

2008 SESSION SUMMARY OF CONDOMINIUM AND HOUSING BILLS

CONDOMINIUM LEGISLATION

1. Condominium Act Revisions: CS/HB 601 by Representative Hudson was effective on July 1, 2008, and it reorganizes the regulation of land sales practices at the Division of Florida Land Sales, Condominiums, and Mobile Homes. The bill renames the Division and it is now known as the Division of Florida Condominiums, Timeshares, and Mobile Homes. The bill also makes the following changes to the Condominium Act:

A. Insurance: The legislation contains several modifications to the insurance provisions found in s. 718.111 (11) of the Act. The insurance provisions of s. 718.111 (11) are reformatted; “pooled insurance” products must now be approved by the Office of Insurance Regulation; criteria is provided for “adequate insurance”; enforcement mechanisms have been provided for unit owner insurance; and the Division *Plaza East* decision is modified to allow associations to rely on community document provisions in maintenance matters and unit owners are made responsible for their negligence that results in damage to the condominium property.

B. Common Expenses: The legislation clarifies the provisions of s. 718.115 to include government-mandated improvements, such as fire protection devices and master utility meters, serving more than one unit or the common elements as a common expense of the condominium association.

C. Estoppel Letters: The bill revises the billing process for estoppel certificates provided by the condominium association for the benefit of a unit owner selling or refinancing the unit. The management company providing the certificate may charge a reasonable fee for the service provided that it has been authorized in writing, and the unit owner is responsible for paying the charge at closing, or if the closing does not occur, in the same manner as assessments are paid.

D. Termination Proceeds: The provisions of s. 718.117 are clarified to ensure that mortgage holders may not claim portions of the proceeds attributable to other units in the condominium that were not subject to the mortgage.

E. Board Member Abstention: An amendment to the bill on the final day of the Session modified the language that passed earlier in the Session in CS/HB 995, and the change provides that when a board member abstains from a vote, the abstention will not be counted for any purpose. (*Chapter 2008-240, Laws of Florida.*)

2. Condominiums-Energy Savings Devices: CS/HB 697 by Representative Aubuchon is the omnibus energy package and Section 3 of the bill amend s. 163.04 to authorize the use of solar collectors, clotheslines and other energy savings devices within the boundary of a condominium unit (the identical provision passed as Section 3 in **HB 7135**). Section 25 of the bill creates new s. 718.113 (6) that permits the board of a condominium association to install solar collectors, clotheslines and other energy savings devices on the common elements without the prior approval of unit owners. (*Chapter 2008-191, Laws of Florida.*)

3. Condominium Act Revisions: CS/CS/HB 995 by Representative Robaina makes a series of changes to the Condominium Act that will take effect on October 1, 2008. Many come from the work of the House Select Committee on Condominiums. The bill provides the following changes:

A. Association Administration: The bill eliminates alternative voting procedures for board elections for all communities containing more than 10 units; eliminates voting rights of units owned by the association; permits unit owners to add agenda items to meetings of the board by petition; imposes new disclosure language for limited proxies used to waive reserves; requires membership meetings to be held within 45 miles of the community; requires special disclosures for any contract with an entity where a member the board has a financial interest; and grants emergency powers to boards of directors in times of an emergency declared by the Governor.

B. Board of Directors: The bill articulates the fiduciary standards imposed on officers and directors; limits board members to terms of one year unless the bylaws permit staggered terms and the staggered terms have been approved by a majority of voting interests of the association; requires candidates for the board to certify that they had read the community documents and the law; permits the Division to remove board members for violations of the law; limits eligibility to members who had not been removed by the division or who are delinquent in their assessments; and requires specific disclosure by board members who have a financial interest in contracts with the association and provides for cancellation of such contracts by the membership.

C. Community Management: The bill amends Chapter 468 to extend regulation to firms that are engaged in community management; require all communities in excess of 10 units to use a licensed manager or management company if they do not self-manage; and prohibit a management company from doing business with any affiliated company without prior disclosure.

D. Condominium Records: The legislation limits access to social security, driver's license, and credit card numbers. It imposes civil penalties on officers and directors who intentionally destroy records or fail to properly keep records; requires association records to be maintained within 45 miles of the community or within the county where the condominium is located and kept for at least 7 years; and authorizes the Division to subpoena records that had not been produced after two, written requests by a unit owner.

E. Condominium Financial Matters: The bill provides that the statutory financial reporting can not be waive for more than 3 consecutive years; requires additional cost-breakdowns in special assessment notices; requires additional disclosures when waiving or reducing the funding of reserves; and requires 30-day written notice before a lien can be filed against a delinquent unit owner.

F. Receivership: The bill imposes new notice requirements on a unit owner seeking a receivership for the condominium association, and it requires an additional notice to be provided by the court when a receiver is appointed for the association.

G. Hurricane Protection and Religious Displays: The legislation amends s. 718.113 and adds additional options for condominium communities to provide hurricane protection that meets or exceeds applicable building codes. The bill also authorizes the display of religious objects in the front door area of a condominium unit that do not exceed 3 inches in width, 6 inches in height and 1.5 inches in depth.

H. Building Inspection: The legislation creates a new provision in the Act requiring a professional architect or engineer to inspect condominiums of 3 stories or more in height at least every 5 years, with an optional waiver of the report by a vote of the membership. The bill also requires the developer to provide a new inspection report on the condition of condominium buildings at the time of transition of control from the developer to the unit owners.

I. SLAPP Suits: The bill provides free speech protection to unit owners by prohibiting the filing of SLAPP suits by the association against a unit owner. The provision is the same as the protection found in Chapter 720 that prohibits a mandatory homeowners' associations from filing SLAPP suits against a home owner.

J. Division Jurisdiction: The legislation limits the Division's post-transition jurisdiction to financial issues, election disputes, and records access, but expands the powers of the Division by granting it the authority to remove board members, to order restitution by a developer, and to certify education and training programs for board members, officers, and unit owners. The bill also extends the authority of the Ombudsman to assist in resolving disputes that are not within the jurisdiction of the Division. (**Chapter 2008-28, Laws of Florida.**)

COMMUNITY ASSOCIATION LEGISLATION

1. Transfer Fee Covenants: SB 464 by Senator Aronberg prohibits, as a matter of public policy, the enforcement of transfer fee covenants requiring payment to the original land owner each time the property is sold. The bill provides a series of exemptions, among them, fees for homeowners' association assessments, condominium association assessments, real estate commissions and governmental taxes and assessments. The bill took effect on July 1, 2008. (*Chapter 2008-35, Laws of Florida.*)

2. Association Estoppel Letters: CS/HB 601 by Representative Hudson was effective on July 1, 2008, and it reorganizes the regulation of lands sales practices at the Division of Florida Land Sales, Condominiums, and Mobile Homes. The bill also creates a procedure for providing estoppel certificates by the homeowners association for the benefit of a home owner selling or refinancing his or her parcel of property. The association management company providing the certificate may charge a reasonable fee for the service provided that it has been authorized in writing, and the home owner is responsible for paying the charge at closing, or if the closing does not occur, in the same manner as assessments are paid to the association. (*Chapter 2008-240, Laws of Florida.*)

3. Fire Safety—Multi-family Buildings: HB 727 by Representative Gibbons requires the owner of any multi-unit residential structure that is of truss-type construction to install special signage approved by the Fire Marshal to advise fire and emergency operations personnel concerning the truss-type construction. (*Chapter 2008-192, Laws of Florida.*)

4. Community Associations—Receivership: HB 1105 by Representative Rivera provides new notice requirements and procedures when a receivership proceeding is under consideration for a condominium, cooperative, or mandatory homeowners' association. The petitioning owner must give all other effected owners 30 days notice of the intent to seek the receivership, and the court must provide the owners additional notice once the receivership has been granted. (The identical language for condominium associations also passed in **CS/CS/HB 995**.) The bill also requires a 30-day written notice to a delinquent unit owner in a condominium or cooperative association prior to the filing of a lien by the association. (*Chapter 2008-202, Laws of Florida.*)

5. Display of the United States Flag: SB 1378 by Senator Fasano allows any homeowner to erect a flag pole on the owner's private property that does not exceed 20 feet in height to display the United States flag and flags of the branches of the Armed Services. The legislation preempts any provision of the community's governing documents or rules and regulations that would restrict the rights authorized in the bill. (*Chapter 2008-45, Laws of Florida.*)

6. **Community Associations–Delinquent Assessments: SB 1986 by Senator Ring** is intended to make technical corrections to s. 720.3085 that relate to the collection procedures for delinquent homeowners' association assessments; it provides new forms for the process; and it preserves the priority position of mortgage liens in a first position. (*Chapter 2008-175, Laws of Florida.*)
