



## H.B. 1229 Tackles New Reforms

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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.

Four weeks ago, we began a review of pending legislation for 2005 with a look at S.B. 2632, a proposal that would severely limit an association's right to collect delinquent assessments through lien foreclosure proceedings. As of this date, that Bill seems to be going nowhere.

In the second installment we reviewed H.B. 1593/S.B. 2062, which addresses, among other things, the emergency powers of a condominium association board after a catastrophic event such as a hurricane. That one is still up in the air.

In the third week, we shifted attention to House Bill 1229, one of the more controversial pieces of pending legislation, focusing on reserve waivers, mandatory education for board members, and audit waivers. Last week, we looked at more of H.B. 1229, including homeowners' association regulation, enforcement, and possible expansion of the role of the Ombudsman.

Last week's column was supposed to wrap up our review of H.B. 1229. However, in a procedural move known as the "strike all amendment," H.B. 1229 has taken on a

new face and tackles new "reforms" that have not previously been on the table.

For those keeping score, government regulation of homeowners' associations is no longer part of H.B. 1229, falling to legislative sticker shock when a \$17 million dollar price tag was estimated. Mandatory education of board members has also been removed from the Bill.

What has now been added to H.B. 1229 will also significantly affect condo associations. Here's some more sauce for the mix:

- ♦ **Unlimited Unit Owner Complaints:** The law was amended in the early 1990's to require associations to provide "substantive responses" to "complaints" from unit owners, which were served on the association by certified mail. The term "complaint" was later changed to "inquiry" in the law. The so-called "certified inquiry rule" became a favored weapon in the arsenal of the Condo Commando, with some associations receiving certified letters from the same unit owner nearly every day. In order to strike a balance between a unit owner's right to a response to his or her legitimate inquiries, and preventing associations from harassment, the Legislature amended the Condominium Act to permit associations to limit "inquiries" to one per month. H.B. 1229 would remove the board's right to establish reasonable rules limiting "inquiries", and revert to the days when unlimited "inquiries" could be used for the

sole purpose of harassing the association, which is why the law was changed in the first place.

♦ **Board Terms:** H.B. 1229 would provide that the term for all board members “shall expire at the annual meeting”, although directors could stand for re-election. This means that those associations whose bylaws provide two or three-year terms, or staggered board terms, would have their bylaws superseded by state law, everyone would need to stand for election each year. More importantly, the proposal eliminates language currently found in the corporate statutes which states that a director serves until their successor is duly elected. For example, if an association has a five-member board and no unit owner chooses to put their name into nomination forty days before the annual meeting, the sitting directors are automatically seated for another term, although they are of course free to resign their posts. H.B. 1229, if passed, would leave associations in such cases with no lawful directors. Under these circumstances, the only available alternative for the legal composition of a board would be to go through an expensive circuit court procedure to have a receiver appointed.

♦ **Prohibiting Husbands and Wives from Simultaneous Board Service:** The law would prohibit “co-owners” from the same unit from simultaneously serving on the board. Although perhaps a reasonable public policy, the proposed language in the Bill is flawed. As it is written currently, if a husband and wife own five units jointly, they still could not simultaneously serve on the board. I think the intended point is to avoid one unit having more power on the board than it has at membership meetings, certainly a complaint I hear frequently when co-owners (usually husband and wife) serve on the board.

♦ **No More Waiver of Reserves:** The most significant proposal in H.B. 1229 would be to change the law, which has existed for some forty years, which allows the unit owners in a condominium to vote to reduce or waive the funding of “statutory reserves.” H.B. 1229 would require reserves to be “fully funded”, and provides a five year phase-in. In my experience, most of the high-priced condominiums maintain full reserves anyway. This amendment would have the most direct impact on middle and lower-cost housing, which tends to be highly populated by senior citizens on fixed incomes. While “full reserve funding” sounds good in theory, this proposal would double assessments for some associations, and will likely drive people with limited economic means out of their homes.

H.B. 1229 has a few more worms in the can which we will open up next week. Remember, whether you are for or against, your Legislator wants to hear from you. Members of the Southwest Florida delegation can be contacted as follows:

**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;  
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**Rep. Paige Kreegel**, House District 72, 941-575-5820;  
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**Rep. Bruce Kyle**, District 73, 335-2411;  
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**Rep. Jeff Kottkamp**, District 74, 344-4900;  
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**Rep. Trudi Williams**, District 75, 433-6775;  
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**Question:** I live in a ten-unit condo. Over the past several years, the mix of unit owners has changed from mostly owner-occupants to absentee landlords. There are now only two residents and eight investor-owners who rent their units out. Nobody will serve on the board, there are no financial statements available, no meetings are held, etc. Individual unit owners repair the common elements when someone thinks something needs to be fixed. Things are getting worse by the day. Is it realistic for one or both of the remaining owner-occupants to petition for the appointment of a receiver? B.G. (via e-mail)

**Answer:** The Florida condominium law permits any unit owner to petition the circuit court for the appointment of a receiver when there are not enough persons willing to serve on the board so as to constitute a quorum.

Receivers are professional conservators, most often accountants. They run your association for an hourly fee, under the supervision of a court. Receiverships are expensive, and are intended for only the most distressed situations.

I would image that, if faced with the prospect of receivership, the investor-owners would find it in their interest to find enough volunteers to serve on the board. In my experience, that is unlikely to resolve your personal situation. Although investor-owners are not evil people by nature, they have an entirely different set of objectives than condominium owner-residents. To them, the unit is an investment. To you, it is your home.

Only you can decide when enough is enough. You might want to think about looking for a more residentially-oriented community, or choosing a non-association setting. Good luck.

**Question:** During Hurricane Charley, many unit owners in our condominium experienced water intrusion. The board has advised us that the windows are the individual unit owner's responsibility. Is that true? They are

mentioned as a unit owner responsibility in our condominium documents. R.R. (via e-mail)

**Answer:** The general responsibility for maintenance of a condominium buildings' windows will depend upon how the declaration of condominium is written, particularly how the unit boundaries are described. If the windows are part of the "common elements", then they are the maintenance responsibility of the association, unless they have been described as "limited common elements", and the declaration specifically requires the owners to maintain them. Conversely, if the windows are described as part of the "unit", they would typically be the unit owners' private responsibility. Documents are written both ways, and there is no "standard" answer.

You should, however, be aware that even though the documents may make you responsible for maintenance of the windows, they are the insurance responsibility of the association, regardless of how the documents are written. You may wish to investigate whether your hurricane losses are covered under the association's master insurance policy.

**Question:** Our unit is on the top floor of the condo building we live in. The roof recently started leaking. We called the association's president, and wrote letters to him, but nothing has been done. Can we call a roofer to fix the problem and send the bill to the association? This has been a hopeless situation for us. J.P. (via e-mail)

**Answer:** That is a tough call. On the one hand, the law favors parties "mitigating damages", which means taking steps to stop an ongoing loss. On the other hand, the roof is presumably part of the "common elements" of your condominium, and the board of directors is vested with the exclusive authority for the maintenance and management of common property.

I have seen a few sets of condominium documents which permit owners to engage in "self-help", when the association fails to take prompt action, although such pro-

visions are rare. On balance, I think you are better off insisting that the association fix the problem. Like in all legal matters, good documentation is the key.

First, you should call the association's president (or management company) and voice your concerns. You should follow up your conversation (or unsuccessful attempt at a conversation) with a certified letter. Your certified letter should specifically ask that the matter be promptly investigated and repaired. You should also take reasonable steps to preserve your personal property against damage (either removing it from the apartment, covering it with plastic, etc.). You should take photographs and keep detailed records of all your actions. You should also immediately contact your insurance agent and insist that the association do likewise.

**Question:** I live in a condominium which is part of a larger development which is governed by a master association. The master association owns the common areas and facilities in the development. The development is composed of several independent condominium associations. The board of the master association is composed of the presidents of each condominium association. An at-large member of the master board is elected by the members of the master association who becomes the president of the master association. The bylaws of the master association state that in absence of the condominium president, the duly elected vice president may assume the president's position on the master association's board. The current president of the master association has determined that the vice president cannot serve on the board in absence of the president. If the vice president cannot serve, our condominium association will be without representation on the board for a portion of the

year since our president spends the summer up north. Do you agree that the vice president cannot serve? G.M. (via e-mail)

**Answer:** In general, if a master association is composed of only condominium unit owners, then it will be considered a condominium association which must comply with Chapter 718, Florida Statutes. If however, the master association includes non-condominium unit owners, the association would likely be a "homeowner's association" governed by the provisions of Chapter 720, Florida Statutes. This distinction is important. If the association is a condominium association (and it sounds like your master association is a condominium association), Chapter 718 would require an election to select the board of directors. There has been a recent Declaratory Statement issued by the Division of Florida Land Sales, Condominiums, and Mobile Homes ("Division"), which regulates condominium associations, which held that a master association composed of condominium unit owners was required to elect the board of directors. The Division further held that a system whereby certain officers of the condominium associations were automatically appointed to the master association board conflicted with Chapter 718. Therefore, not only can the vice president not serve in the absence of the president, but the master association should be electing all board members, not just the president of the master association. The election would have to be held just like a condominium association election (with the two-notice system, the secret ballots, the two-envelope system, etc.). The Declaratory Statement, In Re: Heron Master Association, Inc., (2003092101), can be accessed at [www.myflorida.com/dbpr/lsc](http://www.myflorida.com/dbpr/lsc) and by following the link to "Declaratory Statement Index." ■

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