



## Legislation May Affect Homeowners' Associations

### Highlights of pending bills summarized

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At the half-way point of the 60 day session of the Florida Legislature, a number of bills affecting community associations are still alive, though not all are well. As reported last week, fourteen different bills have been filed in either the House or Senate directly affecting condominiums, cooperatives, and homeowners' associations. It is highly unlikely that all of these bills will go through the required committee hearing process and be presented for vote. Rather, members from each chamber typically caucus and pick one community association bill as the "vehicle" for all of the proposed changes that might ultimately be adopted. From the perspective of the legislative process, there's still plenty of time for this to unfold.

Last week, we looked at proposals affecting condominium associations, primarily focusing on insurance, board member qualifications and foreclosures. Today, we will look at the highlights of pending bills that impact homeowners' associations and cooperatives.

Here's some of the highlights. References to "H.B." denote House Bill. References to "S.B." denote Senate Bill. References to "C.S." denote Committee Substitute: References to "HOA" denote homeowners' association.

- **HOA Official Records:** C.S./H.B. 27 would permit a homeowners' association to charge personnel expenses in connection with a member's inspection and copying of official records, and would require that member requests to inspect official records be made by certified mail.
- **HOA Reserves:** C.S./H.B. 27 would remove limits on "statutory reserve" funding to the extent otherwise limited by assessment increase provisions in the governing documents. The Bill would permit termination of "non-statutory reserve" accounts by majority vote. This Bill would also require the HOA's disclosure of under-funded reserves.
- **HOA Director Compensation:** C.S./H.B. 27: would prohibit compensation of directors unless authorized by the governing documents or approved by a majority of the members.
- **HOA Fines:** C.S./H.B. 27 would permit homeowners' association fines of greater than \$1,000.00 to be secured by a lien.
- **Director Elections:** C.S./H.B. 27 would permit the bylaws of a homeowners'

association to allow for elections using the “two envelope system” now used in condominium associations.

- HOA Covenant Enforcement: C.S./H.B. 27 would create a new law called “The Home Court Advantage Dispute Resolution Act”, which would fine-tune current pre-suit mediation requirements in homeowners’ associations, and provide for arbitration instead of court litigation in certain circumstances.
- HOA Foreclosures: H.B. 633 would eliminate a foreclosing mortgage holder’s immunity from payment of past-due assessments (which is currently subject to a cap of twelve months of unpaid assessments or one percent of the original mortgage debt, whichever is less), if the mortgage foreclosure is not completed within one year of its filing.
- Regulation of Homeowners’ Associations: H.B. 1397 would require the Office of Policy and Program Analysis (OPAGA) to conduct a study as to whether HOAs should be subject to regulation by a state regulatory agency.
- Amendments to HOA Documents: S.B. 998 would negate, retroactively, any requirement for mortgage holder approval of amendments to a homeowners’ association governing documents.
- HOA Collection Costs: S.B. 998 would permit a homeowners’ association lien to secure management company charges for preparation of collection letters.
- Changes to the Cooperative Act: H.B. 1397 proposes to change approximately 50 sections of Chapter 719 of the Florida Statutes, the Florida Cooperative Act. Most of the proposed changes would result in the Cooperative Act containing identical provisions to those found in the current version of the Florida Condominium Act. Among the proposed changes which would coordinate the two statutes are amendments to the cooperative statute involving insurance, official records, board qualifications, and maintenance of common areas.

When the Session ends, we will report on what ideas survived the process, if any.

*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.*

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