



CALL ALERT for December 6, 2011— Legislative Update

HB 319, the community association bill filed by Rep. Moraitis, will be heard on Wednesday, December 7, 2011, in the House Civil Justice Subcommittee. We expect some amendments to the bill to be filed and considering during the subcommittee's meeting. We will update you after Wednesday's meeting.

There are a number of other bills that CALL is tracking that will impact community associations. Some of these include:

HB 13 (Rep. Frishe) and SB 88 (Sen. Latvala) relating to sovereignty submerged lands. These bills propose to exempt multi-family docks and structures that require a lease from paying a fee on minimal amounts of sovereignty submerged lands that are leased, in the same manner as the exemptions that are currently in place for single-family docks. CALL is in favor of these bills.

HB 713 (Rep. Rogers) and SB 706 (Sen. Smith) relating to condominium foreclosures. These bills provide that the share of the common expenses of a unit in the condominium which is in foreclosure may not be assessed against other units in the condominium. CALL is opposed to these bills. If associations can not assess other owners for bad debt, they will not be able to pay their bills or they will have to budget huge contingency line items in the operating budget.

SB 778 (Sen. Detert) relating to homestead exemptions. This bill would require condominium and cooperative associations to provide a list of rented units to the property appraiser's office. CALL would like to see that language removed from the bill. If removed, we do not have any objections to the other portions of the bill, which would provide a reward for reporting illegal or improper homestead exemptions.

HB 213 (Rep. Passidomo) relating to judicial proceedings. This bill has been referred to

as the “Florida Fair Foreclosure Act.” The bill is primarily intended to do two things: the first is to bolster the protection of due process in mortgage foreclosure cases, and the second is to move foreclosure cases expeditiously in order to get real property back into the stream of commerce. There are some mechanisms in the bill that could be beneficial to condominium and homeowners’ associations seeking to assist the courts in expediting uncontested mortgage foreclosure actions. There are also new requirements that could delay the filing of mortgage foreclosure actions, therefore leaving associations with the unenviable option of foreclosing their subordinate lien against a property without equity. The bill would also give the court authority to grant extension or stays when the parties are engaged in good faith negotiations with regard to loan modifications, and allows the court to condition such an extension or stay on the property owner or lender, if it so chooses, paying and condominium or homeowners’ association assessments coming due after the date of the extension or stay and keeping such assessments paid current through the conclusion of the foreclosure action. CALL would like to see some clarification regarding the “if it so chooses” language to specifically refer to the court’s election and not the lenders. Furthermore, we would like to see an expansion of this right of the court to require assessments to be paid by the lender to other circumstances such as those when the plaintiff has delayed prosecution of the action without good cause or failed to follow orders of the court regarding case management or the timely scheduling and conduct of foreclosure sales.

SB 970 (Sen. Bennett) relating to foreclosure proceedings. The bill provides that a lender or financial institution that institutes a foreclosure action may file a motion requesting that the circuit court issue a certificate of abandonment and preservation of property. Upon the issuance of a certificate of abandonment and preservation of the property, the financial institution or lender is authorized to secure the property; maintain utilities, remove trash and debris, maintain the lawn, maintain insurance, and pay all property taxes. CALL would like to see additional language which would allow a community association to file the motion requesting a certificate of abandonment and preservation, and which would require the lender or financial institution to take such action to preserve the property and to pay the assessments when the property has been abandoned.

HB 65 (Rep. Soto) and SB 496 (Sen. Braynon) relating to foreclosure debt relief. These bills would create a “deficiency judgment reimbursement program” administered by the Florida Housing Finance Corporation. It would be contingent upon the United States Department of the Treasury authorizing and directing the Florida Housing Finance Corporation to create and administer the deficiency judgment reimbursement program and upon receiving a minimum of \$100 million from the Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets.

HB 145 (Rep. Soto) and SB 628 (Sen. Sobel) relating to residential foreclosure proceedings. These bills provide that certain acts by mortgage collection firms constitute deceptive and unfair trade practices and can be prosecuted under Florida's Deceptive and Unfair Trade Practices Act. The actions that can be prosecuted include: offering evidence in a residential mortgage foreclosure proceeding that the firm knows to be false; knowingly breaching a bona fide mortgage modification agreement; and retaking possession, without judicial process, of residential property, unless such property is abandoned for more than 30 days.

HB 505 (Rep. Bernard) and SB 1050 (Sen. Bogdanoff) relating to mortgages. These bills require a mortgage holder to provide certain information within a specified time relating to the unpaid loan balance due under a mortgage if an owner of an interest in the property makes a written request.

The 2012 Legislative session begins on January 10, 2012. We will continue to keep you updated through the process.

Very truly yours,

Yeline Goin, Executive Director for CALL
Community Association Leadership Lobby (CALL)

Please visit our "CALL" Website at www.callbp.com to view the full text of the bills "CALL" is tracking.