

## Bills Cover Wide Range of Issues

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By Joe Adams

[jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com)

TEL (239) 433-7707

FAX (239) 433-5933

Each year, Florida's Legislature sits in session for sixty days. To say the least, it is a tumultuous and fast-moving process.

Because Florida has one of the highest per-capita populations of people living in community association settings, it is not surprising that a variety of issues affecting associations are brought up for consideration each year.

Last week, we began a review of legislative proposals for 2005, with a look at a radical proposal that would limit an association's right to collect delinquent assessments through lien foreclosure proceedings. As of this time, Senate Bill 2632 does not have a counterpart in the House of Representatives, and has not been set for any Committee Hearings.

Today, we will shift attention to House Bill 1593 and Senate Bill 2062, which are identical proposals which have been filed in both legislative chambers.

H.B. 1593/S.B. 2062 is a Bill which addresses several unrelated community association issues:

- **Retrofitting Fire Sprinklers:** In 2000, Florida's building code was amended to require the retrofitting of fire sprinklers in most high-rise condominium buildings of more than seventy-five feet. The new law gave associations until the year 2014 to comply. The law was amended in 2003 to permit associations, by a two-thirds vote, to "opt out" of the retrofitting requirement, provided that various technical procedures are followed. H.B. 1593/S.B. 2062 would extend the retrofitting deadline for those who do not opt out until the year 2020.

- **Revival of Covenants Extinguished by MRTA:** As has been discussed in previous editions of this column, Florida's Marketable Record Title Act has unwittingly extinguished many covenants and restrictions applicable to homeowners' associations in Florida. In general, MRTA does not apply to the covenants of a condominium asso-

ciation. Covenants and restrictions are extinguished by MRTA, typically after thirty years, unless certain detailed procedures are taken to prevent extinguishment. For those communities who missed the boat, and have had their covenants extinguished, there is now a procedure for "revival" of those covenants. This procedure was created by a 2004 law, which requires a majority vote of the affected members for reinstatement, and requires the association to follow certain procedures and filing requirements with the State of Florida. However, the 2004 law appears to only apply to mandatory-membership homeowners' associations (since it is found in Chapter 720, the law that applies to homeowners' associations), and thus of no assistance to subdivisions where no mandatory exists. H.B. 1593/S.B. 2062 would also allow reinstatement in neighborhoods that have voluntary associations.

- **Emergency Board Powers After Hurricanes and Similar Casualties:** Although Hurricanes Andrew and Opal affected community associations to some degree, there is no precedence for the magnitude of the 2004 Hurricanes (Charley, Francis, Ivan, and Jean) and the particular effect those storms had on real estate governed by community associations. The "Big Four" from 2004 struck in the heart of areas heavily developed with condominiums, including Lee and Charlotte Counties, Palm Beach and Martin Counties, Central Florida, and the Panhandle.

One issue that was a frequent source of uncertainty after these storms was the scope of a board's authority to take extraordinary actions in the wake of a significant catastrophe. H.B. 1593/S.B. 2062 would address a board's rights after a catastrophic event, including treatment of the following issues:

- The right of an association to declare the condominium property unavailable for occupancy by unit owners, tenants, or guests.
- The right of an association to mitigate damage, including tearing out wet drywall and carpeting, and

the handling of damaged unit owner personal property, such as furniture.

- The ability of an association to suspend notice requirements and levy assessments, the use of reserve funds for non-scheduled purposes, and borrowing money in the wake of a disaster.
- The ability of an association to cancel or reschedule meetings.
- The scope of an association's authority to close down a building when a hurricane is threatened, such as shutting down elevators, shutting off electricity, and dealing with owners who refuse to leave.

Remember, proposed legislation can be viewed on the Internet at the website of the Florida Legislature, [www.leg.state.fl.us](http://www.leg.state.fl.us), where links to both the House and Senate are available.

Whether you are for or against, your Legislator is interested in your opinions. You can contact members of the Southwest Florida delegation as set forth below.

- **Sen. Mike Bennett**, District 21; 823-5718; [bennett.mike.web@flsenate.gov](mailto:bennett.mike.web@flsenate.gov)
- **Sen. Burt Saunders**, District 37; 338-2777 in Lee or 417-6220 in Collier; [saunders.burt.web@flsenate.gov](mailto:saunders.burt.web@flsenate.gov)
- **Rep. Michael Grant**, House District 71; 941-764-1100; [michael.grant@myfloridahouse.gov](mailto:michael.grant@myfloridahouse.gov)
- **Rep. Paige Kreegel**, House District 72, 941-575-5820; [paige.kreegel@myfloridahouse.gov](mailto:paige.kreegel@myfloridahouse.gov)
- **Rep. Bruce Kyle**, District 73, 335-2411; [kyle.bruce@myfloridahouse.gov](mailto:kyle.bruce@myfloridahouse.gov)
- **Rep. Jeff Kottkamp**, District 74, 344-4900; [kottkamp.jeff@myfloridahouse.gov](mailto:kottkamp.jeff@myfloridahouse.gov)
- **Rep. Trudi Williams**, District 75, 433-6775;



**Question:** I live in a senior condominium village in Lee County. I belong to the craft club there and we sewed a beautiful quilt. We did this with the intention to raffle it off for donations to go to our social club. The social club uses monies to purchase bocci balls, craft supplies, sewing machines and repairs, subsidize dances and various functions, etc. Our Board told us that it was illegal for us to have a raffle and refused to allow us to have it. Is it illegal to have such a raffle? L.F. (via e-mail)

**Answer:** Section 849.09, Florida Statutes, makes it unlawful for any person in the State of Florida to promote or conduct a lottery for money or anything of value. There are, however, some exceptions to the law, namely for certain penny-ante games, bingo, and drawings by chance. The law defines "drawing by chance" as an enterprise in which, from the entries submitted by the public to the "organization" conducting the drawing, one or more entries are selected by chance to win a prize.

I believe the raffle you have described falls under this statute, and would be exempt. However, the statute further defines "organization" as meaning an organization which is exempt from federal income taxation pursuant to federal tax laws, and which has a current determination letter from the Internal Revenue Service. Generally, such "organizations" include

corporations operated exclusively for religious, charitable, or other specifically defined purposes, and would not include condominium associations or their committees.

Therefore, your board is technically correct and the drawing is unlawful. From the real world perspective, I would like to meet the state attorney who would be willing to prosecute a group of grandmothers for auctioning a quilt.

**Question:** Our condominium is located in a master planned community. Therefore, we are governed both by our "local" condominium association and the "master association", which also has jurisdiction for architectural control in all of the condos.

As I am sure you know, the Florida condominium statute states that each board "shall adopt hurricane shutter specifications." The law goes on to say that the board's specifications "shall include color, style, and other factors deemed relevant by the board." The law also requires the condo board's specifications to "comply with applicable building codes."

The Chairman of the Architectural Control Committee for the Master Association states that the Master Association's By-Laws gives them control over the appearance of individual condominium shutters. I claim that the Florida statutes have top priority. What is your opinion? P.O. (via e-mail)

**Answer:** Interesting question.

You correctly point out that the condominium law requires the board to adopt hurricane shutter specifications, and that

the condominium association board cannot refuse a unit owner's request to install shutters which comply with those standards.

Conversely, the HOA law is silent on hurricane shutter issues, and the covenants would control.

There are two theories. The first is one of "preemption", and under this theory, a court would conclude that the Legislature has given condominium associations exclusive jurisdiction over this issue. If that were the rule of law, your position would be correct.

The other argument is one of contract. The argument would go that since the HOA does not address hurricane shutters, the Master Association's Architectural Control Committee would have the authority to adopt supplemental specifications, which may be different than the condominium board's, since the Master Association is presumably entitled to adopt more restrictive provisions, and there is no law that would prohibit it as to the HOA.

This reminds me of one of those radio shows where "you be the judge." If I were the judge, I would come down on the side of the condominium unit owners' absolute right to install shutters. However, that may be tempered by the Master Association's ability to require some consistency within the overall community, such as a common shutter color.

**Question:** In order to serve on the association board, the bylaws state that I must be an owner. If I live in the unit, but am not on the county tax roll, can I serve on the board? J.C. (via e-mail)

**Answer:** Typically, the county's "tax rolls" are computerized records, and while handy references, are not one hundred percent accurate.

If the documents require someone to be a "unit owner" to serve on the board, their name must appear on the deed or conveyance. There may be exceptions in certain cases, such as trusts, where the law allows the grantor (maker) of the trust to serve on the board, as well as any beneficiary of the trust who actually resides in the unit.

Remember, the law does not require one to be a property owner to serve on the board, this restriction must be contained in the governing documents.

**Question:** Our new board is having weekly meetings called "work sessions." The members of the community are told that we cannot voice our opinion. All five board members are at these meetings. I think we have a problem with the new board. Any suggestions?

**Answer:** I would suggest that you ask your board to review the recent seven-part series on "sunshine laws" that ran in this column a couple of months ago. I am currently condensing that series into a pamphlet which will be available on the Internet.

If you live in a condominium, your board must allow owners to speak to agenda items. Conversely, in a homeowners' association, there is no right to speak, and your problem would be more "political" than "legal." I am assuming that the board is properly posting notice of these meetings, which would be required whether it is a condominium association or a homeowners' association. ⚖️

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*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*