# COMMUNITY COUNSEL

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## RECENT CASES

- **Where land was conveyed by town to private owner with restriction requiring outdoor recreational use, the use was upheld, even though nothing requires the land to be opened to the public.**
- **Court enforces right of first refusal – to a point, as owners could withdraw property from sale.**

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.

# Opening the Brand New 2006 Legislation

We start our annual review of new legislation which passed both houses of the Florida Legislature and which are believed likely to become law. We start with the item that needs the most immediate attention.

**HB 7121/ SB 862** – This bill deals with **emergency preparedness** and makes changes Section 553.509, Fla. Stat. Among other things, the bill mandates modifications and retrofitting of various types of strategic emergency facilities like evacuation centers and gas stations.

**THIS BILL NEEDS IMMEDIATE ATTENTION BY HIGH RISE COMMUNITIES!!**

It also deals with elevator access in multifamily dwellings that have public elevators and are at least seventy-five (75) feet high.

The language in the Section 12 of HB 7121 requires all such existing multifamily housing in the entire state to have engineering plans in place by the end of 2006 to make at least one elevator operable for at least five (5) days, as well as the building's fire alarm system and emergency lighting for interior common hallways, powered by an alternate and self-contained power source, such as an in-house generator. It also mandates that all work be performed by the end of 2007.

Finally, the bill mandates the creation of emergency preparedness plans by all associations that are subject to the alternate power source requirement. Such plans must deal with evacuation, power generation, and health and safety issues.

However, the bill gives no date by which the emergency preparedness plan must be created. As such, this means that in order to comply the plans would have to be in place on the effective date of the law, or all such housing would be in violation on that date. The effective date of the bill, if it becomes law, would be July 1, 2006.

Therefore, coastal and other high rise communities need to start planning and retaining available engineers as soon as possible.

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# RECENT CASE SUMMARIES

In **Chase, et al., vs. Mullen,** 31 Fla. L. Weekly D 956 (Fla. 5th DCA March 31, 2006) several owners in the Interlachen Lakes Estates brought suit against Lakefront Owner to enforce a restrictive covenant purporting to restrict Lakefront Owner's use of real property. In 1974, Interlachen Lakes Estates deeded the subject property to the Town of Interlachen to be used solely for recreational purposes. The Town of Interlachen held title to the subject property for several years but, upon deciding that it no longer wanted to maintain the property, the town eventually executed a quitclaim deed returning ownership of the property to Interlachen Lakes Estates. Thereafter, Interlachen Lakes Estates recorded a special warranty deed which conveyed the property to itself subject to a restriction which limited the use of the property for ". . . . open space, outdoor recreation and park purposes and no other purposes whatsoever. . . ." Interlachen Lakes Estates then executed a quit claim deed transferring ownership of the property to Lake Property Investment Group. In turn, Lake Property Investment Group executed a quitclaim deed conveying ownership of the property to Lakefront Owner. Lakefront Owner posted trespass warning signs and erected posts and barriers to keep the public off of the property. Owners filed suit to enforce the restrictive covenant. Lakefront Owner counterclaimed for trespass and ejectment. The trial court ruled that the restrictive covenant was "ambiguous, contradictory and inapposite" and therefore unenforceable. On appeal, the Fifth District Court of Appeal reversed the trial court's findings that the restrictive covenant was ambiguous. The appellate court held that the first sentence of the restrictive covenant is neither ambiguous nor contradictory and clearly limits the use of the property to three uses, open space, outdoor recreation or park purposes. As such, the appellate court reversed that portion of the judgment which ostensibly allowed Lakefront Owner to use the property "for any purpose." The appellate court noted however, that the restrictive covenant does not require the property to be open to the public. Therefore, as long as Lakefront Owner uses the property for the three designated purposes, open space, outdoor recreation, or park purposes, there is no violation of the restrictive covenant.

In **Edlund vs. Seagull Townhomes Condominium Association, Inc.,** 31 Fla. L. Weekly D1048 (Fla. 3rd DCA April 12, 2006), Association brought an action for specific performance against Owner and his parents. In 1993 Owner purchased his condominium unit. In 2001 Owner transferred ownership of his condominium unit by quit claim deed to his parents. Owner did not notify Association of the proposed transfer, nor did Owner obtain Association's approval for the transfer. Approximately one year after the transfer, Association notified Owner that Owner had violated the condominium documents by failing to notify Association of the transfer. One week later, Association sued Owner and his parents to enforce Association's right of first refusal. Shortly after suit was filed Owner's parents transferred their interest in the condominium unit back to Owner. Association amended its complaint to allege that the re-conveyance was null and void because it was not approved by Association. Association also sought, via an action for specific performance, to enforce its right of first refusal to purchase the unit under the applicable provisions of the governing documents. The trial court entered summary judgment in favor of Association, finding first, that the initial transfer from Owner to his parents had been approved by association, making parents the owners of the unit, and second, that parents' re-transfer of the unit to Owner, was "null and void" because it had not been approved by Association. The trial court also concluded that Association was entitled to specific performance of that portion of the condominium documents according it a right of first refusal prior to a unit Owner's lease, transfer or sale. Because the "re-sale" to Owner was for only nominal consideration of $10, Owner's parents were ordered to sell the unit to Association for fair market value to be determined by appraisal as ordered by the court. On appeal, the Third District Court of Appeal found no error in the trial court's conclusion that the initial transfer from Owner to his parents was approved by Association and that parents now own the unit. The appellate court further agreed that the attempted re-conveyance from parents back to Owner was null and void. However, the appellate court concluded that the governing documents could not be enforced by requiring parents to convey the unit to Association. The declaration of condominium clearly and unambiguously states that where Association opts to exercise its right of first refusal to purchase a unit, Owner may still withdraw the decision to sell. As such, the trial court erred when it order parents to sell the unit to Association. The trial court could only afford Association the opportunity to exercise its option to purchase along with parents option to withdraw their decision to sell. As such, that portion of the trial court's judgment requiring parents to sell their unit to Association for fair market value was reversed.

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