

# COMMUNITY COUNSEL

July, 2004

A Publication of Wean & Malchow, P.A.

Volume 8, Issue 7

## IMPORTANT NOTICE

### Repeating :

**the cost to file a Florida lawsuit and record documents has changed. Filing fees are now \$255 for all counties, and recording now costs \$10 for the 1st page and \$8.50 thereafter. As a result, our minimum cost deposit for any litigation matter has changed to \$450.00.**

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

## Review of Major New Laws – Part 2

We continue our review of SB 2984 and SB 1184.

1. Effective immediately (continued):

H. County courts are given jurisdiction over HOA cases, including actions for equitable relief, such as injunctions, in the covenant disputes.

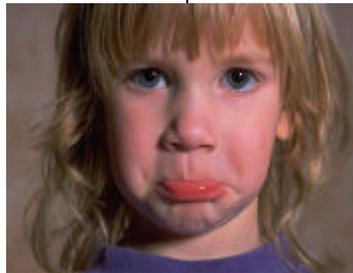
I. Any person buying a parcel in an HOA must receive a disclosure before signing a contract. This law has been transferred from Chapter 689, Fla. Stat. and has been re-written to clean up the language. Also, every contract for sale of a parcel in an HOA must contain a specific disclosure warning the buyer that the contract may be cancelled within 3 days of receiving the disclosure, or upon closing, whichever occurs first. Its unclear why the first disclosure has to be given before the contract is signed, as opposed to at the time of signing the contract. Note **this applies to every sale**, not just to developer sales. **It applies to all homeowners when selling or buying.**

J. Any person or entity other than an HOA that collects mandatory fees for use of common amenities must provide a statement of receipts and expenditures within

60 days of the end of the fiscal year.

K. Any buyer who reasonably relies on a false or misleading statement made by a developer and contained in any document related to a sale of a parcel in an HOA may seek to cancel or to recover damages prior to closing the sale. After sale, the buyer may seek dam-

ages from the developer for a period of one year from the latest of a series of events, not to exceed 5 years. Attorneys fees can also be recovered.



L. Changes are made to Community Development Districts under Chapter 190, Fla. Stat.

They are given the power to adopt rules allowing the District to enforce “deed restrictions.” However, the ability to do so is limited to situations where there is no property owners’ association to do the enforcement. The restrictions

that can be enforced relate to architectural matters. However, the District can only act in this fashion when there are no HOAs in the entire district.

2. Effective October 1, 2004:

A.. Section 768.1325, Fla. Stat. is amended to allow HOAs, Condos and Co-ops to buy and keep automatic

..... **Continuing a review of all new laws effecting community associations .....**

## RECENT STATUTORY CHANGES

defibrillators for the protection of members, and Florida insurers cannot exclude coverage or require extra insurance if these are kept. Such associations are immune from suit for use of well maintained units.

B. Condominium associations still need not answer the questionnaires propounded by lenders seeking to finance purchases or refinances on units. However, if they wish to assist the loan process by answering such questionnaires, they can charge a reasonable fee not to exceed \$150, exclusive of attorney's fees, and will be immune from suit if the person providing the information includes a written statement in substantially the following form: "*The responses herein are made in good faith and to the best of my ability as to their accuracy.*"

C. In condominiums the procedure to opt-out of installing sprinkler systems has been revised to allow use of limited proxies when this vote is taken at a membership meeting.

D. The Q & A sheet has been restored to the list of documents that must be provided by non-developer sellers of condominium units. In other words, every seller of a Unit must provide this form to every prospective buyer.

E. A new Section 720.403 (or maybe 401), Fla. Stat. is created. This and succeeding sections create a procedure whereby a Declaration of Covenants that have lapsed without being extended under Chapter 712, Fla. Stat., can be resurrected. To do this an organizing committee must be formed, consisting of at least three parcel owners. They must create the new Declaration, which must be similar to, but not more restrictive than the original. Although, on the one hand, it can cover fewer lots than the original declaration, it must nevertheless have the same voting rights, proportionate sharing of assessment and amendment provisions as the original Declaration. (How these conditions can occur together is neither clear nor logically intuitive.) It must also create new corporate documents unless the association is still alive and kicking. After at least 14 days notice given by the organizing committee, the written approval of affirmative vote at least a majority of the parcel owners must be obtained. Meeting minutes must be transcribed and the notice, minutes and votes have to be certified by an attorney or court reporter. Within 60 days after the approval, all materials must be provided to the Department of Community Affairs, which has 60 days to determine whether compliance has occurred. If approved, the organizing committee has 30 days to execute and record the new documents and immediately upon recording, a copy must be sent to all parcel owners. The documents are effective upon recording. Owners have one year in which to challenge the application of the new documents to them based on certain theories. It is unclear whether more time is available to assert other bases for challenge.

F. Section 720.303(1), Fla. Stat. will state:

*An association of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of **each** parcel upon an affected parcel owner or owners. (Emphasis supplied)*

What this means language is unclear, but it may mean that small homeowners associations cannot amend their declaration. Why this should be so is also unclear, and this provision will need to be re-written next year.

**MORE NEXT MONTH**