COMMUNITY COUNSEL

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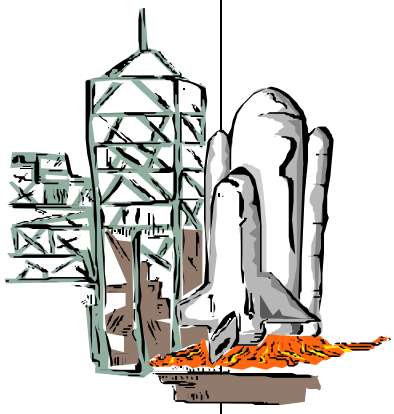
NEW COMMUNITY ASSOCIATION LAWS "TAKE OFF"

Late in June, the Governor signed HB 1195, which then became known as 2011-196, Laws of Florida, and which became effective on July 1, 2011 The bill was intended as a glitch bill, with little to break new ground, although it does include some new wrinkles. Whether it fixes glitches or simply creates new ones remains to be seen. Where appropriate we have indicated which types of Associations are covered by each change. Here are some highlights:



1. A fire safety code exemption from mandatory manual fire alarm systems is extended to all multi-family buildings of less than four stories if they have exterior corridors. (**All**)

2. Email addresses and fax numbers of owners who have not consented to receive notice electronically are not part of the official records. Owners may consent to disclosure, as for example, in a community directory (**Condo and HOAs**)

3. The protection of personnel records is extended to management company employees, but such records do not include employment contracts or budgetary compensation materials. (**Condos and HOAs**)

4. The ability to hold a closed Board meeting to discuss "personnel matters" is extended to condominiums, but not coops. HOAs already have this right.

5. **Condo** election requirements are fixed to account for situations when there are no candidates.

6. Elected directors can either certify that they have read the governing documents or take an approved course anytime from one year prior to election to 90 days after election. One certification is enough as long as the director continuously serves. (**Condos**)

7. An association that forecloses its lien is not liable to any other association for unpaid assessments, fees or other charges which came due before the date it acquires title. (**Condo and HOA**)

8. A statutory form of notice can be sent to the tenant of a delinquent owner requiring payment of all rent to the association until all the owner's obligations are paid or until the tenant leaves. (**All**)

9. The process for total or partial terminations of a **Condo** are revised.

10. **Condos and Coops** must now give hearings before suspending use rights of owners or occupants, except for delinquencies exceeding 90 days. HOAs already had this obligation.

11. **Condo and Coop** fines still cannot become the basis for a lien. In HOAs they can if they exceed $1000.

12. When voting rights are suspended, the vote can't be counted for any voting or quorum purpose. However, nothing provides that the pool of total of votes that can be counted is similarly reduced. (**All**)

13. The two statuses of **Condo "**bulk buyer" and "bulk assignee" are further clarified.

14. **HOA** members can now speak on all agenda items at Board meetings.

15. **HOAs** no longer have to give a hearing in order to suspend use rights for delinquent assessments, and can once again fine for other types of violations.

16. As in condos, **HOA** directors can not be convicted felons without restored civil rights.

17. HOA governing documents can now provide for bulk cable and telecommunications services, much like a condominium.

RECENT CASES

- **Appointment of a receiver without bond or surety is allowed only upon a showing of exceptional circumstances. Absent such a showing it was improper for the trial court to waive a bond or surety.**
- **A member – approved amendment that allowed an HOA to make modifications to members' private property was not a change in the scheme of development.**

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.

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RECENT CASE SUMMARIES

In **Hollywood, LLC vs. 1925 Madison Condominium Association, Inc., et al.,** 36 Fla. L. Weekly D994b (Fla. 4th DCA, May 11, 2011), Hollywood brought suit against Association and moved to appoint a receiver to take control of and manage Association. In the motion, Hollywood alleged that leaks from the condominium building's roof were damaging Hollywood's unit and the building's common elements. Hollywood further alleged that demands were made upon Association to repair or replace the roof, but Association ignored the demands. Therefore, Hollywood sought the appointment of a receiver, but "without bond or other security." After conducting an evidentiary hearing, the court orally granted the motion and, on its own, named a receiver. In naming the receiver, the court stated that it wanted the receiver to be somebody who "knows what he is doing, and has that background and experience. . . ." After the court's oral ruling, the court entered a written order which stated, in pertinent part, *"The court appoints [name of receiver] as the receiver, without bond or other security."* The trial court did not explain why it allowed the receiver to serve "without bond or other security." On appeal, Association argued to the Fourth District Court of Appeal that the trial court erred in appointing a receiver without a showing of exceptional circumstances that would preclude the need or ability to furnish a bond. The appellate court noted that Florida courts have held that an applicant for the appointment of a receiver should be required to provide a bond if the receiver is appointed, with the bond being sufficient in amount to protect the opposing party from any losses sustained should it ultimately be concluded that the appointment of the receiver was improvident, *unless exceptional circumstances are shown which preclude the need or ability to furnish a bond*. In the instant case, no such exceptional circumstances were shown, and therefore the trial court's granting of the motion "without bond or other security" was error.

In **Klinow vs. Island Court at Boca West Property Owners Association, Inc.**, 36 Fla. L. Weekly D1404b (Fla. 4th DCA, June 29, 2011) the declaration provided that it may be amended at any time upon a two-thirds member vote. Association held a meeting on December 13, 2007 to discuss a beautification project to replace driveways and sidewalks on the individual lots at each lot owner's expense. The proposal passed with two-thirds of the votes in favor of the project. At its annual meeting, Association sought to receive another member approval with some clarifications to the language of the amendment. The amendment still requested the authority to replace walkways and driveways, but also added more language, including language which gave Association sole discretion to determine what changes to make. The amendment undisputedly passed, again with at least two-thirds vote of the members. Both amendments were recorded on May 21, 2008. In April 2008, Owners filed a complaint against Association for temporary and permanent injunction and damages. The trial court dismissed the complaint and referred the matter to mediation. Owners filed an amended complaint when mediation efforts failed. The amended complaint raised six counts, including declaratory judgment, injunction, misrepresentation, fraud, breach of fiduciary duty and violation of Section 720.303, Fla. Stat. After a complete trial, the trial court entered judgment in favor of Association on all counts. On appeal to the Fourth District Court of Appeal, the appellate court noted that the original declaration allowed Association to paint, repair, replace and care for garage doors, fences, and exterior building surfaces, other than front residence doors, windows, screening, roofs, gutters, and down-spouts. The proposed amendment merely sought to allow Association to replace privately owned driveway and walkway materials in addition to those tasks enumerated in the original declaration. The appellate court found that this amendment was not a radical change which would create an inconsistent scheme of development, or a deviation in benefits flowing from the grantor (Association) to the grantees (lot owners). The benefit to the homeowners was exemplified in a letter written to all homeowners by Association, which provided that the proposed changes would result in a more aesthetically pleasing community. As such, the appellate court affirmed the ruling of the trial court and held that the amendment was reasonable.

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