



## Condominium Law Q&A

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**Columnist Note:** Over the course of the past year, I have written often about the perfect storm which threatens to undermine the economic viability of many shared ownership housing communities (condominiums, co-operatives and homeowners associations). As more unit owners become up-side down on their mortgages, and foreclosures continue unabated, other unit owners are forced to cover the cash shortfall to keep the association functioning. Lenders, fearful of the exposure which comes with unit ownership, continue in their refusal to expedite foreclosures of borrowers who are not paying their loans. Communities desperate for relief are seeking non-traditional solutions, from denying unit owners access to shared amenities to cutting off cable and Internet services. Some associations are taking risks with factors which buy the association's debt in exchange for quick cash and unrealistic promises of expediting the foreclosure process. Several associations have gone to the extreme of filing bankruptcy in an effort to restructure their debt and cancel burdensome contracts. One, the Maison Grande in Miami-Dade County, used the bankruptcy court to terminate its long term lease for recreation amenities, which lease also included part of the parking spaces of the condominium. Members of the Florida Legislature, flooded with cries for assistance from their constituent community associations across the state, have filed numerous bills which they hope will solve a portion of the problems. The following is a summary of some of the pending legislation:

1. Senate Bill 840: (the Distressed Property Relief Act) Provides the ability of bulk buyers who purchase 10 or more units to be excused from the liability as a "Developer," while requiring payment of the common expenses once they take title to the units.
2. House Bill 115: Provides that during the pendency of a foreclosure action, if the unit is occupied by a tenant, the association may demand that the tenants pay rent directly to the association, with a right of eviction for non-compliance. The Bill also allows a condominium association to suspend certain common element use rights for nonpayment, although utility services could not be suspended. Voting rights could also be suspended for delinquencies.
3. Senate Bill 164: Requires any mortgagee, which has not completed its foreclosure within six months from filing its foreclosure lawsuit, to pay the "statutory cap" (six months of past due assessments or one percent of the original mortgage debt, whichever is less) during the pendency of the lawsuit.
4. House Bill 329: This Bill is another which allows collection of rents directly from tenants and permits suspension of certain common element use rights. More significantly, the Bill deletes the statutory cap and would require a foreclosing lender to pay all assessments.

5. House Bill 337/Senate Bill 864: In addition to allowing the collection of rent from tenants, this Bill states that an association's claim of lien can include the cost of collection efforts by management companies or licensed managers.

6. Senate Bill 780: Requires a financial institution that institutes a foreclosure proceeding to timely pay all fees associated with or owed on the property, including but not limited to homeowners association fees, maintenance fees and taxes.

7. Senate Bill 1270: This Bill would permit a condominium association to disallow use of the common areas and facilities by unit owners who are delinquent in the payment of assessments by more than 90 days.

8. Senate Bill 1272: This Bill changes the statutory cap from 6 months to 12 months. Also, it provides that, in addition to the statutory cap, if a first mortgagee institutes a foreclosure action, the mortgagee is liable for any special assessments levied against a unit during the pendency of such action for damage to the condominium property.

My readers and their associations can make a difference as to what action, if any, their elected representatives will take in regard to this much needed legislative assistance, if we are going to turn the tide on the financial crisis impacting our shared ownership communities. I trust you will share your thoughts with your State Representatives and State Senators who are currently in session.

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