or if they represent your association, please reach out to them before their meeting and let them know what you think of the bills. The links will also include a way for you to email them directly.

[House Civil Justice and Claims Subcommittee](#)  
[Senate Judiciary Committee](#)

### **Fire Sprinkler Bill**

**HB 653** by Representative Moraitis will be considered by the [House Careers and Competition Subcommittee](#) on **Tuesday, March 21 at 8:00 a.m.** Among other things, **HB 653** will clarify that low and mid-rise condominiums are not required to retrofit with fire sprinklers, and therefore, were not required to take an "opt out" vote. In addition, the bill will allow high-rise condominiums and cooperatives the right to also opt out of an engineered life safety system (ELSS). **Therefore, if your high rise building took a fire sprinkler opt out vote, you will**

**want to closely watch this issue. If you have any questions or if your fire marshal is requiring you to take action now with respect to an ELSS, please discuss your options with your association counsel.**

The current environment is very similar to the situation in 2002 when high-rises were pressured to install full sprinkler systems before the 2003 legislative change which first instituted opt out rights. Those associations who failed to wait for the outcome of the 2003 Legislative Session were unfortunately not able to exercise those hard-won opt out rights. Former State Senator Ellyn Bogdanoff was the legislator who successfully sponsored the additional 2010 sprinkler opt out legislation and is now the Lead Lobbyist for our Firm's ELSS Opt Out Lobby Initiative. If your high-rise would like to join this fight, please let me know or contact a member of our staff who is handling intake on our ELSS Opt Out Lobby Group, Diane Schick at [dschick@bplegal.com](mailto:dschick@bplegal.com) for more information on how to join the ELSS Opt Out Lobby Group.

### **Estoppel Bill**

The "Estoppel Bill" has significantly changed since our last CALL Alert. The original bill prohibited associations from collecting the fee when the certificate was prepared. The new version of the bill will continue to allow associations to collect the fee when the certificate is prepared, but provides for significant penalties if the association does not refund the amounts collected when a closing does not occur. **SB 398** has passed two of its three committees of reference. The House version of the bill, **HB 483**, will be heard by the House Careers and Competition Subcommittee on **Tuesday, March 21, at 8:00 a.m.**

### **HOA Rental Bill**

If you live in an HOA and your association is experiencing problems with short-term rentals, you should be aware that **SB 1186** has been filed by Sen. Bracy. The bill would add the following to Chapter 720:

*720.306(1)(g): An amendment prohibiting parcel owners from renting their homes, altering the duration of the rental term, or specifying or limiting the number of times parcel owners are entitled to rent their homes during a specified period applies only to parcel owners who consent individually or through their representatives to the amendment and parcel owners who acquire title to their homes after July 1, 2017.*

**It is unclear whether this proposed change to the law is intended to retroactively invalidate any such**

**amendments recorded before July 1, 2017 but we continue to advise associations who wish to be proactive with regard to hotel-type rentals in their communities to consider amending their governing documents.** At this time, there is no House companion bill and the bill has not been scheduled to be heard in any committees.

We will continue to keep you posted. Make sure to like us on Facebook and follow us on Twitter for up to date information as the bills make their way through the legislative process.

Very truly yours,



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