

SPECIAL LEGISLATIVE ISSUE



SUMMARY OF THE 2008 LEGISLATIVE SESSION

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The 2008 Legislative Session was very eventful as there were a number of bills that passed which will significantly impact community associations. Thanks in large part to the efforts of the community associations participating in Becker & Poliakoff, P.A.'s Community Association Leadership Lobby (CALL), beneficial legislation was adopted. We are very pleased to report that CALL achieved many of its goals this session, including the addition of "emergency powers" for condominium boards after a casualty and a "glitch fix" to the material alterations provisions in the Condominium Act. CALL was also successful in modifying legislation to remove objectionable language included in earlier versions, including the removal of "criminal sanctions" for condominium board members who fail to maintain official records. This article will provide an overview of the major legislation adopted in 2008 that will impact Florida's community associations.

Note that one of the bills that passed during the legislative session, HB 679, primarily impacting homeowners' associations, was vetoed by Governor Crist. Therefore, this article does not address HB 679. We are grateful to Travis Moore, CALL's full time Tallahassee lobbyist, for his assistance during this very hectic but productive session for residents of community associations.

HB 995 - COMMUNITY ASSOCIATIONS

HB 995 affects condominium associations and management firms. The effective date is October 1, 2008.

MANAGEMENT FIRM IMPACTS

Chapter 468: The bill will require community association management firms to be licensed if the firm manages more than 10 units or a budget of \$100,000 or more.

CONDOMINIUM ASSOCIATION IMPACTS

Directors

- **718.111(1)(d):** This section includes a standard of care for directors similar to the standard of care imposed on directors of a not-for-profit corporation pursuant to Section 617.0830, Florida Statutes, (governing not-for-profit corporations). Will require directors to act in good faith and in a manner that he or she reasonably believes is in the best interest of the association. Also provides that directors will be liable for money damages if the director commits a crime, if the director derived an improper personal benefit, either directly or indirectly, or if the act constitutes recklessness, bad faith, with a malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.
- **718.112(2)(d)1:** All board members must stand for election at the annual meeting. However, if the bylaws permit staggered terms of no more than 2 years and if a majority of the total voting interests approve, the directors can serve for 2 year staggered terms. Also states that if no one is interested in or demonstrates an intent to run, such person whose term has expired is automatically reappointed and does not have to stand for election.
- **718.112(2)(d)1:** Co-owners in condos with more than 10 units cannot serve on the board at the same time.
- **718.112(2)(d)1:** Provides that a person who has been suspended or removed by the Division, or is delinquent in the payment of assessment as provided in s. 718.112(2)(n)

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is not eligible for board membership. Also provides that if a person has been convicted of any felony is not eligible to serve on the board until 5 years after his or her civil rights have been restored.

- **718.112(2)(d)3:** Requires candidates to certify, on a form provided by the Division, that they have read and understand “to the best of their ability” the condominium documents, statute, and applicable rules. The form must be submitted along with the notice of intent to run for the board.
- **718.112(2)(n):** Provides that directors who are 90 days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.
- **718.112(2)(o):** Provides that a board member who is charged with felony theft or embezzlement involving the association’s funds shall be removed from office, creating a vacancy in the office to be filled according to law. If the charges are resolved without a finding of guilt, the director shall be reinstated for the remainder of the term, if any.
- **718.1265:** Provides for “emergency powers” for Boards, when a state of emergency is declared, which will allow greater authority to mitigate damages, order a mandatory evacuation, etc.
- **718.3025(1)(f):** States that no written contract providing for maintenance or management services shall be enforceable unless the contract discloses any financial or ownership interest a board member or any party providing maintenance or management services to the association holds with the contracting party.
- **718.3026(3):** This is a new provision addressing contracts between the association and one or more of its directors of any corporation, firm, or entity in which one or more of its directors are financially interested. Will require certain disclosures to be made and the contract must be approved by two-thirds of the directors present at the meeting.
- **718.303(3):** State that fining committee members cannot be board members or persons residing in a board member’s household.
- **718.501(1)(n):** Requires board members, employees, developers, managers and management firms to reasonably cooperate with the Division in its investigation.

Official Records

- **718.111(12)(a)11 and 718.112(12)(c):** States that anyone who knowingly and intentionally defaces or destroys accounting records required to be maintained by the statute, or knowingly or intentionally fails to create or maintain accounting records required by statute, is personally subject to a civil penalty.
- **718.111(12)(b):** Requires that all official records must be maintained for at least 7 years and within 45 miles of the condominium or within the county where the condominium is located. Gives the association the option to maintain and provide the records to the owners in an electronic format.
- **718.111(12)(c)(4):** Provides that social security numbers, drivers’ license numbers, credit card numbers and other personal identifying information are not accessible to unit owners.

Financial

- **718.111(13):** Requires the Division to adopt additional rules regarding information to be included in a financial report such as a summary of the reserves including information as to whether such reserves are being funded at a level sufficient to prevent the need for a special assessment and, if not, the amount of the assessments necessary to bring the reserves up to the level necessary to avoid a special assessment.
- **718.111(13):** Cannot waive financial reports for more than 3 consecutive years.
- **718.112(2)(c):** States that notice of any meetings at which regular or special assessments will be considered shall specifically state the nature, estimated cost, and description of the reasons for assessment.
- **718.112(2)(f)4:** Requires the use of form language for proxy questions to waive or reduce reserves or to use reserves for other than the purposes for which they were intended.

Inspection Reports

- **718.113(6):** Requires an inspection report by architect or engineer every 5 years for buildings more than 3 stories attesting to required maintenance, useful life, and replacement costs. Also provides for an “opt-out” vote by a majority of the owners present in person or by proxy. Such meeting and approval must take place prior to the end of the 5 year period and is only effective for that 5 year period.

Hurricane Shutters

- **718.113(5) and 718.115(1)(e):** Provides that Board can install hurricane protection that complies with or exceeds applicable building codes (in addition to hurricane shutters). A vote of the owners is not required if the hurricane protection to be installed is the maintenance, repair, and replacement responsibility of the association. The cost to install the hurricane protection is a common expense if the hurricane protection to be installed is the maintenance, repair, or replacement responsibility of the association. In such case, owners who have previously installed code compliant hurricane protection will receive a credit on the assessment.

Liens

- **718.121(4):** Requires 30-day notice before filing a lien and requires service by certified mail and regular first-class mail. However, if the address of the owner is outside the United States, the notice must be sent by first-class mail to the unit address and to the last known address by regular mail with international postage.

Miscellaneous

- **718.112(2)(b)2:** Units owned by Association cannot be counted for any purpose.
- **718.112(2)(c):** Provides that if 20 percent of the voting interests petition the board to address an item of business, it must be considered by the board and its next regular meeting or at a special meeting, but not more than 60 days after receipt of the petition.
- **718.112(2)(d)1:** Require that the annual meeting be held at the location provided in the bylaws, and if the bylaws are silent, must be held within 45 miles of condominium.
- **718.112(2)(d)8:** Provides that in order to “opt-out” of voting

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and election procedures in the statute, the condominium must consist of only 10 units or less.

- **718.1124, 718.117(7)(a), and 718.127:** Revises procedures for the appointment of a receiver.
- **718.113(2)(a):** Includes the language “This provision is intended to clarify existing law and applies to associations existing on the effective date of the act.” This is a “clean-up” amendment to include language that was inadvertently left out when amendments to this section were previously adopted.
- **718.113(7):** Provides that an association cannot refuse an owner a reasonable accommodation for the attachment on the mantle or frame of the unit door a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep.
- **718.301(1):** Will require turnover to occur if the developer files for bankruptcy or if a receiver for the developer has been appointed and has not been discharged within 30 days after such appointment.
- **718.301(4)(p):** Will require the developer to prepare and turn over to the association a report, under seal of an architect or engineer, attesting to the maintenance, useful life, and replacement costs of a number of items including roof, elevator, heating and cooling systems, seawalls, etc.
- **718.3026:** Changes the ability of associations to “opt-out” of this section. Would permit only associations with 10 units or less to opt-out.
- **718.501(1)(j):** Requires the Division to providing educational programs (in addition to training programs), which may include web-based, electronic media and live training and seminars.

HB 601 — COMMUNITY ASSOCIATIONS AND DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

This bill primarily impacts condominium and homeowners’ associations. It also changes the powers and duties of the Department of Business and Professional Regulation, which is the state agency responsible for regulating condominiums, cooperatives, and timeshares. The effective date is July 1, 2008.

CONDOMINIUM IMPACTS

Insurance and Reconstruction after Casualty: The new law rewrites Section 718.111(11), Florida Statutes. The following is a summary of the primary changes to this section of the statute.

- **Adequate Insurance.** Adequate hazard insurance shall be based upon the replacement cost of the property as determined by an independent insurance appraisal or update of a prior appraisal. The full insurable value must be determined at least once every 36 months.
- **Self-Insurance and Pooling.** The provisions for self insurance and pooled insurance remain unchanged, but pooled insurance programs will now require the approval of the Office of Insurance Regulation.
- **Deductible.** The deductible must be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is located. The Board must establish the amount of the deductible based upon the level of available funds and predetermined assessment authority at a meeting of the Board. Such

meeting requires fourteen (14) days notice by mail to the owners and must be open to all unit owners. The notice must state the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit. The Board meeting may be held in conjunction with budget meeting.

- **Association Insurance Responsibility.** The Association insures:

(1) All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications;

(2) All alterations and additions made to the condominium property pursuant to 718.113(2) (which means that alterations installed by individual owners will be excluded from the Association’s coverage obligations.)

(3) Exclusions: Same as before (floor, wall and ceiling coverings, etc.) except the statute will no longer exclude air conditioning and heating equipment from the Association’s coverage obligations.

- **Unit Owner Insurance Responsibility.** Unit owner coverage is still mandated, but the statute will also require individual unit owner policies to provide \$2,000.00 of loss assessment coverage per occurrence. The unit owner is required to provide proof of hazard and liability insurance upon request, but not more than once per year. The new statute also requires that the Association be named as an additional insured and loss payee on all casualty policies issued to unit owners. The statute also provides that all improvements or additions to the Condominium Property that benefit fewer than all owners must be insured by the unit owners having the use thereof or may be insured by the Association at the cost and expense of the owners having the use thereof. This provision is subject to interpretation and could be interpreted to apply to limited common element parking spaces, storage lockers, and even balconies and patios, although we do not believe that was not the intent of the new law. The intent of this provision was to require owners to insure additions to the condominium property benefiting fewer than all unit owners that were not part of the original construction.

- **Reconstruction.** All reconstruction is to be undertaken by the Association if the reconstruction work involves damages to portions of the property which the Association insures. The Association can authorize unit owners to undertake reconstruction work with the prior written consent of the board, but can condition such work upon the approval of the repair methods, qualifications of contractors, etc. Unit owners will be responsible for reconstruction of the property to the extent the damage pertains to portions of the property which the owners insure. If the Association undertakes reconstruction work for which the owners are responsible, the Association can charge the unit owner and lien the unit for the costs.

- **Codifies Plaza East; Associations can “Opt-Out”.** The statute codifies the Plaza East decision, which was a declaratory statement issued by the Division of Florida Land Sales, Condominiums, and Mobile Homes which ruled that the deductible on the Association’s casualty policy must be

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absorbed as a common expense, regardless of any provisions in the Declaration to the contrary. However, the statute gives each community the right to opt out by a majority of all voting interests, in which case the reconstruction expenses would be allocated in the manner provided in the Declaration.

• **Exceptions to Association Responsibility for Cost of Reconstruction.**

(1) The Association will not be responsible for reconstruction of unit owner alterations if the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not located within the unit.

(2) Damages caused by casualty loss but which are attributable to unit owner negligence or failure to comply with the requirements of the covenants will be repaired at the expense of the owner.

(3) Casualty losses within the units which were known or should have been known to the owner and not reported to the Association in a timely manner, such that the claim was denied on that basis, will also be the financial responsibility of the unit owner.

• **Opt-out Vote.** In order to opt-out, it requires the approval of a majority of the total voting interests of the association without regard to any mortgagee consent requirements. After the opt-out vote, the Association must record a notice in the public records. The Association can reverse the opt-out vote by the same vote required for the opt-out vote.

• **Action Needed by Associations.** As a result of this new statute, Associations should now do the following:

(1) Obtain an insurance appraisal every 36 months.

(2) Vote on the deductible yearly at a properly noticed board meeting. The notice must state: the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit. Requires 14 days notice by mail to the unit owners.

(3) Take an out-opt vote if you want to follow your condominium documents with regard to reconstruction costs, instead of the new statutory scheme.

Common Expenses for Fire Safety Equipment or Water and Sewer Service where a Master Meter Serves the Condominium:

The new law amends to Section 718.115(1)(a) regarding common expenses. The new law provides that unless otherwise provided in the declaration, expenses such as fire safety equipment or water and sewer service where a master meter serves the condominium, will be common expenses whether or not such services are specifically identified as common expenses in the condominium documents.

Board Member Abstentions. The new law amends Section 718.111(1)(b), Florida Statutes and will permit directors to abstain from voting even if they do not have a conflict of interest. A director who abstains will be presumed to have taken no position with regard to the action.

CONDOMINIUM AND HOMEOWNERS' ASSOCIATION IMPACTS

Estoppel Certificates. The new law amends Sections 718.116(8) and 720.30851 to address estoppel certificates. The new law provides:

- The amount of the fee charged by the association or its authorized agent for the preparation of the estoppel certificate must be included on the certificate.
- The authority to charge a fee for the certificate shall be established by written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate.
- If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from the payer that is not the unit owner, the fee shall be refunded to that payer within 30 days after receipt of the request.

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The new law provides that unless otherwise provided in the declaration, expenses such as fire safety equipment or water and sewer service where a master meter serves the condominium, will be common expenses whether or not such services are specifically identified as common expenses in the condominium documents.

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SB 1986 provides that the holder of a first mortgage who forecloses on the mortgage is liable for up to twelve months of assessments or 1% of the original mortgage amount, whichever is less, for past due assessments. Also, provides forms and procedures for notice of a claim by a homeowners' association and an objection to such a claim.

- The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as assessments are collected.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION IMPACTS

The new law changes name of Division that regulates condominiums and cooperatives to "Division of Florida Condominiums, Time Shares and Mobile Homes." The new law also changes Division's powers and duties to allow the Division to:

- enter an emergency cease and desist order,
- petition the court for the appointment of a receiver,
- seek the imposition of a civil penalty through the circuit court;
- contract with agencies in the state or other jurisdictions to perform investigative functions or accept grants-in-aid from any source.

The intent of these changes is to give the Division more "teeth" in enforcing the law.

HB 1105 - COMMUNITY ASSOCIATIONS

HB 1105 affects condominium, cooperative and homeowners' associations. The effective date is July 1, 2008. This bill addresses two main subjects: (1) the appointment of a receiver and (2) filing of a lien. It requires condominium associations and cooperative associations to give 30 days notice of intent to file a lien. Additionally, the bill amends current law related to condominiums, cooperatives, and homeowners' association and creates ss. 718.127, 719.1124, 719.127, 720.3053, and 720.313, F.S. to provide that a unit or parcel owner must give notice to all the members of an association in addition to the association itself of his or her intent to apply to the circuit court for a receiver.

SB 1986 - HOMEOWNERS' ASSOCIATION LIEN CLAIMS

SB 1986 affects homeowners associations regarding lien claims. The effective date is July 1, 2008. This bill provides that the holder of a first mortgage who forecloses on the mortgage

is liable for up to twelve months of assessments or 1% of the original mortgage amount, whichever is less, for past due assessments. Also, provides forms and procedures for notice of a claim by a homeowners' association and an objection to such a claim. The filing of an objection obligates the association to foreclose the lien within 90 days or, failing that, to waive the right to foreclose on that lien. Gives further direction and a form for use in qualifying offers, which are a means for an owner to forestall foreclosure of an association lien in exchange for an agreement to pay the outstanding balance by a certain date.

SB 464 - RELATING TO TRANSFER FEE COVENANTS/ REAL PROPERTY

SB 464 affects community associations regarding transfer fee covenants. The effective date is July 1, 2008. This bill prohibits transfer fee covenants (i.e. charges that are payable upon the transfer of an interest in real property or are payable for the right to make or accept such transfer), but also provides exceptions to protect community associations, including association assessments, charges, etc.

SB 564 - AUTOMATED EXTERNAL DEFIBRILLATORS

SB 564 affects the law regarding automated external defibrillators ("AED"). The effective date is July 1, 2008. The bill revises the requirements for the use of an AED in cases of cardiac arrest. Under the bill, any person who uses an AED is encouraged, rather than required, to obtain appropriate training. Also, the bill encourages persons or entities that possess an AED to notify, rather than register with, the local emergency medical services director of the location of the device. The bill also revises circumstances under which a person who acquires an AED may obtain immunity from civil liability for harm resulting from the use of an AED.

HB 1489 - RESIDENTIAL TENANCIES

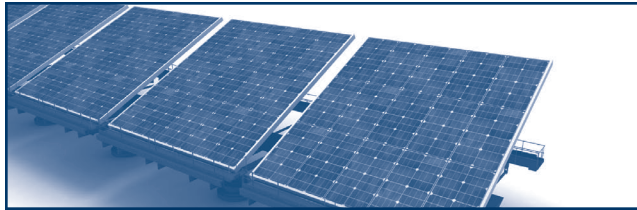
HB 1489 revises the Florida Residential Landlord Tenant Act (Chapter 83, Florida Statutes) to allow for the implementation of an "early termination fee" of a rental agreement. The effective date of this bill is June 10, 2008.

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SB 1378 - FLAG POLES (HOMEOWNERS' ASSOCIATIONS

This new law applies only to homeowners' associations, not condominium or cooperative associations. The effective date is July 1, 2008. The new law provides that any homeowner may display one official U.S. flag and one flag which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard or the POW/MIA flag not larger than 4 1/2 feet by 6 feet. In addition, a homeowner is entitled to erect a freestanding flagpole no more than 20 feet high on the homeowner's property if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement.



HB 697 and HB 7135—ENERGY BILLS/SOLAR PANELS

The new law amends Section 163.04 regarding energy devices based on renewable resources. The old law stated that associations could not prohibit solar collectors, clotheslines or other energy devices based on renewable resources with respect to dwellings not exceeding three stories in height. The new law takes out the three stories height requirement and adds that these devices can be installed within the boundaries of a condominium unit. Therefore, a condominium unit owner cannot cut through common elements, but if, for example, the roof is considered part of the unit, then the owner can install a device.

SB 2860—INSURANCE BILL, KNOWN AS THE "HOMEOWNERS' BILL OF RIGHTS"

The effective date of this law is July 1, 2008. The new law seeks to improve upon the property insurance reforms enacted in 2007 by:

- Extending the rate freeze for Citizens Property Insurance Corporation, the state's insurer of last resort, to January 2010. The freeze was set to expire in January 2009;
- Allowing single-family residential properties with a replacement value of up to \$2 million and single condominium units with a combined dwelling and content replacement cost of \$2 million or more into the Citizens insurance pool (up from \$1 million, which was set to begin Jan. 1, 2009);
- Requiring Citizens' policyholders of property located in wind-borne regions and with an insured value of \$500,000 or more to disclose the property's windstorm mitigation rating to a prospective buyer;
- Increasing fines for violations of the insurance code and for unfair trade practices by private insurers;
- Extending by one year to January 2010 a provision from last year's insurance bill that requires insurers to get state approval before raising property insurance rates;
- Requiring insurers to notify state regulators 90 days before dropping more than 10,000 homeowners' policies in one year;
- Requiring insurers to use state-approved methods to predict the risk of hurricanes, a key factor in setting rates.

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Simply log on from your home or office to participate in our informative FREE webinar on AUGUST 19, 10:30 - 11:30 AM, Eastern Time, where you'll learn about:

- NEW laws impacting board member rights and responsibilities;
- NEW insurance and reconstruction-after-casualty provisions on condominiums, and how you can "opt out";
- NEW statutes affecting elections and annual meetings;

- NEW collection and foreclosure procedures for condominiums, cooperatives, and HOAs and how to comply with them;
- NEW inspection requirements for condominiums that are more than 3 stories and how you can "opt out";
- NEW requirements on votes to waive reserves and financial statements.

Connections are limited, so please register today at <http://bp.ilinc.com>. Select Legislative Update 2008, click on register, fill in your first and last name and email address, and click submit. Once you've registered, we will email you simple instructions on how to participate.

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