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## **Countdown to 2015 Legislative Session-- CALL Alert for February 23, 2015**

We are now done with the Legislative Committee Weeks and counting down to the start of the 2015 Legislative Session on March 3, 2015.

First, we are excited to let you know that CALL's legislative initiatives have been filed in SB 748 by Sen. Ring. CALL's legislative initiatives include:

1. **Collection Costs:** SB 748 includes a provision that will allow associations to recover from delinquent owners a reasonable charge imposed by a management company, bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment. The current law only allows the recovery of "costs." There is a difference of opinion among practitioners as to whether "costs" includes collection costs such as those imposed by management companies. The proposed language clarifies this issue and ensures that the fees that are currently being charged by management companies are collected from the delinquent owners, and not passed on to the paying members of the association.
2. **Posting Recordings of Meetings:** The current law permits owners to tape record or videotape meetings of the board and the members. However, the statutes do



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not currently limit the use or distribution of videotapes by owners. There are legitimate privacy and security concerns when these types of video tapes are posted on a public forum (for example, YouTube). SB 748 close this loophole statutorily by clarifying that videotapes made of association meetings cannot be posted by unit owners in public forums.

3. Digital or electronic transmission of proxies: The current law does not allow owners to transmit a copy of their proxy to the association (for example, by fax or a scan of the proxy sent via email). The intent of this language is to facilitate voting. Many owners are not available to be at meetings in person and may wish to bypass U.S. mail and send their proxy to the association in some other fashion. The proposed language is similar to language currently found in Section 607.0722(10), Florida Statutes, which governs corporations for-profit. The proposed language is being added to Section 617.0721, Florida Statutes, which governs corporations not-for-profit, and therefore, will also apply to condominium, cooperative, and homeowners' associations.
4. Official Records "Catch-all" Provision: The proposed change amends the official records "catch-all" provision in Chapters 718 and 719, so that it is consistent with Chapter 720, Florida Statutes. It provides that other "written" records of the association related to the operation of the association are considered official records.
5. Name Chapter 720 the "Homeowners' Association Act": Both Chapters 718 and 719 have a "short title" but Chapter 720 does not. The proposed amendment gives Chapter 720 a short title (similar to Chapters 718 and 719).

6. Use of the Common Elements: The bill provides that the vote needed to charge use fees for the use of the common elements is a majority of the voting interests present, in person or by proxy, and voting. Currently, the statute simply states by "majority vote."
7. Posting notices: The bill clarifies that "association property" can be used to post notices. This is a "clean-up" amendment. The statute already contemplates, in certain sections, that notice can be posted on association property, but it is inconsistent. This cleans-up the inconsistency.

HB 791 by Rep. Moraitis is the companion bill to SB 748 and also includes many of CALL's legislative initiatives (but it does not include the collection costs provisions.) In addition, HB 791 includes a number of other good changes suggested by CAI-FLA (Community Associations Institute) and The Florida Bar.

**HB 501, Relating to Limitations of Actions** was approved in Civil Justice Subcommittee, but only by 1 vote (7-6). The bill reduces the statute of repose from 10 to 7 years. (Until fairly recently, the statute of repose in Florida was 15 years). The statute of repose operates as an absolute bar to an association's right to have faulty construction, both new construction and renovation work, resolved in the manner provided by law. Thanks to all of our CALL members who contacted the members of the Subcommittee in opposition to the bill. There was significant amount of testimony in opposition to the bill, including two engineers who testified that many construction defects do not appear until after 7 years. By changing the statute of repose from 10 to 7 years, some consumers could be left with no rights as to their most significant financial and life investment, no matter how egregious the wrong. The Representatives voting against HB 501 were: Rep. Moraitis, Rep. Sullivan, Rep.

McGhee, Rep. Dudley, Rep. Berman, and Rep. Stafford. If you have an opportunity, please thank these representatives for their vote.

Other bills of interest to community associations that were recently filed include:

**HB 870, Relating to Community Associations, by Sen. Ring:** This bill authorizes a condominium, cooperative, and homeowners' association to conduct elections by electronic voting under certain conditions and requires an association to select an independent third party as an inspector of elections. It is expected that Rep. Fitzenhagen will file the companion bill in the House.

**HB 1018, Relating to Condominiums, by Sen. Sachs:** This bill changes condominium association reserves requirements. The current law provides that an association is required to maintain reserves for any item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 (in addition to required reserves for roof, painting and paving). The bill changes this to provide that reserves shall be maintained on these other items only if approved by the Board and only if the amount of deferred maintenance or replacement cost exceeds \$100,000. In other words, if this bill is approved, associations will be required to maintain reserves only for roof replacement, building pavement, and pavement resurfacing. In addition, the Board **may, but will not be required to**, maintain reserves on other items if the cost of deferred maintenance or replacement exceeds \$100,000.

**HB 1066, Relating to Residential Properties, by Sen. Bean:** SB 1066 amends Sections 718.116 and 720.3085 to provide that the "safe harbor" amount that first mortgagees pay to the association is the "**greater**" of (1) 12 months past due assessments or (2) 1% of the original mortgage debt. The current law provides that the safe harbor is the "**lesser**" of these

two amounts. The bill also provides that a first mortgagee or its successor or assignee shall be liable for all assessments and related costs and fees which accrue from the date of the judgment of foreclosure or deed in lieu of foreclosure until title is transferred to a third-party purchaser.

Have a great week and we will continue to update you throughout the legislative session.

Very truly yours,



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