COMMUNITY COUNSEL

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Recent Cases

- **A period of four months between the denial of an architectural request and filing of suit is not laches.**
- **No right of way of necessity over a private road was given where ownership of land in question and other land allowing access to public way had been in a common grantor.**

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.

And They're Off …. The 2007 Legislature Begins

As much an annual rite of spring as Grapefruit League baseball, the 2007 Florida legislative season has begun. There is a new (and not so new) crop of proposals that touches and concerns community associations, and we will briefly touch on some of the most important. See *http://www.flsenate.gov* for links to all bills mentioned.

Among the last bills filed before the deadline, HB 1373 (Robaina) / SB 2816 (Villalobos) are over 200 pages each. In fairness, each bill has some ideas that constitute advancements in the law. However, most of the bills are poorly worded, expensive for owners and burdensome for Associations. Provisions such as those subjecting officers and directors to personal liability will result in mass resignations and a rash of receiverships should either bill become law. In the task of balancing the rights of individual property owners against the rights of neighbors, both bills merit a grade of F.

HB 433 (Domino/Anderson) / SB 902 (Jones) represents much of what was proposed for enactment last year, but which faced a Governor's veto based on questionable assumptions and understanding of what the bill said. This year, however, the issues raised by the Governor have been addressed. Though not perfect, the bill is, on balance, better than it is bad. On the difficult task of balancing individual property owners' rights against the rights of other property owners, both bills merit a grade of A-.

HB 1365 (Gibbons). This bill represents an excellent effort to grant emergency powers to Association boards during declared emergencies, so as to allow them to protect the property and begin rebuilding. In balancing individual interests against those of the rest of the members this bill is rated A.

HB 407 (Schwartz) / SC 314 (Geller) is another retread from last year and represents an attempt to better codify the law of condominium termination, while addressing the legitimate concerns expressed in Governor Bush's veto message.

SB 396(C2) (Margolis) addresses needed issues related to the conversion of existing property into condominiums. In that regard it is a consumer–friendly bill. However, it also helps developers by not holding them to budget increases caused by rises in insurance premiums. While this may be understandable, buyers will not be able to cancel deals to buy units even if the ownership price goes through the roof, since the risk of such increases is shifted to the buyer in this bill. This bill does not really address the rights of individual owners and those of their neighbors, but in balancing the rights of owners and developers it rates a C.

We rate the bills on how they balance competing rights.

HB 671 (Chestnut) / SB 348 (Dawson) is a misguided and poorly conceived attempt to prevent Associations from collecting deposits from new buyers, and to exempt buyers from proving financial wherewithal where the buyers have been approved by a lending institution. The bill makes no sense and fails to consider persons paying cash or using alternate sources of financing. In balancing the rights of one owner versus the rights of the rest, this bill rates an unequivocal F-.

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RECENT CASE SUMMARIES

In **Bandy vs. Bay Hill Property Owners Association, Inc.,** 14 Fla. L. Weekly Supp. 255a (December 7, 2006), from 1998 through 2002 Owner had been making substantial changes and additions to the home, including but not limited to the installation of a pool, erection of a wall, as well as other additions to the home. All of these changes were constructed with Association's approval. In February 2002, Owner commenced the construction of a bedroom suite addition to the home. Owner proceeded with the bedroom suite addition on the erroneous assumption that Association had approved the plans for the bedroom suite. In May 2002, Association orally notified Owner that the height of the wall violated the governing documents and that there was no approval to build the addition. On June 3, 2002, Owner attended a meeting of the Board to discuss the height of the wall. At this meeting, Owner was also notified that Association could not find any plans that were submitted and approved for the bedroom suite addition and consequently, Owner would need to resubmit the plans and cease construction until approval was obtained. On June 5, 2002, Owner submitted an application form and a set of plans for the bedroom suite addition. Association rejected these plans for being deficient. On July 1, 2002, Owner requested an estoppel letter from Association in order to sell the property. On July 16, 2002, Owner picked up the previously submitted and rejected plans from Association, believing that any issues had been resolved. On this same day, Association sent the estoppel letter to the bank handling the sale of the home. The estoppel letter stated that the dues were paid through the end of 2002, that approval of the buyer by Association was not required, and that there were no pending special assessments. The estoppel letter was silent as to an restrictive covenant violations on the property. On July 22, 2002, Owner sold the property to his son and daughter-in-law (hereinafter "New Owners"). On September 12, 2002, Association filed suit against New Owners seeking declaratory and injunctive relief against New Owners for their failure to obtain approval for the bedroom suite. After a two-day trial, the court found that New Owners violated the governing documents by failing to obtain approval for the bedroom suite. The trial court held that the New Owners had failed to prove the elements of their defense of estoppel. The trial court did not enter a ruling on New Owners' defense of laches, until it denied New Owner's motion for rehearing. On appeal, Association argued that the appeal became moot when the New Owners lost title to the property as a result of a foreclosure sale. The Circuit Court of the Ninth Judicial Circuit sitting in its appellate capacity denied this argument. Additionally, the appellate court upheld the trial court's denial of a re-hearing based on an estoppel defense. Specifically, the court noted that the New Owners failed to show how they could have reasonably relied upon Association's express rejection of the plans for the addition when completing construction. With respect to New Owners' laches argument, aside from the motion for rehearing, the only argument on this point presented to the trial court was a single statement made at closing. As such, the issue was not properly preserved for appellate review. Furthermore, the appellate court noted that Association filed suit a mere four months after learning of the construction. This short period of time was insufficient to prove a defense of laches.

In **Palm Beach Polo Holdings, Inc., vs. Equestrian Club Estates Property Owners Association, Inc.**, 32 Fla. L. Weekly D605b (Fla. 4th DCA February 28, 2007), Holdings appealed the trial court's final judgment in favor of Association denying a common law way of necessity over Association's access road. Holdings is the fee simple owner of an undeveloped tract of land referred to as the "100 Acre Lot." The 100 Acre Lot is bordered on the northeast by Association, on the northwest by the "Stadium Jumping Site", on the east and west by unrelated parties, and on the south by the unbuilt extension of Lake Worth Road. Palm Beach Polo, Inc., owns the Stadium Jumping Site. North of Association and the Stadium Jumping Site is Pierson Road, a public roadway. Holdings seeks access to Pierson Road via Association's private roadway that runs through Association to Pierson Road. In evaluating Holding's way of necessity claim, the court examined how the relevant properties became titled as they are today. Tri-State Group, Inc., participated in a bankruptcy auction and was the winning bidder of the 100 Acre Lot and the Stadium Jumping Side. However, Tri-State did not take title to the property. Tri-State assigned the contract to two new Florida Corporations. Holdings took title to the 100 Acre Lot and Palm Beach Polo, Inc., took title to the Stadium Jumping Site. The issue was whether the 100 Acre Lot is inaccessible except over Association's private road. The trial court held that while access over Association's private road may be more "convenient", it was not an absolute necessity. On appeal, the appellate court affirmed the ruling of the trial court and noted that *but for Tri-State's intentional act of transferring the properties to two separately controlled corporations, no claim of necessity would ever have arisen*.

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