COMMUNITY COUNSEL

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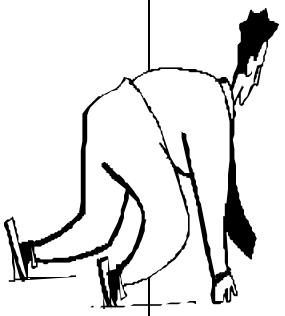
Where to Start? Part I

The legislative session has begun. Many bills are now in play, with others still to come. Some offer the biggest changes in community association governance in over a decade, and not all the changes are helpful.

In a state as diverse as Florida substantial differences of opinion are a given. A dedicated group of anti-association activists, calling themselves consumer advocates, has grown more vocal and aggressive over the years, hosting web sites, engaging in grass roots lobbying and allying themselves statewide with managers and legislative gadflies. Their work has resulted in some success, with key figures in Tallahassee providing opportunities for these dissidents to "drive the bus." Thus far this session the bus ride has yielded one major bill and one report that will probably be converted into another major bill.



HB 1223 has radical and bad condominium proposals. We recommend its defeat.

We refer you to HB 1223 (Robaina), which is a condo bill available on line at http://www.flsenate.gov/Statutes. That bill is the result of statewide hearings held by a Committee appointed by the House Speaker that purported to look into condominium governance. If enacted, we believe that no rational person will volunteer to serve on a condominium Board. Among many other things this bill would –

1. Divest owners of multiple units of more than one vote (developer included?);

2. Create a second class of owners who could not be deprived of any rental, pet or parking rights;

3. Make it harder to waive reserves;

4. Restrict who can serve on the board (resident owners only) and for how long;

5. Require criminal background checks on all candidates that would be available to all owners;

6. Soften lien and collection rights;

7. Impose criminal liability for maliciously imposing a lien for the purpose of trying to acquire a unit;

8. Prevent excess special assessment funds from being applied to future assessments without owner approval;

9. Require greater competitive bidding;

10. Require mandatory criminal background checks on all tenants;

11. Mandate training for all new board members;

12. Create an ombudsman and advisory council with broad powers and a mandate to assist owners in disputes with their associations.

NEXT MONTH – Homeowners Associations

Recent Cases

- **In mobile home park, settlement in law suit that created a separate rate structure not based on size or location of lot was improper.**
- **Procedural defects in adoption of special assessment and the noticing of repairs sinks collection efforts.**

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RECENT CASE SUMMARIES

In **Kaufman vs. Hometown, LLC, d/b/a Lake Worth Village Mobile Home Community**, 11 Fla. L. Weekly Supp 206a (Circuit Court, 15th Judicial Circuit (Appellate–Civil), 1/14/04), Owners had been leasing a residential lot upon which they owned a mobile home when Park Owner acquired the park in 1999. In 1993 when they moved in, Owners were provided with a prospectus, which terms were binding for the duration of the tenancy, and which were renewed automatically every year. Owner's lease had been renewed automatically since 1993. Before 1999, the park was an age restricted community. However, in 2000 the new Park Owner decided to increase the rents and to open the park to persons of all ages. Thereafter, Owners took their concerns to the homeowners association which filed a lawsuit against Park Owner seeking to prevent the opening of the park to residents of all ages. In this lawsuit, Park Owner and many of the residents resolved the dispute and entered into a voluntary settlement agreement. Owners refused to sign this settlement agreement. The settlement agreement provided that anyone who signed the agreement would have rent guaranteed for ten years at $410.90 per month. Residents who did not sign the settlement agreement, including Owners, were required to pay $430.00 per month. Owners refused to pay the additional rent and tendered the sum of $410.90 per month. Park Owner refused this tender and instituted an eviction action. In the trial court, Owners alleged that the differing rents violated §723.031(5), Fla. Stat., because these differing rents unreasonably discriminated between similarly situated tenants. Park Owner countered that the settlement agreement provided a reasonable basis for the different rents. The trial court granted summary judgment in favor of Park Owner and held that the settlement agreement was a valid basis supporting discriminatory rents. On appeal, the Circuit Court reversed the summary judgment based upon the existence of material issues of disputed fact. First, the plain meaning of §723.031(5), Fla. Stat., allows for only two permissible bases under which a park owner can charge discriminatory rental prices; location and size of the lot. The Circuit Court also held that the contractual provisions of the settlement agreement were not consistent with the legislative intent of protecting residents from abusive tactics by park owners. The Court determined that Owners were entitled to present evidence on whether the lot rental increase was reasonable. The issue of "reasonableness" of the increase is an issue of fact for resolution by a jury and cannot be resolved by summary judgment.

In **Taylor vs. Sims Creek Homeowners Association, Inc.**, 11 Fla. L. Weekly Supp 208c (Circuit Court, 15th Judicial Circuit (Appellate–Civil), 1/14/04), Association brought an action against Owners to foreclose a lien for special assessments. Owners own Unit B in Building 16 of Phase II. The residents of in Building 16 were complaining of leaks in the roof of their units. One of these residents requested that the owners in Building 16 sign a contract for the replacement of the roof. Owners failed to respond to this request. Thereafter, Association contacted all four unit owners in Building 16 regarding the need for a roof replacement. Owners failed to respond to this letter from Association. On February 3, 2000, Association sent to all owners of Building 16 a Notice to Correct the roof. On March 3, 2000, (28 days after issuance of the Notice to Correct) Association entered into a contract for the replacement of the roof. Association then notified Owner that a special assessment had been levied upon their unit for their share of the roof replacement cost. The trial court entered judgment in favor of Association on the claim to foreclose the special assessment lien. On appeal, the Circuit Court reversed the trial court. First, the Circuit Court held that the special assessment was improperly levied due to the fact that no notice of a board meeting, including a statement that assessments would be considered and the nature of the assessment, was ever posted as required by §720.303, Fla. Stat. Also, pursuant to the clear and unambiguous language of the governing documents, Owners had thirty (30) days from the date of the Notice to Correct to correct the violation before Association could enter into a ". . . . contract to have the necessary work performed, whereupon the cost of the work shall become a special assessment against the Owner(s) concerned. . . ." By sending out the Notice to Correct, Association was prohibited from entering into a contract for the repair work prior to the expiration of the thirty-day period. Lastly, the Circuit Court noted that the roof replacement work was never approved by Association's architectural review committee as required by the governing documents.

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