

COMMUNITY COUNSEL

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Recent Cases

- ♦ **Associations have a duty to examine the basis of an owner's delinquency and to accept partial payments, even when the matter has been turned over to legal counsel for collection activity. Such payments should be provided to counsel for evaluation and determination of whether to accept the tender. A blanket rejection of partial payments is not appropriate in all instances.**

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.

THE 2008 HARVEST OF NEW LAWS - PART II

We continue our summary of the many changes in community association law, first completing HB 995:

11. Condo membership meetings must be held within 45 miles of the condo if the documents are silent as to the location of meetings.
12. Really confusing language is added regarding the terms of existing directors, along with new limits on staggered terms; requiring all condo communities currently using staggered terms to re-vote the issue and to limit terms to no more than 2 years.
13. Delinquent owners can't serve on a condo board. In condos with more than 10 units co-owners of units also can't serve on the Board at the same time.
14. The Division has the power to disqualify members from Board service for violations of the Condo Act, and may remove them from the board.



It is a bitter harvest in 2008. There is much confusion and few good ideas included in these new laws.

15. Condo Board candidates must certify in writing to reading and understanding the documents, the Act and the Division's rules and must agree to comply with same.
16. Votes to waive or reduce reserves must contain a stern warning and a form disclosure.
17. Sitting condo directors who fall more than 90 days delinquent are deemed to have resigned from the board.

18. Criminal felony charges involving association property disqualifies directors from service until cleared. It is not clear what happens to the term of the director who is eventually cleared.

19. The entire receivership system to cover situations where no board can be raised has been revised.

20. There are extensive revisions to the hurricane shutter provisions of the Condo Act.

21. Physical inspections and engineer's reports are now required every 5 years for all condo buildings over three stories.

22. Small religious objects are permitted on doors frames .

23. There are changes related to imposition of construction and tax liens and a new 45 day notice to delinquent owners prior to filing a lien against a unit is required.

24. A prohibition against "SLAPP" suits is added (Strategic Suits Against Public Participation) and penalties for suits intended to chill public petitions for redress of alleged wrongs is available against anyone, including managers and board members.

25. Broad emergency powers are given to boards in declared states of emergency.

26. Turnover is triggered when the developer goes bankrupt. Continued >>>>>>>

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RECENT CASE SUMMARIES

HB 995 Concluded:

27. The developer must prepare a comprehensive turnover report on the condition of improvements for all condominiums.
28. Condo board members must disclose any interest in entities providing management and maintenance services to a condo. Members may veto such contracts.
29. There are many changes in Division authority and jurisdiction. In most instances it loses jurisdiction of post-turnover condominium communities, financial issues being a notable exception. It can now subpoena official records not timely provided to an owner on request.
30. There are many changes in Ombudsman's function regarding post-turnover condo communities and even the Condo Advisory Council is replaced with a committee having broader jurisdiction. Watch out HOAs, you've been warned!
31. Finally, there are new disclosures required on the Q & A sheet.

In **Ocean Two Condominium Association, Inc. vs. Kliger**, 33 Fla. L. Weekly D1548a (Fla. 3rd DCA June 11, 2008) Association brought an action to foreclose its assessment lien against Owner. (The problem that arose in this case is an unfortunate, but all too common problem. For one reason or another a unit owner falls behind in their assessments. If efforts to resolve the problem are unavailing, the condominium association, usually through its management company, turns the matter over to the association's attorneys for the imposition of a lien and the commencement of a lien foreclosure action. If, as here, the unit owners wish to dispute part of the association's claim (interest and attorney's fees for example), and to pay the *undisputed* monthly maintenance amounts, there is evidently a misapprehension by some management companies and associations that they should reject any such partial payment. Apparently the reason – not recognized in the condominium statute – is that the association's claim will be waived or impaired if a partial payment is accepted after "its been turned over to the attorneys.") As noted by the appellate court, the results of this case turn on Owner's right to make partial payments during the pendency of their dispute with Association. The trial court held that Association and its management company improperly refused a tendered payment in the early part of the dispute, with the result that the lien foreclosure action was premature. On appeal to the Third District Court of Appeal, the appellate court noted that Association and its counsel have ample leverage, and Owners have very little. However, this system is not unfair and functions appropriately when the Owners have no bona fide basis for dispute. However, when the Owners do have a good faith argument for disputing the billings, the interest, late charges, or attorney's fees, the lien amount can become a moving target for Owners. In this case, Owners used a direct debit "Sure Pay" account to pay maintenance fees. Owners asserted at trial that their Sure Pay account was inadvertently debited for three months after they sold another unit in the same condominium, with the result that the balance in the account was insufficient to cover the charges for their two remaining units in January 2004. Association presented evidence to the contrary, but it is undisputed that once Owners received billings showing insufficient funds in the Sure Pay account and arrearages (including late charges and bank fees), they tendered checks to the management company in an effort to bring current the undisputed monthly assessments. Management company however refused the tendered checks because the account had been turned over to the attorneys. As such, the appellate court affirmed the judgment of the trial court that held that Association's foreclosure action was premature.