



March 28, 2008

News – Local News

Legislators working on changes for rules governing home/condo associations

By I.M. Stackel

Some view it as a comforting extra blanket of protection from the outside world. Some, as another burdensome layer of government.

Florida legislators are working hard with both sides to negotiate compromises that will be reflected in pending legislation affecting thousands of homeowners and condo associations.

The subtleties shift every day that new and updated laws are discussed in legislative subcommittees, although it is now believed that about 25 pieces of legislation containing provisions and changes for associations will be incorporated into Rep. Julio Robaina's House Bill 995.

As of Dec. 31, there were 1,394,467 condo units in Florida, plus 77,609 cooperative shares.

Though community associations are somewhat regulated by the state, homeowner associations are not. It is not yet clear how many homes are subject to mandatory association laws.

Robaina's fight to push through association reforms are now legendary in Tallahassee. His efforts have been defeated several times, but Robaina has repeatedly reintroduced legislation.

This week, after his bill successfully passed through several subcommittees, Robaina, R-Miami, was ecstatic.

"It looks like the (House) leadership is behind it," Robaina said. "We're now working on a lot of suggestions, but the bill is moving."

After meeting five times in January, February and March to hear public testimony about associations all over the state, the Select Committee on Condominium and Homeowner Association Governance — led by Robaina — issued its final report on March 4.

Robaina's bill incorporates some of the report's suggestions.

The bill would amend a statute, which governs condo associations. It would remove provisions providing for association windstorm insurance; require official association records be maintained for at least 5 years and be made available to members at specifically named locations; create criminal and civil sanctions against any officer, director or association manager who knowingly or intentionally defaces, destroys or fails to create or maintain accounting records; restrict a condo association from waiving a financial report for more than 2 years; and, prohibit accessibility to certain types of personal information about unit owners.

The bill also prohibits any board from adopting rules or regulations that step on the rights of an owner to practice his or her religion; and, prohibits associations from spending association money to prosecute a suit against an individual unit owner.

A companion bill addressing community associations filed by Sen. Alex Villalobos, R-Miami, is doing well, and is at the conference bill status, last under review by the Banking and Insurance Committee.

Robaina said that everyone he had to fight in the past is now on board.

"I think we really got the message out loud and clear ... they know we're not going away. We're going to come back at it again and again," Robaina said.

The word in Tallahassee is that 995 and 995a will become a "train" bill, to which all other community and condo association legislation will be added.

Not all of Robaina's opponents have been silenced.

Attorney **Donna D. Berger**, a partner in **Katzman & Korr** of Fort Lauderdale, is also the head of the **Community Advocacy Network (CAN)**. Formerly with Becker & Poliakoff, and the head of that law firm's community advocacy's voice, Berger has some serious issues with some of the pending legislation.

"This bill is changing on an hourly basis (but) I was speaking with our CAN lobbyist, Pete Dunbar, earlier and it looks like 995 will wind up being the community association vehicle this year," Berger said Friday.

Berger has several problems with the bill.

First, it strips voting rights on any unit owned by the association. That's a problem because more and more, associations are reluctantly becoming the owners of many units as a result of foreclosures.

The bill also prohibits staggered terms for directors -- with no real valid reason for doing so, she said.

It removes the ability to opt out of the cumbersome statutory election procedures; takes away the ability of the members to vote to opt out of the financial reporting requirements more than 2 consecutive years in a row; allows owners to keep their hurricane shutters up year-round; allows the division to remove directors from office and to prohibit certain candidates

from running for office; and requires the free expression of religion on the condominium premises without defining what that entails.

"Can you imagine boards engaged in esoteric debate over what constitutes a religious practice?" asked Berger, who represents some 1,000 common-interest ownership communities throughout the state, with a large presence in Collier and Lee counties.

However, there are some helpful provisions that will be included in this bill, Berger noted. They include a clarification of insurance responsibilities and empowering boards with emergency powers to deal with the advent and aftermath of storms.

Community Association Institute (CAI), another community and homeowners advocacy group, is not too thrilled with proposed changes to legislation.

William D. White, the Naples-based property manager who is on the CAI South Gulf Coast chapter's board of directors, tracks legislation for his group.

"We're asking people not to vote for 995a," White said this week.

"It has a couple of redeeming qualities, but a good 85 percent of it is detrimental to community associates," said White, who manages 22 properties.

The most egregious is a proposal to make association directors subject to criminal prosecution if a major error occurs.

The amendment identifies a criminal violation as "anything that doesn't follow statutes," White said. "It could be a mistake. It is absolutely ludicrous (to do this) to a director who is not getting paid."

Another flaw is the proposed change in auditing requirements, White said. They were established in 1990. An audit is very expensive now, he said.

"At this time, it appears that there will be three community association packages put together by legislative leadership and have a strong likelihood of passage," White said.

In addition to Robaina's, that includes HB 679, a homeowners association reform bill, and HB 1379, a bill that would reorganize the Department of Business and Professional Regulation.

"The session doesn't end until May 2, so there is still plenty of time for changing things," White said.

Proposed legislative changes for community, homeowner and condo associations, as provided by William D. White, owner of Professional Community Services of Naples, a property management firm:

- Homeowners Association Reform House Bill 679 by Andy Gardiner, R-Orlando. This bill includes HOA emergency board meetings; owners have the right to petition to have something placed on the agenda similar to condos; prohibits board members from receiving compensation; adds additional disclosures to the form that sellers must give buyers regarding HOAs; and extends the time to prepare end-of-year financials to 120 days.
- Department of Business and Professional Regulation Reorganization House Bill 1379, sponsored by Rep. Matt Hudson, R-Naples. Includes agreed-to reconstruction after casualty insurance language; includes removing land sales out of the division, allows the department to enter into co-operative agreements with other jurisdictions; and worked out language, which sets up an equitable way for managers to get paid for preparing certificates, and also how refunds work if property doesn't close.
- Condo reform House Bill 995 by Rep. Julio Robaina, R-Miami. Includes a new version of the emergency powers' language; several Community Association Management reforms including licensing management companies, making sure even small associations use a licensed Condo Association Management; if 20 percent of the owners request, the board must place an item on the agenda; board members are suspended from office if charged with a felony theft from the association; all board members' terms end at the annual meeting, which will destroy the continuity gained by staggering terms of directors but there is no limit to how many terms they can serve and if not enough people volunteer to serve board is automatically retained; convicted felons must have rights restored before serving on board; 30-day lien notice; full disclosure if any board member has a financial interest in any contract.

Monday, the bills may be — again — revised, “and could have a totally different slant to them,” White said.