COMMUNITY COUNSEL

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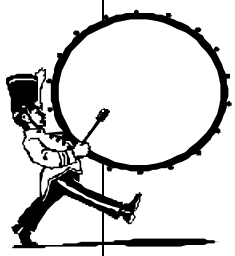
2002 Legislative Round-up

The 2002 Legislative session was one of unexpectedly high drama, with a lot of high-stakes issues appearing in a session that was expected to be distracted by budgetary and redistricting issues. On the whole, community associations and related industries fared well, largely through vigilance and the swift exercise of political muscle. Here are some of the issues that were in play:



1. Condominium arbitration – A move was afoot, attributed initially to the Governor, to eliminate this successful program to save money. For a time, the number of arbitrators was cut from seven to two. However the plan was universally panned, considering that the program is supported by condo trust funds, and the number of arbitrators has been increased to five. As part of a more comprehensive bill, H.843/S.694, the arbitration section was told to expedite resolution of condo and coop election disputes.

2. Master association regulation – Although a comprehensive model bill already exists in Tallahassee, one State Senator decided that there was a need to enact immediate regulation. His bill (S.2004) was poorly drawn and would have inadvertently deregulated many large communities. It was killed for this year.

3. Elimination of the CAM Regulatory Counsel and a $200 per Cam special assessment – both ideas were withdrawn for now.

4. A real property task force to evaluate relations between HOAs and their members, with an eye toward eliminating the right to foreclose for unpaid assessments. Talk about your bad ideas, this one (H.887/S.1484) went nowhere.

5. Insurance – A well–intentioned attempt to standardize coverage issues between condo association and members' insurance quickly attracted so many bad ideas, like scavengers attracted to carrion, that the idea was dropped.

6.. Doc stamps – This finally got done. Now, per H.173/S.694, a party buying at a foreclosure sale really does pay documentary taxes based on the amount of the bid, just as we always knew.

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7. Developer Immunity – S.634 was an attempt to immunize developers of condominiums from construction defect liability claims. Though the goal *sounded* lofty because it incorporated the required a bond to pay some damages, the execution was so biased as to transparently pro-developer, leaving damaged buyers with truly minimal damages.

8. H.843/S. 694 – This is CAI's bill for 2002. It took more abuse en route to passage than the Perils of Pauline. It corrects some multicondominium issues, requires the Declaration to state how limited common elements may be transferred separately, and does away with the Q & A sheet in non-developer transfers. It becomes effective July 1, 2002.

RECENT CASES

- **How surveying errors affecting multiple lots are shared.**
- **Builder may be liable for incorrect statements involving matters of public record if they are outside of the buyer's chain of title.**

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RECENT CASE SUMMARIES

In **Petryni vs. Denton**, 27 Fla. L. Weekly D212 (Fla. 2nd DCA 1/18/2002), Petryni brought a lawsuit against Denton over a boundary dispute involving three lots in a platted subdivision. Petryni owned Lot 4, Denton owned Lot 5 and Eloise Barco owned Lot 6. Each of these three lots had frontage on a private subdivision road. According to the subdivision plat, lots 5 and 6 had 125 feet of frontage each, and lot 4 had 120 feet of frontage. The dispute arose when it was discovered that the actual total road frontage of the three lots, when measured on the ground, was ten feet less than the measured distances on the plat, due to an error in the original plat. The subdivision was originally platted in 1958. In 1982 Denton placed four concrete boundary monuments between lots 4 and 5 along what Denton contends is the true boundary line. Denton's boundary line effectively placed the entire ten-foot deficiency within the Petrynis' lot and decreased the Petrynis' frontage from 120 feet to 110 feet. Petrynis filed an ejectment action against Denton seeking removal of the monuments and shrubbery planted along the Denton-created boundary line, removal of a water well near the Denton-created boundary line, and removal of a boat ramp which all the parties agreed was on the Petrynis' lot. The Second District Court of Appeal followed the established rule that when division lines are run splitting up larger tracts of land into parts and an error discloses more or less than the area assigned to it in the plan or deed, the excess or deficiency should be shared by all of the smaller tracts or lots in proportion to their areas. Every lot or parcel must bear is proportionate part of the burden or receive its share of the benefit of a corrected re-survey. This general rule has its exceptions. The rule should not be applied where it is impractical, where the parties have established a boundary by agreement, or where a party's surveyor has found the original surveyor's monuments. As to the latter exception, the monuments placed on the ground by the original surveyor control over the written plat. But because neither party was able to produce evidence of the original surveyor's monuments, the Second District Court of Appeal held that the ten foot deficiency must be allotted proportionally among lots 4, 5, and 6.

In **M/I Schottenstein Homes, Inc., vs. Azam**, 27 Fla. L. Weekly S190 (Fla. March 7, 2002) Azam sued M/I Schottenstein Homes, Inc., for fraud in the inducement of real estate purchase contracts, recission of the contracts, and negligent misrepresentation. Azam alleged that during the negotiations for the purchase of his home, representatives of M/I stated that property located only 500 feet from Azam's home would be permanently maintained as a nature preserve. However, the nature preserve property was subject to a site plan prepared by Palm Beach County that evidenced that a school was to be constructed on the "nature preserve" property. M/I moved to dismiss the complaint because the school site plan was contained in the public records of Palm Beach County. As such, M/I alleged that Azam was charged with knowledge of facts contained in the public records and therefore Azam could not have relied upon any alleged misrepresentations made by M/I representatives. The trial court dismissed the case and held that "statements concerning public record cannot form the basis for a claim of actionable fraud." On appeal to the Fourth District Court of Appeal, the appellate court reversed the trial court's dismissal of the fraud claim and held that whether a fraud claim is properly asserted with respect to matters contained in the public record is a factual question which should be determined on a case-by-case basis. The Florida Supreme Court upheld the Fourth District Court of Appeal and held that an action for fraudulent misrepresentation must be reviewed on a case-by-case basis. The Court drew a distinction between matters contained in the "public record" and matters contained in the purchasers "chain of title." Matters contained in a purchaser's "chain of title" are imputed to the purchaser, and therefore the purchaser's reliance on any fraudulent statements made by the seller would ordinarily not be justified. However, a purchaser's reliance on fraudulent statements may form the basis for actionable fraud when the fraudulent statements concern matters contained in the "public record" and which are outside of the purchasers chain of title.

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