



CALL Alert for October 21, 2011—Community Association Bill filed by Representative Moraitis

Dear Clay Witt:

Representative George Moraitis, the sponsor of HB 1195, which became law on July 1, 2011, has filed a new community association bill, HB 319. HB 319 will be considered during the 2012 Legislative Session. HB 319 impacts condominium, cooperative, and homeowners' associations.

As you will note, HB 319 covers a wide variety of subjects. And as you all have learned from previous sessions, the original version of a bill is never the same as the final approved bill and in some cases, the final version of a bill is vastly different from the original filed bill. CALL has been providing comment and input to Rep. Moraitis throughout the bill drafting process and we look forward to continuing to work with Rep. Moraitis and other members of the Legislature during the upcoming session.

The following is a brief overview of the bill. For a full summary of the impacts of HB 319, please go to www.callbp.com under "Latest Updates."

Elevator Upgrades

- The current law requires that upgrades to the Safety Code for Existing Elevators and Escalators, ASME A17.1 and A17.3, which require Phase II Firefighters' Service on elevators, be completed by no later than July 1, 2015. HB 319 will delete the requirement for compliance by July 1, 2015, and will allow the owner of the elevator to delay making upgrades until the elevator is replaced or requires major modification.

Director Certification and Educational Certificates (Condominiums, Cooperatives, and Homeowners' Associations)

- The current law regarding director certification and education applies only to directors serving on the board of condominium associations. HB 319 will incorporate these provisions into the Cooperative Act and Homeowners' Association Act. HB 319 will require cooperative and homeowners' association directors to certify that they have the governing documents and current written policies; that they will work to uphold such documents and policies to the best of

their ability; and that they will faithfully discharge their fiduciary responsibility to the association's members. In lieu of the written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by an education provider approved by the division within 1 year before or 90 days after the date of election or appointment.

Elections (Condominiums, Cooperatives, and Homeowners' Associations)

- HB 319 provides that any challenge to the election process must be commenced within sixty days after the election results are announced.

Recalls (Condominiums, Cooperatives and Homeowners' Associations)

- HB 319 will allow the unit owner representative to file a petition for arbitration if the board fails to duly notice and hold the required meeting after being served with a recall petition, or fails to file a petition for arbitration challenging the recall. HB 319 will also permit a board member who has been recalled to file a petition for arbitration pursuant to Section 718.1255 challenging the validity of the recall.
- HB 319 also provides that the Division may not accept a petition for recall arbitration when there are 60 or fewer days until the scheduled reelection of the board members sought to be recalled or when 60 or fewer days have not elapsed since the election of the board members sought to be recalled.

Hurricane Protection (Condominiums)

- The current statute permits the board to install hurricane shutters, impact glass, or code-compliant windows, in certain cases. One of the changes proposed by HB 319 is to also allow the board to install code-compliant doors, in the same manner as is currently allowed with respect to hurricane shutters, impact glass, and code-compliant windows. HB 319 also clarifies the procedures for installing the permitted types of hurricane protection and clarifies when owners with existing hurricane protection are entitled to a credit.

Liability for Assessments (Condominiums and Homeowners' Associations)

- The current law provides that a unit owner is jointly and severally liable with the previous owner for all unpaid assessments. HB 319 amends this to provide that the owner is also liable for late fees, interest, costs, and reasonable attorney fees incurred by the association in its attempt to collect such amounts that came due up to the time of transfer of title.
- HB 319 also deletes the word "superior" from the current version of the statute that says that an association that acquires title to a unit through foreclosure of its lien for assessments is not liable for assessments, etc. that came due before the association's acquisition of title in favor of any other association which holds a lien interest on the unit or parcel.

Suspension of Use Rights (Condominiums, Cooperatives and Homeowners' Associations)

- The current law permits suspension of use rights for violations of the governing documents. HB 319 clarifies that certain use rights cannot be suspended for violations of the governing documents, including limited common elements, common elements or common areas needed to access the unit or parcel, utility services provided to the unit or parcel, parking spaces, or elevators.

Suspension of Voting Rights (Condominiums, Cooperatives and Homeowners' Associations)

- The current law provides if the voting rights of a unit or parcel has been suspended by the association, it may not be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action. HB 319 changes the wording of the current law to provide that notwithstanding an association's declaration, articles of incorporation, or bylaws, the requirements to establish a quorum, conduct an election, or obtain membership approval, shall be reduced by the number of suspended voting interests or consent rights.

Phase Condominiums

- The current law allows phases to be added to a phase condominium within 7 years after the date of recording the original declaration of condominium submitting the initial phase to condominium ownership. HB 319 will allow the 7-year deadline to be extended if an amendment to the declaration is approved by the unit owners.

Creating a Condominium within a Condominium

- HB 319 creates Section 718.406, Florida Statutes, which will allow the creation of a condominium within an already existing condominium.

Condominium Ombudsman

- The current law provides that an officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession. HB 319 amends this section of the law to clarify that an officer or full-time employee of the ombudsman's office may not engage in any other business or profession if it directly or indirectly relates to or conflicts with his or her work in the ombudsman's office.

Condominium Bulk Buyers

- The current bulk buyer provisions are set to expire on July 1, 2012. HB 319 proposes to extend the bulk buyer law to July 1, 2015.

Official Records (Cooperative and Homeowners' Associations)

Cooperative Impacts

- HB 319 amends the Cooperative Act to make more consistent with the Condominium Act and Homeowners' Association Act with respect to records that are not accessible to unit owners. These include: any record protected by the lawyer-client privilege as provided in Section 90.502; personnel records; personal identifying information; electronic security measures; and software and operating system used by the association.

Homeowners' Association Impacts

- The current Homeowners' Association Act provides that personnel records of association employees are not accessible for inspection by parcel owners. The current statute does not mention management company employees, and HB 319 proposes to add that personnel records of management company employees also are not accessible.

Mortgagee Consent for Amendments (Cooperatives and Homeowners' Associations)

- HB 319 amends the Cooperative Act and the Homeowners' Association Act to incorporate the mortgagee consent provisions adopted in the Condominium Act in 2007. The intent is to provide for a streamlined method for obtaining mortgagee consent.

Community Association Manager Personal Information

- HB 319 amends Chapter 468, Florida Statutes, to provide that the Department of Business and Professional Regulation may not publish a licensee's personal home address unless it is for the purpose of satisfying a public records request.

Very truly yours,

Yeline Goin, Executive Director for CALL

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