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## **Legislative Update--Weeks 6 and 7 of Session and Preview of Week 8--CALL Alert for April 17, 2015**

The battle over the State budget has cast a dark cloud over the last few weeks of the 2015 legislative session. Rather than celebrating "sine die" on May 1, it now appears very likely that the session will either be extended, or that lawmakers will have to come back later for a special session on the budget. The uncertainty is based on the federal government's decision to not fund the Low Income Pool, or LIP, a program that pays hospitals and health providers for providing care for large numbers of uninsured and low-income persons. The Senate budget includes funds for a modified LIP program and Medicaid expansion, while the House budget does not. The disagreement on these key issues has resulted in a \$4 billion dollar difference between the House and Senate budgets. However, even if the session is extended or a special session is called, the Legislature will likely not take up anything other than the budget during the extra time or the special session. Also, next Tuesday, April 21, is the last day that regularly scheduled committees may



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meet. Therefore, many bills will be “dead” after Tuesday, but there will be attempts to bring them back to life by removing committee references or by amending them onto existing bills. As a result, we can never predict with certainty what bills will pass or not pass until the end of session. The updated CALL 2015 Bill Tracking Report will give you an idea of what bills are still in play. Click [here](#) to be taken to the report.

**HB 611 (Rep. Woods)/SB 736 (Sen. Stargel), Relating to Residential**

**Properties:** These are the "estoppel certificate" bills that I've been updating you on throughout the session. The bill language has gone through many twists and turns and now appears to be close to passing. The bills have been approved by all committees of reference in the House and Senate.

The current versions, while better than the original versions, still raise a number of concerns. The bills are still troubling because they prohibit the association from asking that the estoppel fee be paid in advance as a condition of delivering the estoppel certificate. Rather, the bill will require that the estoppel fee be paid to the association from the proceeds at closing. If the association has to delay collecting fees until the deals close, it will add cost to the process by having to monitor the deals and chase after the fees. In addition, if the closing does not occur, and the unit ends up in foreclosure and in the hands of the lender, the association will never recover these additional fees because of the "safe harbor" amount that lenders pay to the association. In addition, the bill provides that the association waives any right to collect any amounts in excess of the estoppel certificate against anyone who relies on the certificate. This would include the unit owner. The current law allows the association to collect the delinquent fees

against an owner, even if there is an unintentional error in the estoppel certificate. There is no reason for the waiver language to apply to a unit owner. The following is a summary of the latest version of the bills:

(1) Requires an association to issue an estoppel certificate within 10 business days after receiving a written or electronic request for the certificate. The certificate must be delivered by mail, by hand delivery, or by electronic means on the date of issuance.

(2) Requires the estoppel certificate to contain: (a) the date of issuance; (b) the amount of the assessments and other moneys owed to the association by the unit owner on the date of issuance; (c) the amount of any additional assessments scheduled to become due for each day after the date of issuance for the 30 or 35 day effective period of the estoppel certificate; (d) the amount of any fee charged by the association for preparing and delivering the estoppel certificate. This fee is in addition to any other amounts on the estoppel certificate; (e) the signature of an officer or agent of the association.

(3) Provides that the estoppel certificate that is delivered on the date of issuance has a 30 day effective period, and an estoppel certificate that is mailed to the requester has a 35-day effective period.

(4) Provides that the association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns;

(5) Provides that the association may charge a fee for preparing and delivering an estoppel certificate as follows:

(a) \$250 if no delinquent amounts are owed;

(b) An additional \$100 if an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request;

(c) An additional \$100 if delinquent amounts are owed to the association;

(d) The association may not charge a fee for

an estoppel certificate that is issued more than 10 business days after it receives the request for the certificate;

(e) The maximum fee may be adjusted every 3 years in accordance with the Consumer Price Index (CPI).

(6) Provides that if the estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the fee shall be paid to the association at closing. The association may not require the payment of any other fees as a condition for the preparation of the delivery of an estoppel certificate.

**SB 748 (Sen. Ring)/HB 791 (Rep. Moraitis), Relating to Residential Properties:**

In an unfortunate turn of events, HB 791 went from a bill that CALL supports, to one that includes a provision that CALL does not support. Specifically, the bill was amended in the House Finance & Tax Committee to remove the "compromise" bulk buyer law that was drafted by a committee of the Florida Bar, and the current bulk buyer law was extended until 2018. CALL is opposed to that portion of the bill for the following reasons:

(1) The current bulk-buyer law, known as the "Distressed Condominium Relief Act" was adopted in 2010.

(2) The legislative intent provides that the law could not be open-ended without "potentially prejudicing the rights of unit owners and condominium associations", and therefore, could only be used for a "specific and defined period" of time. As a result, the Legislature set the "sunset date" as July 1, 2012.

(3) In 2012, the sunset date was extended until July 1, 2015, and in 2014, the sunset date was extended to July 1, 2016. CALL supported the extension of the law until 2016 because we knew that a committee of the Florida Bar, including 3 developer attorneys and 3 association attorneys, were working on compromise language regarding bulk buyers that would replace the current bulk buyer law with something that could be permanent and would protect owners and associations.

(4) The bulk buyer law was never intended to be permanent, and we believe that it is no longer necessary because there are very few "distressed condominiums" left. Rather than continuing to extend the sunset date year after year, the Legislature should either allow the law to expire or replace it with the compromise language drafted by the committee of the Florida Bar.

This is unfortunately another example of developer special interests prevailing over the rights of homeowners and consumers.

**HB 1211 (Rep. Fitzenhagen), Relating to Community Associations:** HB 1211 has been approved by all committees of reference. It allows an association to conduct elections through an internet based online election process. The bill removes the requirement that the bylaws must provide for notice by electronic transmission and allows an association to SEND the meeting documents by electronic mail as long as an owner has consented in writing to receiving electronic notice. In order to provide for online voting, the Board must adopt a Board resolution in the same manner as a Board rule requiring unit use (i.e., with 14 days notice to the owners of the board meeting). Owners who consent to online voting will have the opportunity to use the online voting system. SB 748 by Senator Ring was amended to include the online voting provisions in HB 1211. It is also expected that HB 791 by Rep. Moraitis will be amended to include the online voting provisions from HB 1211.

**HB 643 (Rep. Sprowls)/SB 1172 (Sen. Latvala), Relating to Termination of a Condominium Association:** These are the "condominium termination" bills that change the voting requirements and procedures for optional termination of condominiums. The current bills provide that optional termination cannot be used until 5 years after the recording of a declaration of condominium, unless there is no objection to the plan of termination. Also, dissenting owners would be entitled to 100% of the fair market value

of the unit, but original purchasers from the developer are entitled to at least the purchase price of the unit. HB 643 has been approved by all committees of reference, and SB 1172, by Sen. Latvala, will be considered in its last committee of reference on Monday, April 20 at 1:00 p.m.

**HB 4021 (Rep. Steube)/SB 796 (Sen. Evers), Relating to Financial**

**Reporting:** The bill amends the financial reporting requirement for condominiums, cooperatives and homeowners' associations. Currently, the law provides that associations that operate fewer than 50 units are permitted to have prepared a report of cash receipts and expenditures, regardless of the amount of the association's annual revenues. The bill removes this language and would require all associations, regardless of size, to prepare the financial report based on the association's annual revenues. HB 4021 was not heard this week, and is waiting to be considered by its last committee of reference, House Regulatory Affairs. Unfortunately for the proponents of HB 4021 (and fortunately for the opponents), Regulatory Affairs is no longer meeting and therefore, the bill would have to be removed from Regulatory Affairs in order to be considered by the full House. The Senate companion bill, SB 796, will be considered in its last committee of reference on Monday, April 20 at 1:00. It is possible that the bill language could pass by getting added to another related bill.

**HB 71 (Rep. Smith)/SB 414 (Sen.**

**Altman):** HB 71 deals only with "service animals" and not "emotional support animals." The bill, among other things, provides that a person who knowingly and fraudulently represents himself or herself through conduct or verbal or written notice as requiring the need for a service animal or as being the trainer of a service animal is guilty of a misdemeanor in the second degree punishable in the same manner as other second degree misdemeanors, and requiring the performance of 30 hours of community service, to be completed in not

more than 6 months. HB 71 has been approved by the House, and the Senate companion bill, SB 414, has been approved by all committees of reference and waits to be placed on the "special order" calendar so that it can be considered by the full Senate.

**HB 87 (Rep. Passidomo)/SB 418 (Sen. Richter):** HB 87 and SB 418 deal with construction defect claims. SB 418 and HB 87 were amended to address CALL's initial concerns and we are no longer opposed. HB 87 passed the House unanimously and SB 418 is on the Senate's special order calendar for April 22.

Have a wonderful weekend and we will continue to update you throughout the legislative session.

Very truly yours,



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