



Fate of Several Condo Association Bills Decided

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On June 1, 2010, Governor Charlie Crist signed Senate Bill 1196, which will become law on July 1, 2010. The highlights of SB 1196 were addressed in a previous column (see “Senate Bill Would Affect Association Operations”, published May 9, 2010). Now that it is clear that these sweeping changes will take effect within the month, the next several editions of this column will be devoted to an in-depth look at the new laws.

Prior to dissecting SB 1196, I would report that a few other bills affecting community associations, some of which were addressed in last week’s column (see “Bills Affecting Associations Await Crist’s Signature”) have also had their fate decided by the Governor. SB 663 relating to elevator retrofitting, elevator keys, and condominium inspections was signed by the Governor and will become law on July 1, 2010. HB 1411 relating to timeshare foreclosures was also approved by the Governor and became law on May 27, 2010.

SB 2044 relating to insurance (including shortening the time for making of hurricane claims from five years to three years) was vetoed by the Governor. Likewise SB 1964 was vetoed. SB 1964 would have limited the liability of design professionals for economic damages caused by a design defect. The Governor concluded that such a limitation of liability would “grant unique privileges to design professionals by removing a

consumer’s right to bring a tort action against them for economic damages caused by their negligence”.

One of the most watched provisions in SB 1196 involves a topic that has been near and dear to the hearts of all condominium dwellers’ since the hurricanes of 2004-2005, property insurance. The new law states that for individual unit owner insurance policies (usually called “HO-6” policies) issued on or after July 1, 2010, the policy must include at least \$2,000.00 in “property loss assessment coverage for all assessments made as a result of the same direct loss to the property”. Deductibles for such coverage may not exceed \$250.00 per loss. This is a modification of the 2008 amendment to the law which required insurance for “special assessments” to be included in HO-6 policies, creating substantial confusion in the industry as to what was actually covered. The new change should clarify that issue.

The reference to “hazard insurance” has been replaced throughout the new statute with the term “property insurance”. Also, the association’s insurance obligations are now consistently stated in the statute to be based on the “replacement cost” of the property, deleting the term “full insurable value” previously used in some portions of the statute.

The law regarding the setting of deductibles under the association's master policy has also been modified. Pursuant to a 2008 change to the statute, the board was obligated to set deductibles at an open board meeting, preceded by fourteen days' mailed and posted notice. The mailed notice which was sent to unit owners was required to contain a detailed disclosure of the proposed deductible, potential special assessments, and various other information. The new law eliminates the requirement that a detailed proposed deductible statement be included with notice of the board meeting. However, deductibles must still be set at open board meetings preceded by fourteen days' mailed and posted notice.

The 2010 change to the insurance section of the condominium statute also eliminates the previous requirement that the association be an additional named insured and loss payee on the individual unit owners' HO-6 policies.

Most importantly, the 2008 change to the law implementing mandatory HO-6 insurance for unit owners, and granting authority for an association to "force-place" such insurance, has been removed from the law. Although the statute still states that

the insurance of various internal unit items (such as coverings, cabinetry, and fixtures) is "the responsibility of the unit owner", there is no longer an affirmative right granted to the association to require proof of insurance nor "force-place" such insurance (buy the insurance on behalf of the unit owner and file a claim of lien against the unit if the insurance cost is not reimbursed). In my opinion, an association can still mandate HO-6 insurance through the declaration of condominium if it so chooses, and likewise through the declaration can determine appropriate remedies for non-compliance.

I believe that these changes in the law will meet mixed reviews. Some associations liked the concept of mandatory HO-6 insurance and enforced it vigorously. Others did not like the administrative burden and enforced the law half-heartedly. Many associations simply ignored it.

Next week we will continue with our review of SB 1196 with an emphasis on assessment and collections, including increased mortgagee liability and a new statutory right to attach rental income from delinquent owners.

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