



Law *advisor*

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Summary of the 2008 Legislative Session

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The 2008 Regular Session of the Florida Legislature produced many changes that will directly impact common interest ownership communities. HB 995 is effective October 1, 2008. HB 464, SB 1378, HB 1489, SB 1986, HB 1105, HB 697, HB 727, SB 564/HB 243, and HB 601 became effective on July 1, 2008. Only HB 679 was vetoed by the Governor. All new laws impact condominium, cooperative and homeowners associations.

Members in all types of community associations are more highly regulated by the State than any other type of real property owners. As such, community association members must remain vigilant about the types of laws that are passed in Tallahassee. Most proposed laws can and often do impact the manner in which these communities are operated and administered, the costs associated with such operations, and ultimately the real property value of the homes and units located inside these communities.

It is possible for owners to become part of the process year-round by meeting with their legislators during the Summer and early Fall when these individuals are back in their district offices and eager to meet with their constituents. Community members should make appointments to introduce themselves, their community and their particular concerns. While each community has different needs and concerns that must be addressed, some issues common to most communities include: hurricane shutters and other hurricane protections like laminated windows, energy efficiency issues, document amendments, delinquent assessment collection, board service, density issues, etc.

The format of the "2008 Legislative Summary" is simple. It is designed to simplify and summarize those bills that are now law, and those bills that have passed both Houses but have not yet been signed by Governor Crist. Members in any type of community association should read the summary carefully to determine which bills change the Condominium Act (F.S. 718), the Homeowners Association Act (F.S. 720), or the Cooperative Owners Act (F.S. 719). Of course, all questions regarding the potential impact of these legislative changes on a community, or the need to update existing governing documents, should be discussed with your community association attorney.

Community Advocacy Network

Please be sure to continue logging on to our Community Advocacy Network at www.canfl.com for all the latest news, tools and information for your community. You can print out summaries of all the bills that passed which impact community associations by clicking on the Latest Issues and Legislation tab, check out which State Legislator is spotlighted this month, review media articles from around the State on community association issues or see which new vendors are participating in our Affinity Program with special services and/or discounts for your association! If you have forgotten your community's password to log on to the CAN website at www.canfl.com please contact our webmaster, Diane Schick at DSchick@askthefirm.com.



Summary of the 2008 Legislative Session

Bills that Passed and Have Been Signed by the Governor

HB 995 (Community Association Bill):

HB 995 impacts community association management firms (**CAMs**) and condominium associations. **HB 995** impacts association administration, board members, community management, official records of the association, association financial matters, hurricane protections, building inspections, receivership, and the Division of Florida Condominiums, Timeshares and Mobile Homes (**“Division”**) jurisdiction.

Community Association Management Act (F.S. 468) Changes:

New defined term for “Community Association Management Firm” (**“CAM Firm”**)

- i. Creation of the “Regulatory Council of Community Association Managers”**
 1. responsibilities include recommending changes to community association law and improvements to education programs offered by the Division.
- ii. CAM or CAM Firm**
 1. must be properly licensed if they manage over 10 units or have an association budget greater than \$100,000;
 2. must designate person within CAM Firm to respond to all Division inquiries;
 3. subject to discipline if they do not disclose financial interest in any third party that is contracting with association if CAM is acting on behalf of association.

Condominium Act Changes (F.S. 718)

Officers or Directors

- Statutory fiduciary obligations- must act in the best interests of the association;
- Directors are limited to one year terms unless the bylaws provide for staggered terms not to exceed 2 years and a majority of the members approve such staggered terms;
- If the condominium consists of more than 10 units, co-owners may not serve as members of the board at the same time;
- Any unit owners desiring to run for the board must submit a signed form provided by the division which certifies that he or she has read and understands to the best of their ability the governing documents of the association, condominium act and administrative rules. This form must be sent out with the 60-day first notice of the annual meeting and election and must be returned by the candidates not less than 35 days prior to the election;
- Any board member delinquent for more than 90 days in assessments is ineligible for board membership and is automatically removed from office if already in office at time of delinquency;
- Any convicted felon who has not had his or her civil rights restored for at least 5 years before the date of the board election is ineligible for board candidacy;



Summary of the 2008 Legislative Session

Condominium Act Changes (F.S. 718) continued

- Any director or officer charged with felony theft or embezzlement of association funds is automatically removed from office and shall be reinstated for the remainder of the term should there be a finding of no guilt;
- Emergency powers-only if “State of Emergency” declared includes:
 - ability to conduct meetings without satisfying the notice requirements,
 - cancel and reschedule meetings,
 - name assistant directors or officers,
 - relocate the principal office of the association,
 - mitigate further damages,
 - use reserve funds without a membership vote
 - declare building and/or units uninhabitable
 - order a mandatory evacuation
 - not liable if owners/occupants stay despite evacuation order
 - contract on behalf of unit owners,
 - levy special assessments without a vote of the membership,
 - borrow money to fund emergency repairs
- Any officer or director that has a financial interest in any company doing business with the association must disclose the financial relationship and place such disclosure in the minutes of the association’s official records, and such disclosure must conform with F.S. 617.0832; a board member with a disclosed financial interest may be counted for quorum purposes but may not vote on the ratification of the agreement; in addition any member of the association may move to cancel the agreement if a majority of the total voting interests present approve, and if cancelled then the association is only liable for the reasonable value of the goods or services and shall not be liable for termination fees, liquidated damages, or other form of penalty.

Official Records

- Accounting records cannot be intentionally defaced or destroyed and if so the offender faces recall/removal as an officer or director as well as civil penalties;
- A **“Developer Turnover Inspection Report”** is now an official record of the association;
- Must retain all official records for at least 7 years;
- Official records must be located within 45 miles of the condominium, or in the county where the condominium is located;
- Unit owners’ social security numbers, drivers’ license numbers or credit card numbers are exempt from inspection requests;
- Every condominium that is greater than 3 stories in height must prepare an **“Engineering Report”** every 5 years beginning on October 1, 2008 unless waived by a majority of the voting interests in the condominium.
- Developer’s must prepare a **“Turnover Inspection Report”** that is sealed by an architect or engineer including reserve analysis for roof, structure, electrical systems, plumbing, and other specific reserve items.

Reserves

If limited proxies are used during a membership vote to waive or reduce reserves, then the proxy must contain a specific disclosure that special assessments may be necessary if the reserves are waived;



Summary of the 2008 Legislative Session

Condominium Act Changes (F.S. 718) continued

Receivership

If there is a failure to fill board vacancies that results in the board's inability to achieve a quorum, then any unit owner may move to appoint a receiver provided all the statutory requirements are fulfilled and proper notices to the association and all unit owners are provided;

Turnover

A developer controlled association must turn over majority control of the board if the developer files for bankruptcy protection or a receiver is appointed for developer's entity;

Hurricane Shutters

A majority of the unit owners may authorize the board to implement a

“Mandatory Hurricane Shutter Program” as follows:

- The association will install shutters or other hurricane protections (i.e. Laminated or impact windows) that comply with the applicable building code;
- The costs shall be a common expense of the condominium;
- Any previously installed shutters or other protections installed by a unit owner shall not be removed by the association if those shutters/protections are compliant with the applicable building code;
- The declaration of condominium may allocate the maintenance responsibility of hurricane shutters or other protection to the unit owner or association;
- Any unit owner in a condominium that has adopted a mandatory hurricane shutter program and who has previously installed hurricane shutters or other protections shall receive a pro rata credit for the assessed costs for such common expenses of the association as it pertains to installation costs only, as all non-installation costs shall be common expenses of the condominium.

Budgets and Financial Reporting:

- Financial reporting requirements now must include specific disclosure regarding reserves and whether such reserves are sufficient to prevent a special assessment;
- Cash receipts and expenditures report can be used instead of an annual audited financial report if a majority of the membership approves at a properly noticed meeting, and such a vote can be effective for 2 consecutive years, provided that no waiver shall exist for more than 3 consecutive years;
- Annual budgets must include revenue;

Miscellaneous:

- Any unit owned by the association has no voting rights;
- All member meetings must be held within 45 miles of the condominium;
- Unit owners may display on the mantle or frame of the unit's door a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep;



Summary of the 2008 Legislative Session

Condominium Act Changes (F.S. 718) continued

Miscellaneous (continued):

- Division has jurisdiction to investigate any developer controlled association for incomplete or failed turnover, but after turnover Division jurisdiction is limited to investigating financial issues, elections and unit owners' access to official records of the association;
- Division has right to issue a subpoena to non-compliant association that has received a proper official records request if more than 20 days have elapsed without response from receipt of request;
- Any sale from non-developer unit owner on or after January 1, 2009 must provide a prospective purchaser with a Division approved form outlining and summarizing the governance of the association and other matters. A sale may be voidable if such form is not provided.
- Strategic lawsuits against public participation ("SLAPP") suits are strictly prohibited as being contrary to public policy. SLAPP suits involve actions where members are sued by individuals, business entities, or governmental entities arising out of that owner's appearance and presentation before a governmental body on matters related to the association. Any member sued in such a manner may move to dismiss, and if successful, the court may award actual damages, and may award treble damages along with attorney's fees. In addition, association funds may not be used to prosecute a SLAPP suit against an owner. This same prohibition is found in Chapter 720, F.S. (the HOA Act).

SB 464 (Transfer Fee Covenants)

SB 464 impacts all the various types of community associations (i.e. condominiums, cooperatives, and homeowners associations) by prohibiting Transfer Fee Covenants, but also provides important exceptions to protect community associations. This law has been signed by the Governor and takes effect July 1, 2008.

- **"Transfer Fee"** means fees or 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, regardless if the amount is fixed, based on a percentage of the value of the property, purchase price, or other consideration given for the transfer.
- **"Transfer"** means a sale, gift, conveyance, assignment, inheritance or other transfer.
- prohibits **"Transfer Fee Covenants"** which imposes a fee for transfers executed on or after July 1, 2008 making them void and unenforceable.
- any Transfer Fee Covenant entered into before July 1, 2008 are not presumed to be enforceable.
- **Community Association Exception:**
 - community association assessments, charges, fees, fines or other amounts payable to a community association pursuant to a declaration or covenant or applicable law;
 - fees for estoppel letters or certificates issued by the association;
 - fees associated with the approval of a prospective lessee or prospective owner when the governing documents allow such fees;
 - any consideration payable to the holder of an option to purchase;
 - the holder of a first refusal right or the holder of a first offer to purchase for waiving, releasing or not exercising the option or right upon transfer of the property.



Summary of the 2008 Legislative Session

SB 1378 (Flag Bill)

Homeowners Association Act Changes (F.S. 720)

All parcel owners may display:

- 1 portable, removable, U.S. Flag or official flag of the State of Florida; and
- 1 portable, removable, official flag not larger than 4 1/2 feet by 6 feet which represents the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or a POW-MIA flag.

All parcel owners may erect:

- A freestanding flagpole no more than 20 feet high on any portion of the homeowners real property if not erected within or upon an easement and if such flagpole does not obstruct sightlines at intersections;

HB 1489 (Landlord Termination Fee Bill)

The Landlord Tenant Act (F.S. 83) has been amended to allow an “**Early Termination Fee**” for a tenant’s early termination of a rental agreement. This is relevant to community associations that have a standard form of lease, which may now have to be amended to provide for remedies in accordance with this important legislative change. The Governor must take action on **HB 1489** by June 14, 2008. The effective date of this new law is upon the Governor’s signature or effective immediately.

Early Termination Fee:

- Any charge, fee, or forfeiture, agreed upon in writing, and assessed against a tenant when a tenant elects to terminate the rental agreement and vacates before the end of the rental agreement so long as the term is less than one (1) year and in writing;

Landlord Duties:

- Exercise “**Good Faith**” when attempting to relet the premises and any rent received by the landlord as a result of reletting must be deducted from the balance of rent due from the tenant.
- **Good Faith** means the landlord uses at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to rent other similar rental units.

Landlord’s Remedies:

- Retaking possession of the premises and holding the tenant liable for the difference between the rent stipulated to be paid under the rental agreement and what the landlord is able to recover from reletting.
- Liquidated damages clause or an early termination fee provided that neither includes an amount exceeding 2 months rent.
- The rent and other charges accrued through the last month of tenant’s possession and charges for damages to the dwelling unit.

Miscellaneous:

- If an Early Termination Fee is agreed upon, the tenant must give 60 days prior written notice to the proposed date of early termination.
- The tenant must indicate acceptance of liquidated damages or an Early Termination Fee by signing a separate addendum to the rental agreement that is statutorily mandated.



Summary of the 2008 Legislative Session

SB 1986 (Homeowners Association Bill):

SB 1986 is effective July 1, 2008. **SB 1986** only impacts HOAs and provides new requirements for filing and foreclosing an association lien, a statutory framework for offers to pay off the existing delinquency, and a limitation on the potential liability to which a foreclosing first mortgagee is exposed.

Homeowners Association Act (Changes F.S. 720)

Liens:

- If the governing documents so provide an association has a lien to secure payment of assessments and other amounts that are due.

Written Demand for Past Due Assessments:

- 45-day notice must be served on the delinquent parcel owner before recording a “Claim of Lien”.
- 45-day notice must be given to the delinquent parcel owner to make full payment and the association may not commence foreclosure action until after the 45-day period has expired.
- 45-day requirement does not apply if the parcel owner is:
 - subject to a foreclosure action or forced sale of another party, or
 - if the parcel owner is a debtor in a bankruptcy proceeding;

Claim of Lien:

- Secures the payment of:
 - interest;
 - late charges;
 - reasonable attorney’s fees.
- Must state:
 - description of the parcel,
 - name of the record owner,
 - name and address of the association,
 - assessment amount due, and
 - due date.
- A “**Statutory Notice of Contest of Lien**” must be recorded and sent to the association if a parcel owner contests the Claim of Lien. Association has 90 days to enforce the lien or else lien is void unless there is an automatic stay due to a unit owner bankruptcy in which case the 90-day period shall be extended for the length of time the association is prevented from filing its action.

Miscellaneous:

- Foreclosure of lien is the same procedure as a mortgage lien foreclosure;
- Association may bring action for money judgment without waiving claim of lien;
- Association is entitled to attorney’s fees incurred in connection with action to foreclose a lien or to recover a money judgment for unpaid assessments;
- Court can order an owner that remains in possession of a parcel post-foreclosure judgment to pay reasonable rent;
- If the parcel is rented during the pendency of a foreclosure action the association is entitled to a receiver and all costs of receiver are payable by non-prevailing party;



Summary of the 2008 Legislative Session

Homeowners Association Act (Changes F.S. 720) continued

First Mortgagee Liability:

- the liability of any first mortgagee or its successor or assignee who:
 - acquires title to a parcel by foreclosure or deed in lieu of foreclosure; and
 - filed suit against the parcel owner and initially joined the association is limited to the lesser of:
 - twelve (12) months past due regular or special assessments; or
 - one percent (1%) of the original mortgage debt.

Qualifying Offers:

- Statutory Form must be used;
- Owner may send a written offer to pay all amounts secured by the lien of the association plus amounts accruing during the pendency of the offer;
- Qualifying offer may only be submitted if trial or trial docket for lien foreclosure action is not set to begin within 30 days;
- Qualifying offer is voidable if the owner is subject to a mortgage foreclosure or a tax certificate sale while the Qualifying Offer is pending;
- Void If the parcel owner becomes a debtor in a bankruptcy proceeding while a Qualifying Offer is pending;
- The foreclosure action is stayed for no more than 60 days from the date of service of the Qualifying Offer and no earlier than 30 days before the date trial, arbitration, or the beginning of trial docket, whichever occurs first to permit the owner to pay the Qualifying Offer to the association plus any amounts accruing during the pendency of the offer;
- The Qualifying Offer must be notarized.

Condominium Act Changes (F.S. 718), Homeowners Association Act Changes (F.S. 720) and Cooperative Act Changes (F.S. 719)

HB 1105 (Community Association Bill)

HB 1105 provides a process for the appointment of a receiver in the various types of community associations (i.e. condominium, cooperative, and homeowners' associations) when vacancies on the board prevent a quorum from being obtained. In addition, the new law provides a form of statutory notice that a petitioning unit owner/member must provide to the association, and all unit owners/members in the community association before a receiver may be appointed. The new law also provides that in condominiums and cooperatives, the association must wait 30 days before filing a claim of lien as well as outlining the manner of service of process. The effective date of this law is July 1, 2008.



Summary of the 2008 Legislative Session

HB 697 (Energy Efficiency Bill)

HB 697 grants owners within any type of community association (condominium, cooperative, and homeowners= associations) the right to install energy efficient devices (i.e. solar collectors, clotheslines, etc.) on their property. In condominiums, the board now has the right to install energy efficient technology upon the common elements and/or association property without a unit owner vote. The effective date of HB 697 is July 1, 2008.

HB 727 (Roof Truss Bill)

Condominium Act (F.S. 718) and Cooperative Act (F.S. 719) Changes:

Officer or Director:

- Mark the structure with a sign or symbol approved by the State Fire Marshal sufficient to warn persons conducting fire control and other emergency operations of the existence of light-frame truss-type construction and structure

The State Fire Marshal will be adopting rules necessary to implement the new law, including the dimensions and color of such sign or symbol, the time when a condominium or cooperative building must comply with this new law, the location of the sign or symbol on the building. The effective date of this new law is July 1, 2008.

SB 564/HB 243 (“Cardiac Arrest Bill”)

SB 564/HB 243 impacts all community associations (condominiums, cooperatives, and homeowners= associations) because it removes old requirements for the use of “Life Safety Devices” and conditions immunity from civil liability if any harm results from their use or availability. Any community association that has a Life Safety Device should review their governing documents regarding its use and availability. The effective date of this new law is July 1, 2008.

- Amends F.S. 768.1325, (“Cardiac Arrest Survival Act”)
- Provides immunity from civil liability to “Persons” who make an automated external defibrillator device (“Life Safety Device”) available for use or who use or attempt to use such device on a victim of a perceived medical emergency.
- “Persons” includes community associations which include condominiums, cooperatives, homeowners’ associations, timeshares and mobile homes.
- In any community association that makes a Life Safety Device available or a person/member of the community association uses the Life Safety Device on a victim (without the victim’s objection), the following must be satisfied in order to achieve civil immunity:
 - the community association must properly maintain and test the life safety device or
 - provide appropriate training in the use of the life safety device to those designated persons who will use the life safety device on the victim (i.e. employee or agent of community association).
 - appropriate training is not required if the life safety device is equipped with audible, visual, or written instructions on its use or such instructions are adjacent to the life safety device.
- Any community associations that wishes to have Life Safety Devices, no longer must notify local emergency medical services medical director of the most recent placement of the Life Safety Device to maintain their immunity from civil liability.



Summary of the 2008 Legislative Session

HB 601 (Community Association Bill)

HB 601 impacts all the various types of community associations. There are new insurance requirements, including self-insurance requirements, new types of common expenses, a new procedure for obtaining estoppel certificates, an expansion of Division powers as well as other changes. The effective date of **HB 601** is July 1, 2008.

Condominium Act Changes (F.S. 718)

Officer or Director:

- Any director who abstains from a vote is deemed to have taken no position;
- A developer controlled association must provide adequate hazard insurance and if they do not it is a breach of fiduciary duty;
- A unit owner controlled association must use its best efforts to obtain and maintain adequate insurance to protect the condominium property;
- The board shall require a **“Certificate of Insurance”** from every unit owner once per year and if the unit owner fails to produce same within 30 days the association may purchase an insurance policy on the owner’s behalf and collect the costs for such policy as a special assessment against that owner.

Insurance:

The replacement cost for any insured condominium property must be determined through an independent insurance appraisal every 36 months or they may update an existing appraisal.

Self-Insurance:

Any association may self-insure its hazard coverage provided they comply with F.S. 624.460 - 624.488 and any policies and rates are reviewed by Office of Insurance Regulation in addition to disclosing all material terms to unit owners before any agreement is executed;

Deductibles:

The board may determine a deductible based on reserves, available funds and assessment authority, but must have a meeting open to all unit owners to determine the deductible and the notice must state the proposed deductible and an estimate of the potential assessment;



Summary of the 2008 Legislative Session

Hazard Policy Requirements:

- Every hazard insurance policy renewed after January 1, 2009, for the purpose of protecting the condominium, **must provide** primary coverage for:
 - all portions of condominium property as originally installed or replacement in like kind and quality according to the original plans and specifications;
 - all material alterations or additions to the condominium property or association property made by the association;
- Every hazard insurance policy **shall exclude**:
 - all personal property within the unit;
 - limited common elements;
 - floor, wall, and ceiling coverings;
 - electrical fixtures, appliances, water heaters, water filters, built-in cabinets and counter-tops;
 - window treatments including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing;
- Every unit owner hazard policy issued after January 1, 2009, must contain a provision that the policy is excess coverage over the amount recoverable under any other policy with special assessment coverage of no less than \$2,000 per occurrence;
- The association must be named as an additional insured and loss payee on all casualty insurance policies issued in the condominium;

Limited Common Elements:

- Any limited common element shall either be insured by the association or unit owner and if the association insures same, then the costs of such insurance shall be a limited common expense or special charge to the unit owner so benefitted.

Repair Post-Casualty:

- Any repairs made to damaged property after a casualty event must be performed by the association unless a unit owner obtains prior written board approval to make repairs;
- The association may condition any unit owner repair upon approval of the repair methods to be used and the qualifications of the owner's proposed contractor
- A unit owner performing repairs post-casualty must obtain all permits and must pay for all reconstruction work to his or her unit/condominium property for which he or she is required to maintain hazard coverage or the association may conduct such work and charge the unit owner through a special assessment;
- The association has no obligation to restore or repair any extras or add-ons installed by a unit owner that benefit only 1 unit;
- A unit owner is responsible for the costs of repair to the condominium property, the unit owner's personal property, association property, or any other property that the unit owner is required to insure if the unit owner or his or her family, unit occupants, or guests caused the damage through negligence, intentional conduct or failure to comply with terms of the declaration of condominium and such damage is not paid for by such insurance proceeds;
- The association shall reimburse unit owners with insurance proceeds collected by the association from unit owners if the damaged condominium property is the maintenance responsibility of the unit owner;



Summary of the 2008 Legislative Session

Repair Post-Casualty (continued)

- If casualty losses were known or should have been known by the unit owner, but were not reported until after the insurance claim was settled, resolved, or denied for untimely filing, the association is not obligated to pay to repair or reconstruct any damage to the condominium property as a common expense and such costs to repair and replace shall be the unit owner's responsibility.

Multi-Condominium Association:

- A multi-condominium association may, by majority vote of the collective members of the multi-condominium association, elect to operate the condominium as a single condominium for purposes of insurance matters, purchasing hazard policies and the apportionment of deductibles and damages in excess of coverage.
- Any election to collectively insure such condominium associations requires an amendment to the declaration before such action is taken and must be so disclosed in the master association budget, and the association budgets respectively;

Fidelity Insurance:

- The association must obtain fidelity insurance for all persons who handle any association funds in an amount of coverage equal to the maximum funds that will be in the custody of the association at any one time;
- Any amendment to the declaration to comply with these new requirements shall not require mortgagee approval.

Common Expenses includes the following:

- The costs of repairs for condominium property that must be insured by the association;
- Deductibles, uninsured losses, and other damages in excess of coverage within the hazard policy maintained by the association;
- Any item or service provided by any federal, state, or local governmental entity that must be maintained by the association like fire safety equipment or water or sewer services where there is a master meter.

Opt-Out Procedures:

- Any association may elect to opt-out of the insurance requirements of F.S. 718.111(j)(1)-(j)(4) if a majority of the total voting interests approve and provide through their declaration of condominium a different method of maintenance and insurance obligations between the association and unit owners as well as a different manner for the allocation of repair and reconstruction expenses. An effective **"Opt-Out Amendment"** must contain the following:
 - a recorded **"Opt-Out Notice"** in the public records of the county where the condominium is located setting forth the date of the opt-out vote and the official records book and page of the declaration of condominium;

Estoppel Certificates:

- An association has 15 days after receipt to provide a unit owner or his or her designee or a mortgagee an estoppel certificate stating the amount of assessments and other moneys owed to the association by the owner or the mortgagee. Such estoppel certificate shall be signed by an officer or authorized agent of the association when so requested;



Summary of the 2008 Legislative Session

Estoppel Certificates (continued)

- The fee to be charged for such estoppel certificate must be listed on the face of the certificate and the authority to charge such fee must be found in a board resolution or in the management contract;
- Estoppel certificate fees shall be refunded if the sale or transfer does not close if the prospective unit owner provides written notice 30 days after the scheduled closing date;
- The association has 30 days to refund a prospective purchasers estoppel certificate fee.

Division Powers shall include the ability to:

- Issue a cease and desist order (effective for 90 days) if the Division finds that a developer, association, officer, director, or assignee or agent is about to violate any provision of F.S. 718;
- Petition for the appointment of a receiver;
- Petition for a restitution order;
- Impose a civil penalty ranging from \$500.00 to \$5,000.00 after obtaining a court order for a violation and the court may also impose attorney's fees and if the Division prevails, the costs of investigation;
- Contract with other agencies.

Homeowners Association Act Changes (F.S. 720)

- Estoppel Certificates
 - Identical to the changes for Condominiums listed above.

Cooperative Act Changes (F.S. 719)

- Self-Insurance:
 - a cooperative may self-insure with a group of associations, including condominium associations and HOAs.



Summary of the 2008 Legislative Session

HB 679 PASSED BOTH HOUSES BUT WAS VETOED BY GOVERNOR

HB 679:

HB 679, was passed by both Houses but vetoed by the Governor. **HB 679** would have impacted swimming pool regulations within homeowner associations (HOAs), impacted the budgeting and financial reporting requirements of associations, prohibited board members and officers from receiving certain financial interests in association business, allowed for associations to lien for fines, and finally would have required changes to the mediation and arbitration of certain disputes among associations and homeowners. In addition, **HB 679** would have impacted officers and directors of an association by requiring them to sign statements verifying an understanding of the governing document and Florida condominium law.

Governor Crist, however, vetoed **HB 679** because it intended to reduce the annual inspections of public swimming pools within homeowners associations from 2 per year to 1 per year. He stated:

"I have concerns that this supervision and inspection exemption for homeowners' association swimming pools would present a danger to the health and safety of Floridians who frequent such pools. Under the bill, smaller homeowners associations that meet certain requirements would be completely exempt from the routine inspections done by the Department of Health to ensure that water quality and safety requirements are met....I cannot allow the families that use the approximately 7,300 public pools found at homeowners' associations across the state to be endangered by water-related illnesses and other safety hazards due to this loss or decrease in state supervision."



MESSAGE

From the Editor



As you can see from the list above of just the 2008 statutory changes, the last few legislative sessions have produced a rash of community association bills. It is more important than ever for community association members to make their voices heard on these issues early in the process before they become law. Once the session starts each March, community members should become informed about the bills that are pending that have the potential to impact their communities and should weigh in on those bills at each of their committee stops. The information and tools provided on the **Community Advocacy Network (CAN)** website at www.canfl.com, allow owners and board members alike to log on, read the bills and bill summaries and use the **“Capitol Connection”** email tool to contact their representatives as well as all members of every committee hearing a particular bill. Every annual retainer client of Katzman Garfinkel automatically receives a complimentary membership subscription to **CAN**. While there is no doubt it takes persistence and patience to participate in the political process, it is possible to ensure responsive and responsible community association legislation by getting involved.

If you have any questions about the Community Advocacy Network (CAN), please contact Executive Director, Donna Berger, at 954-315-0372 or via email at dberger@askthefirm.com.



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