



## **New Remedies Offered For Delinquent Assessments**

### **SB 1196 Provides for Suspension of Some Rights**

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Today's column continues our review of SB 1196, which becomes effective July 1. Today's topic, some new remedies for delinquent assessments.

The 2010 Session of the Florida Legislature saw numerous Bills aimed at improving the lot of condominium and homeowners' associations and their relative position in the current financial crisis. From an association's perspective, the more helpful legislative proposals focused on requiring banks to start and complete their foreclosure actions more quickly. These proposals were analyzed at some length in a previous column (see "Pending Bills Would Help Protect Associations" published January 31).

Perhaps predictably, none of the more beneficial proposed reforms survived objections from the banking industry. However, associations did score a few points in terms of available remedies when addressing delinquencies.

For condominium associations, common element use rights may now be suspended when a unit owner is delinquent in the payment of any "monetary obligation" to the association. Notably, this would not only include regular assessments, but also interest, late fees, and attorney's fees, as well as special assessments and unpaid fines. The authority to suspend common element use rights

does not need to be contained in the condominium documents, and no hearing is required. However, the law clearly states that common element use rights may not be suspended unless the suspension is approved at a properly noticed meeting of the board.

Notice of the suspension, once approved by the Board, must be sent to the unit owner, or his or her tenant, guest, or invitee after the board meeting. I recommend that the posted notice of the board meeting not specifically name the owner nor list the unit number when a suspension is contemplated. Rather, the association should stick to a generic agenda disclosure such as "consideration of suspending rights of delinquent unit owners."

The law goes on to say that suspension of common element use rights cannot restrict access to the unit, use of elevators, or parking rights. The Association also cannot cut off "utilities" (water and sewer service, for example). However, there is a legitimate argument that cable television service is not a "utility", and can be cut off (assuming that common element infrastructure must be used to receive the signal and further assuming that the cable operator will agree to suspend services for non-payment).

Suspensions in the condominium context can only be imposed for monetary obligations that are more than ninety days past due. Suspensions can only be levied for a “reasonable” time. I believe that a suspension which is co-extensive with the period of delinquency would be considered reasonable. Stated otherwise, it would appear that the suspension can last for as long as the delinquency lasts.

A condominium association may now also suspend the voting rights of a member due to the non-payment of any monetary obligation due the association which is more than ninety days delinquent. The authority for suspension of voting rights likewise does not need to be contained in the condominium documents. The voting suspension ends upon full payment of all obligations due the association. In my opinion, unless otherwise provided in the condominium documents, a unit whose voting rights have been suspended is not subtracted from the number of voting interests used to calculate a quorum, nor other voting requirements.

In the homeowners’ association context, the new law seems to have gone backwards. For some time, HOA’s could suspend use rights for non-payment of assessments if authorized by the governing documents. Pursuant to SB 1196, a homeowners’ association can now suspend common area use rights if a member is delinquent for more than ninety days in the payment of any monetary obligation to the association, until such monetary obligation is paid. The right to suspend no longer needs to be contained in the governing documents.

Similar to the new law for suspension of condominium use rights, HOA suspensions cannot apply to portions of the common areas used for

providing access to the parcel, nor may “utility services” provided to the parcel be cut off. As in the case of condominiums, suspensions of common area use rights in the HOA context may be imposed for non-payment of any “monetary obligation” (including fines), not just unpaid assessments.

The unfortunate part of the new law for HOA’s, which appears to be a drafting glitch, is that a homeowners’ association cannot impose a suspension without at least fourteen days’ notice to the person sought to be suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, nor the spouses or relatives of such persons. Under previous law, a homeowners’ association did not need to afford an opportunity for a hearing when suspending common area use rights for non-payment of assessments.

Finally, continuing the regrettable tendency of the Florida Legislature to ignore the legislative needs of cooperative constituents, Chapter 719 of the Florida Statutes was not amended by SB 1196 so as to permit suspension of common area use rights for non-payment of assessments, rents, or other financial obligations. Accordingly, it would appear that suspension is still not a remedy available to cooperative associations.

Next week, we will continue with our review of SB 1196 and remedies now available with respect to delinquencies, including increased mortgagee liability for unpaid assessments and the right of associations to attach rental income directly from tenants occupying delinquent units.

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