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Legislative Update--Week 5 of Session and Preview of Week 6--CALL Alert for April 3, 2015

At the start of session, there were about 30 bills directly impacting community associations. However, with only 4 weeks left until the end of the 2015 legislative session, we have a good idea as to which ones are still in play. I have posted on the CALL website the 2015 Bill Tracking Report, which is a spreadsheet of the main bills we are tracking showing where the bills are in the process. It is a good overview of which bills have moved and which ones haven't. [Click here to be taken to the CALL 2015 Bill Tracking Report.](#)

On everyone's radar this year are **HB 611 (Rep. Woods) and SB 736 (Sen. Stargel)**. These are the "estoppel certificate" bills. The bills significantly change the procedures for requesting and delivering estoppel certificates whenever property is sold in a community. CALL (Community Association Leadership Lobby) is opposed to the bills. The Senate bill, SB 736, was approved this week by its first committee of reference, Regulated Industries, after being temporarily postponed the previous week. The bill was amended to remove the estoppel certificate fee "caps". Although there were 2 "no" votes, many of the Senators raised concerns about the bill and it is expected that the bill will be amended next week when it is heard in Judiciary to change some of the more problematic areas. However, because we do not know



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yet how the bill will be amended, it is important that you contact the members of the Senate Judiciary Committee before it meets on Tuesday, April 7 at 4:00 p.m. You may cut and paste the following into your email:

Please vote "NO" on SB 736 for the following reasons:

(1) The bill will 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. The current procedure, which works very well, is that the fee is paid at the time the work is done.

(2) The bill states that the estoppel certificate must be valid for 30 days. This prevents the association from adding special assessments that will be due in the 30 day window but are not levied. There should be a way for the association to update the estoppel certificate to reflect these additional amounts.

(3) 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.

(4) The bill provides that if the association fails to deliver an estoppel certificate as required, the association waives, as to any person who would have in good faith relied on the estoppel certificate, any amounts that would have been due. This waiver language is too harsh. If there is an unintentional error, or if the association is not able to provide the estoppel certificate on time, it waives the right to collect any amounts owed to the association. This could be a windfall to a delinquent owner if the association

unintentionally makes a mistake or unintentionally sends the estoppel certificate a day late.

(5) The bill reduces the time that the association must comply with a request for an estoppel certificate from 15 days to 10 days. This is problematic for a number of reasons, including that the association does not always have the necessary information to process an estoppel certificate, yet the clock starts to run and the waiver will apply if the association is even a day late.

The easiest way to contact the members of the committee is through Legislator Connect on the CALL website: www.callbp.com. You will need your password to log into the website, and the password is the same as your association's matter number. If you do not know your matter number, please contact CALL Administrator Diana Zayas-Bazan at call@bplegal.com or 1-844-435-2255. Or, here are two other options for emailing the members of the Senate Judiciary Committee:

(1) Copy and paste the following emails into the "TO" section of your email:

portilla.miguel@flsenate.gov;
ring.jeremy@flsenate.gov;
bean.aaron@flsenate.gov;
benacquisto.lizbeth@flsenate.gov;
brandes.jeff@flsenate.gov;
joyner.arthenia@flsenate.gov;
simmons.david@flsenate.gov;
simpson.wilton@flsenate.gov;
soto.darren@flsenate.gov;
stargel.kelli@flsenate.gov

(2) Email the members individually as follows:

Chair: Senator Miguel Diaz de la Portilla:

portilla.miguel@flsenate.gov

Vice Chair: Senator Jeremy Ring:

ring.jeremy@flsenate.gov

Members:

Senator Aaron Bean:

bean.aaron@flsenate.gov

Senator Lizbeth Benacquisto:
benacquisto.lizbeth@flsenate.gov

Senator Jeff Brandes:
brandes.jeff@flsenate.gov

Senator Arthenia L.
Joyner: joyner.arthenia@flsenate.gov

Senator David Simmons:
simmons.david@flsenate.gov

Senator Wilton Simpson:
simpson.wilton@flsenate.gov

Senator Darren
Soto: soto.darren@flsenate.gov

Senator Kelli Stargel:
stargel.kelli@flsenate.gov

SB 748 (Sen. Ring)/HB 791 (Rep. Moraitis): HB 791 was scheduled to be heard in Finance & Tax this week, however, the meeting ran long and the committee did not get to the bill. HB 791 is the main community association bill this year and includes initiatives from CALL, CAI-FLA, and the Florida Bar. An amendment has been filed to remove the provision that if an association takes a deed in lieu of foreclosure, it is responsible for documentary stamps on the unpaid assessment. The current law requires the association to pay documentary stamps on the unpaid mortgage. The change in the law would be a savings to associations, but because it would reduce documentary stamp revenue to the State, the language will be removed. HB 791 will need to be on the agenda for Finance & Tax next week or else we may run out of time to pass it. SB 748 by Sen. Ring will be heard in Judiciary next Tuesday, April 7, at 4:00 p.m.

HB 1211 (Rep. Fitzenhagen): HB 1211 was approved in its last committee of reference, Judiciary. It allows an association to conduct elections through an internet based on-line election process. The bill was amended in Judiciary to make it more likely that associations will take advantage of online voting by making the following changes: (1) Removes the requirement that the bylaws must provide for electronic notice to the owners. This will allow an association to SEND the meeting documents by

electronic mail as long as an owner has consented in writing to receiving electronic notice. The purpose of the change is to make it easier for associations to provide electronic notice. There is no reason to require it in the bylaws as long as the owners are given the opportunity to consent in writing; (2) Changes the term "electronic voting" to "internet based online voting system" and changes the term "member's electronic voting platform" to "electronic device" to clarify what type of electronic voting system is being contemplated; (3) Removes the requirement that internet voting must be authorized by the association's bylaws. Instead, 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.

It is expected that SB 748, by Senator Ring, will be amended to match the online voting provisions in HB 1211.

HB 643 (Rep. Sprowls)/SB 1172 (Sen. Latvala): These are the "condominium termination" bills that change the voting requirements and procedures for optional termination of condominiums. One of the changes proposed is that optional termination cannot be used until 7 years after the recording of a declaration of condominium. Also, dissenting owners would be entitled to 110% of the purchase price, or 110% of the fair market value, whichever is greater. The bills were not considered this week, but SB 1172, by Sen. Latvala, will be considered in Judiciary on Tuesday, April 7 at 4:00 p.m.

HB 4021 (Rep. Steube)/SB 796 (Sen. Evers): HB 4021 was not heard this week, and is waiting to be considered by its last committee of reference, House Judiciary. The Senate companion bill, SB 796, was approved unanimously this week by Regulated Industries and will be considered in its second committee of

reference, Senate Judiciary, on Tuesday, April 7 at 4:00 p.m. 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 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, was approved by Senate Commerce and Tourism, and will be considered by Senate Community Affairs on Tuesday, April 7.

HB 87 (Rep. Passidomo)/SB 418 (Sen. Richter): HB 87 and SB 418 deal with construction defect claims. SB 418 by Senator Richter was amended in Regulated Industries this week to address our concerns, and CALL is no longer opposed. SB 418 will be considered in Banking and Insurance on Tuesday, April 7.

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

Very truly yours,



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