



## Senate Bill Would Affect Association Operations

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On April 28, 2010, the Florida Legislature passed a Bill that will affect the operation of community associations in several areas. Senate Bill 1196, unless vetoed by the Governor, will become the law on July 1, 2010. Once the fate of the Bill is sealed by the Governor's action or inaction, and assuming it becomes the law, we will take an in-depth look at the various provisions of the new statute in future editions of this column.

In the mean time, here's a sneak-peak at the highlights of the Bill, which has garnered a fair amount of attention in the media.

**Condominium Insurance:** SB 1196 would eliminate the mandatory unit owner insurance requirements written into the law in 2008. The statute also eliminates the requirement that the board meeting where deductibles are set be preceded by a special form of notice, although 14 days mailed and posted notice of that board meeting will still need to be given.

**Condominium Assessment Liability:** In a change that will delight many associations, a foreclosing lender's "safe harbor" has been increased from 6 months of unpaid assessments to 12 months. The cap of one percent of the original mortgage debt still applies, so the foreclosing lender would pay the lesser of 12 months of unpaid assessments or one percent of the original mortgage debt.

**Remedies For Delinquencies:** The statutes for condominiums, cooperatives, and homeowners associations would all be amended by the Bill to add a few more options for associations in dealing with delinquents. New remedies would include suspension of common element use rights and suspension of voting rights for condominiums (already statutorily permitted for homeowners' associations). Significantly, SB 1196 would allow associations to directly attach rents, without need for court action, if there is a tenant occupying a unit or parcel for which delinquencies exist.

**HOA Fines:** SB 1196 would restore the ability of a homeowners' association to file a lien to secure an unpaid fine, as long as the fine is more than one thousand dollars (and the declaration of covenants would also presumably have to authorize a lien for fines). Condominiums and cooperatives would still be precluded from filing liens for unpaid fines.

**Board Vacancies:** A glitch created by 2009 legislation would be straightened out, and all community association (condo, co-op, and HOA) board member vacancies could be filled by the remaining board members, for the unexpired term of the seat, unless otherwise provided in the bylaws. Under current law, board vacancies in cooperatives and homeowners' associations are only filled until the next annual meeting.

**Employee Records:** The Condominium Act would be amended to provide that personnel records of association employees, including payroll records, would be exempted from the definition of "official records", and thus not subject to unit owner inspection. Employee payroll records would also be specifically exempted from member inspection rights in the homeowners' association context.

**Owner Privacy:** The statutes applicable to condominiums and homeowners' associations would be amended to say that the telephone numbers and email addresses of owners/members are not part of the official records, with a limited exception for cases where an owner/member has consented to receive meeting notices by electronic means. This presumably means that the association is not supposed to be giving this information out, which could wreak some havoc in communities who like to publish member directories (some kind of waiver form will probably suffice).

**Fire Sprinklers:** Buildings that are required to retrofit fire sprinklers based on changes made to the state building codes adopted in 2000, will have until 2019 to comply, but must apply for their building permit by the end of 2016. Associations would still be permitted to "opt out" of the retrofitting requirement, and the required vote has been reduced from two thirds of the units to a majority. Further, associations can now also opt

out of common area retrofitting. Opt out votes must be completed by the end of 2016.

**Rental Amendment Grandfathering Law:** The 2004 change to the statute which made it much harder for condominium associations to impose rental restrictions would be relaxed a bit. Under the new law, grandfathering would only apply to amendments that restrict the minimum rental term, or the number of times a unit can be rented in a given period of time.

**Bulk Internet and Telephone Service Contracts:** Condominium associations would be empowered to contract for expanded telecommunication services on a bulk basis, including telephone and internet.

**HOA Board Elections:** Homeowners' associations whose bylaws permit secret balloting in the election of directors would be required to use the "two envelope" system now used in condominium board elections.

There are many more details in this 103 page Bill including provisions affecting distressed condominiums, HOA reserves, board member liability, and director compensation. Stay tuned.

*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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