



CALL ALERT for February 16, 2012—HB 319 Seeks to Curb Predatory Collection Agency Practices and Mounting Lawsuits against Associations

Becker & Poliakoff today made public an Open Letter Regarding HB 319 issued to Florida's legislators by Joseph Adams, managing shareholder in charge of the firm's Southwest Florida practice. The letter addresses legal and other issues that have been largely ignored in the deluge of public information about this proposed condominium legislation. An abridged text of Mr. Adams' letter follows:

Open Letter to Florida Legislators Regarding HB 319

"I am the Managing Shareholder of the Naples and Ft. Myers Offices of Becker & Poliakoff. I have been practicing community association law in Collier County since 1985 and in Lee County since 1987. In the early 1990's I was among a group of attorneys (and others) advocating for the interests of associations.

" We were able to change the law in 1992 with a major concession from the banking industry, during a time when properties being foreclosed had little to no equity. Specifically, first mortgagees agreed to pay the lesser of 1% of the original mortgage debt or six months worth of regular assessments to the association if they acquired title via foreclosure. Before that - mortgagees paid nothing to the association for past-due debts when they foreclosed.

"The term used in the original Safe Harbor statute 20 years ago, and the term still used today, is "assessments." If attorney's fees or other costs and charges incurred prior to the bank taking title were the legal responsibility of a foreclosing lender, the statute would say so. By using the term "assessments," the Legislature, for better or worse, limited the bank's liability to assessments. This is clear.

"Over the past few years, we have routinely seen demands for attorney's fees exceeding ten thousand dollars made by association collection lawyers in routine mortgage foreclosure cases. These advocates seek legislative reform to benefit their bottom line, not the bottom line of the community associations. Were their intent otherwise, they would be advocating for an increased Safe Harbor. Legislation they support would create an unlimited liability for legal fees, but not one additional cent for past due assessments.

“As an attorney who has spent most of my legal career representing associations, I am most concerned that these claims will result in more litigation brought against associations for claiming amounts to which they are not entitled. We have already seen these lawsuits around the state. Eventually, these lawsuits will target directors individually. Clarification of the Safe Harbor will prevent additional costly and acrimonious litigation that associations simply cannot afford.

“CALL strongly believes that banks should pay more. We support increasing the Safe Harbor Amount. We support any measure that will put more money in associations’ pockets. Florida should follow Massachusetts and confer complete (not just limited) “super lien” status on the association’s right of lien, even superior to the first mortgage. This would put the association’s assessment lien in the same preferred position as property taxes, since the association provides equally important services as taxing entities.

“Alternatively, we also support increasing the Safe Harbor amount to the lesser of 24 months of unpaid assessments or 2% of the original mortgage debt. If banks are obligated to pay sums above the 12 months or 1%, it should be paid to the associations, not collection lawyers.

“We do not support legislation that provides financial opportunity to collection lawyers and collection agencies, with no financial relief to associations by increasing the Safe Harbor and we cannot support efforts that are likely to lead to increased litigation as well as the possibility of individual director liability.”

Full Text of the Open Letter

If you would like to read the full text of the Open Letter, please read Mr. Adams’ blog post:

http://www.floridacondohoalawblog.com/2012/02/articles/legislation-1/hb-319-an-analysis-of-the-legal-issues-and-history/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+FloridaCondoHoaLegalBlog+%28Florida+Condo+%26+HOA+Legal+Blog%2

Very truly yours,

Yeline Goin, Executive Director

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.