

## New laws give condo directors more power

### The bill gives more freedom to condo directors when preparing for storms and dealing with the aftermath

By I.M. STACKEL

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Laws that govern how much power condo association directors have were signed by Gov. Charlie Crist last week.

While some groups that represent condo associations hail passage as good legislation, the new laws that take effect Jan. 1 are not exactly what its sponsor envisioned.

It was the intention of Rep. Julio Robaina, R-Miami, to protect condo owners from overly powerful condo directors, and some of those provisions were watered down.

However, House Bill 995 now offers condo board directors emergency powers that Community Advocacy Network has long endorsed.

Attorney Donna D. Berger, a partner in Katzman & Korr of Fort Lauderdale, heads up Community Advocacy Network and said its members "should be very proud of the role ... played in making this bill a worthwhile piece of legislation that now protects condominium unit owners and good board members, while making it more difficult for self-serving directors to continue to act unilaterally."

House Bill 995 now contains the following emergency powers language that Community Advocacy Network has endorsed for the past two years, giving boards more guidance "and latitude" when dealing with storm preparations, and the aftermath of storms, Berger said last week:

- The ability to conduct board and membership meetings with notice given as is practicable even if the statute or documents would otherwise require greater notice;
- The ability to name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to make up for the absence or incapacity of any association officer as a result of the storm;
- The ability to implement a disaster plan before or immediately following the event for which a disaster has been declared including, but not limited to, shutting down or off elevators, electricity, air conditioners, water, sewer or security systems;
- The ability to declare any portion of the condominium property unavailable for entry or occupancy to unit owners, family members, tenants, guests, agents or invitees to protect the health, safety and welfare of such people;
- The ability to cancel and reschedule any association meeting;
- The ability to require the evacuation of the condominium property in the event that the local authority issues an evacuation order;
- The ability to mitigate further damage including the ability to contract for debris removal, removal of wet drywall, insulation, carpet, cabinetry or other fixtures inside the units to prevent or mitigate the spread of mold, mildew or fungus;
- The ability to contract, on behalf of the unit owners, for items or services for which the owners would ordinarily be responsible but which are necessary to prevent further damage to the condominium property. Some of these services could include the drying of units, the boarding of broken windows or doors, the replacement of damaged air conditioners or air handlers to provide climate control in the units or to other portions of the property.

In the event the association chooses to do undertake these emergency services, the unit owner or owners benefitting from them are responsible for reimbursing the association for the actual costs of the items or services and the board may lien such owner or owners for nonpayment of same;

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-- The ability to levy special assessments without a vote of the membership even if a contrary provision requiring such approval exists in the condominium documents; and

-- The ability, without owner approval, to borrow money and pledge association assets as collateral to fund emergency repairs and carry out the association's duties when the operating funds are insufficient.

This kind of guidance for volunteer boards struggling with storm preparation and storm cleanup is long overdue and a welcome addition to 995, Berger said.

William D. White, who operates a property management group in Naples and is on the board of Community Association Institute South Gulf Coast chapter's board of directors, tracks legislation summed up the changes as follows: that HB 995 calls for a two-year license for all association management firms, and each firm must designate a licensed Community Association Manager to respond to all complaints filed with the Florida Department of Business and Professional Regulation, which oversees condo associations; and that the piece of legislation, which endured numerous amendments, and became the train bill for at least 25 different attempts to rewrite rules governing condo and community associations, also spells out disciplinary action for management firms that flout the intent of the laws; that includes making association records easily available to an owner requesting them; furthermore, units owned by the association may not be counted toward a quorum, and those units do not carry a vote; condo associations with more than 10 units may not allow co-owners of the same unit to serve as association directors at the same time. An owner delinquent in payment of assessments is not eligible for board membership; and, officers or directors who are more than 90 days delinquent in assessment payments shall be considered as having abandoned his or her office; and association emergency powers were rewritten, providing directors with "very broad powers to deal with disasters and declared states of emergency," White said.

Overall, HB 995 is a good bill, White said.

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