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**Reply To:
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VIA E-MAIL AND REGULAR MAIL

The Honorable Charlie Crist
Governor
State of Florida
400 S. Monroe St.
Tallahassee, FL 32399-0001

Re: Negative Impact of Veto of Senate Bill 714

Dear Governor Crist:

No doubt you felt that the advice given by your advisors, that SB 714 should be vetoed, was persuasive. Otherwise you would not have vetoed the bill. The expressed reason for doing so, that delaying the implementation of retrofitting the common areas of some residential condominiums with fire sprinklers presented an "unacceptable safety risk," fails to recognize the other critical and necessary provisions of the Bill.

In 2008 the Florida Legislature passed, and you signed into law, HB 601. While there were some excellent provisions within the Bill, some inartfully written language caused considerable concern as to its potential financial impact upon the State's 4-5 million condominium unit owners.

In particular, amendments added to F.S. 718.111(11) (Insurance) provided:

(g) Every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. **Such policies must include special assessment coverage of no less than \$2,000 per occurrence....** (emphasis added).

The drafting intent was to insure "loss assessment coverage" not "special assessment coverage."

(g)(2) The association shall require each unit owner to provide evidence of currently effective policy of hazard and liability insurance upon

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request, but not more than once per year. Upon failure of an owner to provide a certificate of insurance issued by an insurer approved to write such insurance in this state within 30 days after the date on which a written request is delivered, **the association may purchase a policy of insurance on behalf of an owner.** The cost of such a policy, together with reconstruction costs undertaken by the association but which are the responsibilities of the unit owner, may be collected in the manner provided for the collection of assessments in S. 718.116. (emphasis added).

This amendment gave condominium associations the authority to “force place insurance” on individual unit owners. Not a good idea in these economically difficult times and not a good idea for condominium associations to be in the business of force placing insurance on unit owners.

But, the amendment which gives unit owners the greatest exposure to economic liability was that added to S. 718.111(11)(g)(1):

1. All improvements or additions to the condominium property that benefit fewer than all unit owners shall be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having the use thereof.

And, s. 718.111(11)(g)(4):

4. Unit owners are responsible for the cost of reconstruction of any portion of the condominium property for which the unit owner is required to carry casualty insurance, and any such reconstruction work undertaken by the association shall be chargeable to the unit owner and enforceable as an assessment pursuant to S. 718.116. ...

No doubt the drafter’s intent was to make it a unit owner obligation to carry insurance and be responsible for repairs for up-grades or “betterments” made to the improvements. But that is not what the law says. It imposes upon the unit owner(s) the obligation for carrying insurance on, and repairing if damaged by casualty, all improvements that “benefit fewer than all unit owners.” Examples would be unit balconies, parking spaces or garages, storage bins, or other improvements generally designated as “limited common elements.”

S.B. 714 would have cured all of the aforesaid drafting errors. In addition, last year’s amendments imposed upon every layman who wished to run for the board the burden to not only read the entire Condominium Act, the Administrative Rules and their condominium documents, but also to certify “that they understood to the best of their ability” the condominium documents, statutes, and applicable rules. The best analogy I can think of to illustrate the absurdity of this regulation would be to require every candidate for the Florida Cabinet or Legislature to certify that they have read all of the Florida Statutes and Administrative Rules, and understand them.

Turning to the expressed reason for vetoing the Bill, concern with the “safety risk” of delaying retrofitting of common areas of condominiums 75 feet in height or higher with fire sprinklers: To the best of my knowledge there has not been a single reported incident where failure to retrofit has caused any loss of life or injury since the law was implemented and enforcement began in 2000-

2001. On the other hand, imposing a cost which has been estimated to be hundreds of thousands of dollars per high rise building on condominium unit owners living through the worst financial crisis in history adds insult to injury. Every day the press reports on the financial crisis impacting our State's condominium owners, as a direct result of mortgage foreclosures, and the fact that banks and unit owners not paying their share of the common expenses. The following are but a few of the headlines:

- i. "Banks stick unpaid fees to condo." Florida Today, October 26, 2008.
- ii. "Deerfield Beach may shut off water at condo that owes \$90,000." South Florida Sun-Sentinel, February 3, 2009.
- iii. "Florida's delinquent condo owners force neighbors to pay more." The Sun Sentinel, March 5, 2009.
- iv. "U.S. property bust threatens condo 'death spiral'." Reuters, April 3, 2009.

With all due respect, exactly who did your advisors assume will be forced to pay the special assessments to retrofit a condominium where 40% - 50% of the units are in default in payment of their assessments, or in mortgage foreclosure?

Governor, while I don't question the motives, with all due respect, your advisors didn't give you good advice in recommending a veto of SB 714.

Very truly yours,



Gary A. Poliakoff, J.D.

GAP/trs

cc: Sen. Ted Deutch
Sen. Eleanor Sobel
Rep. Ellyn Bogdanoff
Rep. Joseph Gibbons
Rep. Matt Hudson
Rep. Maria Sachs
Rep. Kelly Skidmore