

2014 LEGISLATIVE SESSION AND COMMUNITY ASSOCIATION BILLS

Over the past ten years the Community Association Leadership Lobby (CALL) has provided education, outreach and advocacy on issues impacting all types of community associations. As the Tallahassee based Executive Director, and lawyer/lobbyist for CALL, I am able to create an ongoing presence for CALL and keep the important needs of community associations in legislators' minds.

I am proud to serve in this role on behalf of the thousands of communities Becker & Poliakoff represents and am re-energized every time I meet another dedicated community leader in my travels throughout the state.

In any given legislative session, there are a number of bills which, if passed, could significantly impact the manner in which associations operate and administer their associations. During the 2014 legislative session, and the months leading up to it, CALL tracked hundreds of bills of interest to community associations.

Of the hundreds of bills that CALL tracked during the



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legislative session, only a few actually passed that directly impact community associations. The following is a summary of such bills that passed. There is also a brief summary of some of the significant bills that did not pass. In this edition is also a list of "Action Items" for your association to implement as a result of the new legislation.

CALL has also published three separate Legislative Guides for Condominiums, Cooperatives and Homeowners' Associations, as well as a comprehensive Legislative Guide that addresses all three types of shared-ownership communities. If you would like to receive a Legislative Guide, please contact call@bplegal.com and let us know which version you would like to receive. The CALL website, www.callbp.com, also contains information on all of the bills as well as pertinent media coverage, important links, lobbyist updates, and information on how to contact members of the legislature. If you do not know your community's individual password for the CALL website, please contact call@bplegal.com.



Bills that PASSED

SB 440 (SEN. ALTMAN), RELATING TO CONDOMINIUMS

Effective Date: July 1, 2014

Summary: Amends Chapter 718 to clarify that the following provisions apply only to residential condominiums: (1) the requirement to respond to certified written inquiries; (2) the prohibition against voting by general proxy; (3) board member terms; (4) the prohibition of co-owners of a unit serving on the board; (5) legal and financial eligibility requirements for board members; (6) the requirement that the board elections take place via written ballot or voting machine; (7) the requirement that new board directors certify within 90 days that they have read the governing documents and bylaws, swear to uphold their responsibilities, etc.; (8) mandatory nonbinding arbitration; (9) fire sprinkler opt-out provisions (10) opting out of the requirements of Section 553.509(2), Florida Statutes, dealing with the Americans with Disabilities Act Standards for Accessible Design; and (11) hurricane shutter specifications and hurricane protection provisions. These requirements would no longer apply to vacation, timeshare, or commercial condominium associations.

The bill also extends the date of the “bulk buyer” law from July 1, 2015 to July 1, 2016.



HB 807 (REP. MORAITIS), RELATING TO RESIDENTIAL PROPERTY

Effective Date: July 1, 2014

Summary: The bill includes a number of impacts on condominiums, cooperatives, and homeowners’ associations, including:

- (1) **Timeshares:** The amendment distinguishes timeshares from the broader category of “vacation rentals.”
- (2) **Marketable Record Title Act (Homeowners’ Associations):** This is an initiative of the Florida Bar which clarifies the notice requirements when a homeowners’ association is preserving covenants and restrictions. Specifically, it provides that the HOA or clerk is not required to provide additional notice pursuant to Section 712.06(3) and it is intended to clarify existing law. Therefore, this would clarify that the HOA is not required to publish notice in a newspaper regarding the MRTA preservation.
- (3) **Abandoned Units (Condominiums):** Creates a new provision (Section 718.111(5)(b)1.), to provide that in addition to Section 718.111(5)(a), which gives the association the irrevocable right of access to each unit during reasonable hours, etc., and regardless of whether authority is provided in the declaration or other recorded

condominium documents, an association, at the sole discretion of the board, may enter an abandoned unit to: inspect the unit and adjoining common elements; make repairs to the unit or to the common elements serving the unit, as needed; repair the unit as mold or deterioration is present; turn on the power for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. It also provides criteria for

determining whether a unit is presumed to be abandoned (depending on whether the unit is the subject of a foreclosure or not) and for certain notice requirements. It also permits the association to request that a court appoint a receiver in order to lease an abandoned unit.

- (4) **Insurance (Condominiums):** Amends Section 718.111(11)(j) to clarify that if an item is damaged by something other than an insurable event, the repair or replacement of the item is as provided in the declaration or bylaws.
- (5) **Turnover of Official Records (Condominiums and Cooperatives):** Amends Section 718.111(12) to require an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. It authorizes the Division to impose a civil penalty against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property. The bill makes similar changes to the Cooperative Act.
- (6) **Owner Directories (Condominiums, Cooperatives and Homeowners' Associations):** The bill clarifies that owners in a condominium, cooperative and homeowners' association can consent to the publication of other contact information in an owner directory, such as e-mails. It also clarifies that the association may publish all owner telephone numbers in an owner directory (currently the statute only refers to the publishing of the telephone "number".)
- (7) **Board Meetings (Condominiums):** The bill provides that a condominium board or committee members' participation in a meeting by a telephone, real time video conferencing, or similar real time electronic or video communication counts toward a quorum, and such member may vote as if physically present.
- (8) **Communicating by E-mail (Condominiums):** The bill includes a provision stating that a condominium board or committee member may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.
- (9) **Assessments (Condominiums):** The bill provides that a condominium association that acquires title through foreclosure or by deed in lieu of foreclosure is not considered a previous owner. This allows an association that takes title to a unit to demand unpaid assessments from the next owner. First mortgagees would still be entitled to the "safe harbor" amount (i.e., 12 months past due assessments or 1% of the original mortgage debt, whichever is less).
- (10) **Bulk Buyers (Condominiums):** The bill extends the "bulk buyer" law from July 1, 2015 to July 1, 2016.
- (11) **Financial Reporting (Cooperatives):** The bill amends the Cooperative Act to incorporate provisions currently in the Condominium and Homeowners' Association Acts regarding financial reporting.
- (12) **Board Member Eligibility (Cooperatives):** The bill states that a person who has been suspended or removed by the Division or who is delinquent in the payment of any monetary obligation to the association is not eligible to be a candidate. It also disqualifies a director or officer who has been indicted with felony theft or embezzlement offense involving the association's property.
- (13) **Emergency Powers (Cooperatives and Homeowners' Associations):** The bill incorporates many of the current emergency powers provisions in the Condominium Act into the Cooperative Act and Homeowners' Association Act.
- (14) **Amendments (Homeowners' Associations):** Amends Section 720.306(1)(b) to allow the association to provide notice of adopted amendments by email, if the owner has given permission for electronic notice. Also, if the association had previously provided a copy of the amendment prior to an owner vote on the amendment, the association can notify the owners that the amendment passed and the OR book and page number or instrument number of the amendment and notice that a copy of the amendment is available at no charge to the owners, in lieu of providing an actual copy.
- (15) **Community Association Living Study Council:** Repeals Section 718.50151, Florida Statutes, which created the Community Association Living Study Council.



- (16) **Accessible Meetings (Homeowners' Associations):** Amends Sections 720.303(2)(a) and 720.306(1)(a) to require that HOA board meetings and owner meetings be held at locations which are accessible to physically handicapped persons, but only if a request is made by a physically handicapped person who is entitled to attend the meeting.
- (17) **Optional Termination (Condominiums):** Amends Section 718.117(9) to provide that if a plan of optional termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection

HB 7037 (CIVIL JUSTICE SUBCOMMITTEE AND REP. SPANO), RELATING TO RESIDENTIAL COMMUNITIES.

Effective Date: July 1, 2014

Summary: This bill adds the following activities to the definition of "community association management": determining the number of days required for statutory notices, determining amounts due the association, collecting amounts due the association prior to the filing of a civil action, calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of a community association that have been created by statute or by a state agency, drafting meeting notices and agendas, calculating and preparing certificates of assessments and estoppel certificates, responding to requests for certificates of assessment and estoppel certificates, negotiating monetary or performance terms of a contract subject to approval by an association, drafting pre-arbitration demands, coordinating or performing maintenance for real or personal property and other routine services involved in the operation of a community association, and complying with the association's governing documents and the requirements of law as necessary to perform any of the foregoing.

The bill also amends Chapters 718, 719 and 720 to provide a statutory form for a release of lien, a 30-day pre-lien letter, and a 30-day notice of intent to foreclose letter, which will allow managers to prepare and file those documents. (Note: The original bill also included a form for a claim of lien, but that was removed from the bill).

The bill creates Section 468.4334 to provide that:

- A CAM or a community association management firm are deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under Chapter 468.
- A CAM or a community association management firm shall discharge duties performed on behalf of the association as authorized by Chapter 468 loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.
- A contract between a CAM (or a community association management firm) and a community association may provide that the community association indemnifies and holds harmless the CAM (or the community association management firm) for ordinary negligence resulting from the manager or management firm's act or omission that is the result of an instruction or direction of the community association. However, such does not preclude any other negotiated indemnity or hold harmless provision.
- The indemnification may not cover any act or omission that violates a criminal law; derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.





Bills that DID NOT PASS

The vast majority of the bills that are filed each year do not end up passing and either “die in committee” or because the bill is not passed by either the House or Senate and “die in messages.” There were a number of bills impacting community associations that did not pass including:

- **HB 871** by Rep. Trujillo and SB 1462 by Sen. Stargel, Relating to Residential Properties, which would have increased the “safe harbor” amount that a first mortgagee pays to the association when taking title to a unit upon foreclosure of the mortgage to 24 months of assessments and other costs that accrued or came due pursuant to the association’s governing documents, or 2% of the original mortgage debt, whichever is less. (The current “safe harbor” amount is 12 months past due common expenses and regular periodic assessments, or 1% of the original mortgage debt, whichever is less.)
- **SB 1458** by Sen. Abruzzo and HB 1405 by Rep. Rader, Relating to Condominiums, which would have increased the “safe harbor” amount to 24 months past due assessments, or 3% of the original mortgage debt, whichever is less.
- **HB 881** by Rep. Pritchett, Relating to Condominiums, which would have allowed condominium associations to use general proxies (instead of limited proxies) on any issue related to the financial matters of the association.
- **SB 1546** by Sen. Latvala and HB 1061 by Rep. Zimmerman, Relating to Condominiums (Optional Termination), which would have required that owners who do not vote in favor of optional termination receive compensation equal to 110 percent of the original purchase price of his or her unit or 110 percent of the fair market value of his or her unit, whichever is greater.
- **SB 1348** by Sen. Hays, Relating to Homeowners’ Associations, which would have, among other things, provided for regulatory oversight of homeowners’ associations by the Department of Business and Professional Regulation (“Department”), similar to the Department’s regulation of condominium and cooperative associations. It would also have required a \$4.00 per unit fee in order to fund the new regulatory program.
- **HB 849** by Rep. Smith and SB 1146 by Sen. Altman, Relating to Service Animals, would have, among other things, provided 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 by statute and requiring the performance of 30 hours of community service, to be completed in not more than 6 months.
- **HB 7039** (Civil Justice Subcommittee and Rep. Hill) and SB 1496 (Sen. Evers), Relating to Unlicensed Practice of Law, would have created exemptions for the unlicensed practice of law and provided that certain activities were not considered to be the unlicensed practice of law including, but not limited to, acting within the lawful scope of practice of a business or profession regulated by the state.
- **HB 617** (Rep. Wood) and SB 974 (Sen. Abruzzo), Relating to Towing of Vehicles and Vessels, would have authorized the owner or lessee of real property to have a vessel or vehicle removed from that property without certain signage if the vessel or vehicle had remained there for 5 days or more. It would have required a sticker be placed on the vehicle or vessel and also that local law enforcement be notified in order to verify and document in a police report that the notice complied with the law.
- Numerous bills dealing with mobile home park lot tenancies were filed, but died in committee.

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COMMUNITY ASSOCIATION
LEADERSHIP LOBBY

RECOMMENDED ACTION STEPS After the 2014 Legislative Session

- Amend Bylaws to authorize association to provide notice by electronic mail.
- Get written authorization from owners to communicate via email.
- Get written authorization from owners to include other contact information (i.e., email addresses) in the owner directory.
- Adopt a policy for turnover of records to include an inventory of the records received from outgoing board/committee member.
- Adopt an email communication policy for board members.
- Adopt and/or update collection policy.
- Adopt an emergency/disaster plan.
- Determine whether meeting location is accessible to physically handicapped persons and, if not, find potential locations in the event association receives a request. (Homeowners' Associations Only).
- Ask your association attorney to perform an audit of your governing documents to confirm whether or not you have incorporated previous legislative changes in years past.
- Ask your association attorney to review contracts (management contracts, service contracts, construction contracts, etc.) to ensure that the association is adequately protected with regard to indemnification, insurance, and other similar provisions.

