COMMUNITY COUNSEL

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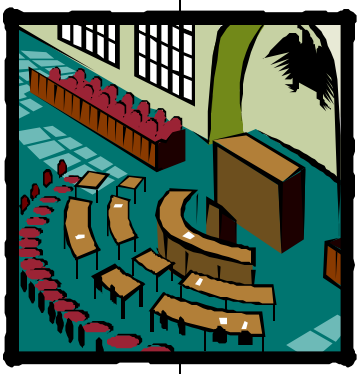
IMPORTANT NOTICE

A new law has increased the cost to file a lawsuit and to record documents in the public records. Filing fees are now $255 for all counties, and recording now costs $10 for the 1st page and $8.50 thereafter.

We are forced to increase our minimum cost deposit for any litigation matter to $450.00.

Major New Laws Signed by Governor

On or about June 23, 2004, Governor Bush opted to sign both SB 2984 and SB 1184. The lengthy bills, which we have highlighted in summary fashion for the past few months, are similar but not identical. In reconciling them the first of many issues they present is their effective date. Some provisions are effective October 1, 2004. Some are effective as of the date the governor signed the bills. Some provisions appear to become effective July 1, 2004. From this month to October we start a review of most of the major provisions of these and other bills.



We continue a review of all new laws effecting community associations.

1. Effective immediately:

A. SB 1728, discussed in detail in last month's issue of *Community Counsel* , which is downloadable from our website.

B. Section 720.305, Fla. Stat, is amended to prevent fines levied by homeowner associations from becoming a lien subject to foreclosure. Attorney's fees incurred in suits to collect a fine can be awarded as part of the judgment. But good luck collecting it.

C. 720.3055, Fla. Stat, is added, further regulating HOA's. If an association enters into a contract for more than one year it must be in writing, and if it will cost in excess of 10% of the annual budget the Association must obtain competitive bids. Although effective immediately, the law nevertheless excludes contracts entered into before 10/1/04 from the competitive bid requirements. The same is true for renewals of such contracts. Also exempted are contracts with an HOA's experts, i.e. its ***manager***, ***attorney, accountant, architect and engineer***. Other contract renewals are exempt also if they can be terminated on 30 days notice, if they are for unique or emergency goods or services or if they are made with the holder of a government franchise. Rather illogically, the law provides that management contracts that are competitively bid may not exceed three (3) years in length, but management contracts that are not competitively bid (remember, they are exempt in the first place) apparently can be for an unlimited duration.

D. Section 720.306, Fla. Stat. Is amended to require a minimum of 14 days notice to all members of all **>>>>**

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RECENT STATUTORY CHANGES

>>>> HOA membership meetings. Notice may also be posted on a closed circuit TV system. At HOA membership meetings, members have a right to speak on all agenda items and all items "opened for discussion." How this occurs is not stated. In addition, to this right all members have a separate right to speak ***on any subject*** for at least three minutes if they gave advance written notice of their desire to speak. Thus, the concept of the filibuster appears to be available to HOA's members. Be prepared to hear a lot of stimulating, if irrelevant discussion about the Hubble Telescope and the speakers' favorite sports teams.

E. Election disputes must now be submitted to binding arbitration before the Arbitration Section of the Division of Florida Land Sales, Condominiums and Mobile Homes ("the Division"). It is very interesting that the Division is taking the position that this provision is not effective until October 1st, even though SB 2984 clearly states it is immediate in effect. This is probably because they simply aren't ready for an immediate influx of cases.

F. Similarly, the Division is stalling until October 1st in implementation of new language in Section 720.311, Fla. Stat., which sets forth procedures for the mandatory mediation of "disputes" before the Division. The types of "disputes" that must be mediated are set forth in the statute and the wording is very problematic:

> *Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas* ***and other covenant enforcement disputes****, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be filed with the department for mandatory mediation before the dispute is filed in court*. (Emphasis supplied)

Since most obligations between HOA's and owners arise from covenants, it appears that all claims must be mediated before suit. Although the Division is taking the position that this excludes assessment collection, the cases are uniform that the obligation to pay assessments arises not by statute but by covenant.

Also the costs of mediation and how it will be paid are far from clear from the statute. All that is known is that the initial filing fee will be at least $200.00, paid by the moving party – usually the Association. The money is supposed to be used to pay for HOA educational programs.

G. Here's one for condos. The following language is now in effect:

> *(13) Any amendment restricting unit owners'* ***rights relating to the rental of units*** *applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of that amendment.* (Emphasis supplied)

The boundaries of this language are unclear. It could encompass tangential concerns other than whether an owner can rent. It could prevent legitimate amendments limiting the number of occupants, pets or cars a tenant can have.

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