



New HOA Regulation Bills Filed; Committee Week Update -- CALL ALERT for February 8, 2013

There were two Senate Bills filed recently that would significantly change the operation of homeowners' associations governed by Chapter 720. Both of the bills have been filed by Sen. Hays from Umatilla, Florida.

The more significant of the two bills is SB 596, a 124 page bill which would require the Department of Business and Professional Regulation (DBPR) to regulate homeowners' associations in a similar manner to condominium and cooperative associations. Some of the significant changes to the law include:

--Renames the Division of Condominiums, Timeshares, and Mobile Homes as the Division of Condominiums, Homeowners' Associations, Timeshares, and Mobile Homes (the "Division").

--Gives the Division the authority to investigate complaints when the association is still under developer control as well as after the association has been turned over to the owners.

--Gives the Division the ability to levy civil penalties against the developer and/or the association --Requires a \$4.00 per unit fee in order to fund the new regulatory program.

--Prohibits general proxies for most homeowners' association votes and requires a "condo-style" two-notice, two-envelope secret ballot election process.

--Amends the turnover provisions to add some additional turnover triggers to allow the association to be controlled by the owners.

--Requires the approval of two-thirds of the parcel owners for amendments to the governing documents and prohibits the reduction of that threshold.

--Requires that in an action by the association against an owner for unpaid assessments, the owner must pay into the court registry the amount that is alleged to be unpaid.

The second bill, SB 580, also amends the homeowners' association act as follows:

--Allows owners to take photographs of association official records with a camera or other electronic device at no charge.

--Deletes the ability of a homeowners' association to charge reasonable personnel fees related to copying official records.

--Requires that all new board members sign a certification stating that they have read the association's governing documents, or take an education class.

--Requires a certain level of disclosure for contracts entered into with entities in which a board member has a financial interest.

--Prohibits directors from taking "kick-backs."

--Requires that directors who are charged with a felony theft or embezzlement involving the association's funds be removed from office.

--Requires the association to maintain insurance or a fidelity bond for all persons who control or disburse association funds.

Design Professional Bill Approved in Senate Regulated Industries

The Design Professional bill, SB 286, was heard in the Senate Regulated Industries Committee on Wednesday of this week. Prior to the hearing on Wednesday, I met with Senator Negrón, along with a number of other groups who oppose the bill to explain our concerns. At the hearing on Wednesday, attorney Joe Adams, the managing shareholder of the Ft. Myers office of Becker & Poliakoff, spoke against the bill. However, the bill still passed unanimously out of the Regulated Industries Committee hearing. The House companion, HB 575, has been filed by Rep. Passidomo, but it has not yet been heard in any House committees.

Bills Approved in House Civil Justice Subcommittee

Three significant bills that will impact community association were approved in the House Civil Justice Subcommittee on Thursday of this week.

HB 73, relating to residential properties, by Representative Moraitis, passed unanimously. There were a number of changes to the original bill that were approved by the committee. These include:

--Exempting swimming pools operated by homeowners' associations with 32 parcels or less from regulation, except for water quality issues. This exemption currently exists in the law for condominium associations with 32 units or less, and the amendment extends the exemption to small homeowners' associations.

--Clarifying the vote needed for purchase of leases in Section 718.111(8).

--Fixing a glitch in Section 718.111(11)(j) regarding the responsibility of the association for the reconstruction of items that the association insures. The change clarifies that the association is only responsible when the item is damaged by an insurable event.

The above three changes were CALL initiatives and we are appreciative of Rep. Moraitis for working with CALL on these amendments to the bill.

Other changes to the bill include:

--Allowing unit owners to use a smartphone or tablet to scan or take pictures of association records during a records inspection at no charge to the owner.

--Raising the dollar amount thresholds for the financial reporting requirements. For instance, the requirement for an audit is raised from \$400,000 in annual revenues to \$500,000 in annual revenues.

--Clarifying the language in Section 718.111(11) regarding when the unit owner is responsible for the cost of reconstruction.

--Allowing the Division of Condominiums, Timeshares and Mobile Homes to provide educational programs for cooperative associations including web-based or live training.

HB 87, the foreclosure bill, by Representative Passidomo, passed 10-3. The significant part of the committee meeting on Thursday was devoted to the foreclosure bill. The majority of the speakers at Thursday's meeting spoke in opposition to the bill. I had previously been invited to speak at a meeting in January of the House Civil Justice Subcommittee which was held to give the members of the committee a comprehensive overview of the problems with foreclosures in the State of Florida. I spoke to the committee regarding the impacts that the foreclosure crisis has had on community associations. At the hearing on Thursday, attorney Joe Adams,

the managing shareholder of the Ft. Myers office of Becker & Poliakoff, spoke in favor of Rep. Passidomo's bill, which includes an important provision for associations. Specifically, the bill gives associations the right to request that the court enter an "order to show cause" why a final judgment of foreclosure should not be entered. This procedure currently exists in the law, but only the plaintiffs (the banks) can take advantage of it. The bill allows associations to use this procedure as well while adding some additional protections for owners in foreclosure. CALL believes that the provisions balance the rights of the associations and the owners in foreclosure and will go a long way towards moving many stalled cases. CALL appreciates all that Rep. Passidomo has done to keep this language in the bill for associations.

HB 175, relating to condominiums, by Representative Fitzenhagen, also passed unanimously on Thursday. HB 175 is primarily intended to facilitate the sales of units by condominium developers.

Next week is another committee week, although as of today, none of the major bills that CALL is tracking will be heard in committees.

I will update you all again soon.

Very Truly Yours,

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