

# Community Association Law

---

## Legislative Report

### 2014 Session

**June 30, 2014**

**WEAN & MALCHOW, P.A.**

## About the Presenters

### **Paul L. Wean, Managing Shareholder**

Paul is a graduate of Boston University and is a Law Review Alumni of Western New England College School of Law. Prior to becoming a member of the Florida Bar (1987) and moving to Florida (1988) he was a partner in a Boston-area law firm and thereafter he became a partner in a major Florida law firm, but left in 1995 to start Wean & Malchow, P.A. with the goal of keeping it a small and personal operation. Despite its size, Wean & Malchow, P. A. stays in the forefront of developments in the law affecting Florida communities by actively participating in CAI-FLA's legislative initiatives and lobbying, and by monitoring new case law developments. Paul is a Florida Supreme Court Certified Circuit Court Mediator and he also serves on both Orange County's Planning & Zoning Commission and its Animal Services Advisory Board. More recently, Paul and his wife Joan co-founded "Pawsitive Shelter Photography, Inc.," an effort to save good pets through better photography, presenting the homeless companion animals in Central Florida public shelters as desirable pets, thereby reducing euthanasia rates. It now has 50 volunteers.

**WEAN & MALCHOW, P.A.**

## About the Presenters

---

### **Helena G. Malchow, Shareholder**

Helena G. Malchow is a shareholder/partner in the firm of Wean & Malchow, P.A. She graduated with honors from Florida State University College of Law in May, 1992. In September, 1995 she joined Paul Wean in the opening of Paul L. Wean, P.A. Three years later, she became a partner with Paul Wean and the firm's name was changed to Wean & Malchow, P.A. For the past nineteen (19) years the firm has focused on the representation of all types of community associations. Since 2007, Helena is a Florida Supreme Court Certified Mediator, which enables her to assist in the resolution of issues involving community associations. Helena is originally from Miami, Florida and speaks fluent Spanish.

**WEAN & MALCHOW, P.A.**

# Checking on Bills & Laws

---

- ❖ Governor's website: [www.flgov.com](http://www.flgov.com)
  - ❖ Click on "Media Center" located in the menu bar across the top, then select "Bill Actions" from the drop-down list.
- ❖ Legislature: [www.leg.state.fl.us](http://www.leg.state.fl.us)
  - ❖ Click on "Senate" or "House" and search by Bill number, or text
- ❖ Wean & Malchow, P.A.: [www.wmlo.com](http://www.wmlo.com)
  - ❖ the monthly ***Community Counsel*** newsletter – we call them as we see them.

# **1. SB 440 Commercial Condominiums**

## **Signed into law 6/13/2014 – Effective 7/1/2014**

---

By Senator Altman

- ❖ The bill revises several provisions of the Condominium Act to better distinguish statutory regulations only applying to residential condominiums from those not applying to commercial condominiums, timeshares and vacation club condominiums.

# **1. SB 440 Commercial Condominiums**

**Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ❖ **The following statutory requirements - applicable to all residential condominiums - no longer apply to commercial condos, time shares or vacations clubs:**
- ❖ The need to respond to members' certified mail inquiries under Section 718.112(2)(a)1, Fla. Stat.
- ❖ The need to use limited proxies when members vote.
- ❖ The need to limit directors' staggered terms to two years.

# **1. SB 440 Commercial Condominiums**

## **Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ❖ The need for co-owners of units to refrain from serving on the Board at the same time.
- ❖ The inability of a seriously delinquent member or a convicted felon to be a candidate for, or to serve on the board of directors. (Yahoo!)
- ❖ The need to use written ballots or voting machines in the conduct of the election of directors.
- ❖ The need for directors to certify within 90 days of taking office that they are familiar with and will uphold their governing documents as a condition of remaining in office.

# 1. SB 440 Commercial Condominiums

## Signed into law 6/13/2014 – Effective 7/1/2014

---

- ❖ The need to take disputes to mandatory presuit arbitration.
- ❖ The need to retrofit fire sprinklers in the condominium by January 1, 2020, as required by Section 718.112(2)(l), Fla. Stat.
- ❖ The need to comply with the hurricane shutter requirements of Sections 718.113 and 718.115, Fla. Stat.
- ❖ Also, only ***residential*** condominiums retain the ability, upon a vote of a majority of the members, to avoid retrofitting to meet requirements of the Americans with Disabilities Act.



## **2. HB 7037 Community Association Managers Signed into law 6/13/2014 – Effective 7/1/2014**

---

By Representative Spano

- ❖ This bill is the latest volley of a two-decades-old skirmish between managers and attorneys over those parts of their practices that intersect. The first salvo was fired in 1996 when the Bar obtained a ruling from the Florida Supreme Court in FLORIDA BAR RE ADVISORY OPINION, 681 So.2d 1119 (Fla. 1996). The Court ruled on various common activities and declared them either copasetic for managers or the unauthorized practice of law (“UPL”). The Court also re-enforced its role as the final arbiter of what constitutes the practice of law in Florida.

## **2. HB 7037 Community Association Managers Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ❖ The next rounds in the battle have come in smaller increments as, over the past years, managers have made legislative gains that allow them to prepare and charge for estoppel letters and there have been repeated efforts to obtain legislative approval to recover managers' collection costs.
- ❖ As a result of these and other new manager practices, such as preparing notices of intent to lien, members of the Bar fired back, again petitioning the Florida Supreme Court for a new pronouncement on the UPL issue.

## **2. HB 7037 Community Association Managers** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ❖ Not to be outdone, and before the Supreme Court has even ruled, the Florida Legislature entered to fray and passed this bill. The bill (a) creates a list of new activities that are now part of the definition of community association management. It also (b) attempts to remove some of the analysis that may be associated with the practice of law by creating fill-in-the blank forms for managers to use in certain circumstances. Finally, it (c) restates the standard of care that managers owe to their clients, but allows managers to negotiate to contractually absolve themselves of their ordinary negligence.

## **2. HB 7037 Community Association Managers Signed into law 6/13/2014 – Effective 7/1/2014**

---

The new management activities are:

- ❖ Counting and doing basic math, as by
  - (a) calculating the date of meetings and notice periods;
  - (b) calculating a quorum and the vote need to take an action, such as passing an amendment; and computing the amounts owed to the association prior to litigation.
- ❖ Preparing meeting notices and agendas, estoppel letters and pre-litigation demands.

## 2. HB 7037 Community Association Managers Signed into law 6/13/2014 – Effective 7/1/2014

---

- ❖ Performing and supervising maintenance and other normal tasks involved in the operation of the community association.
- ❖ Completing management-related forms created either by statute or by the Division or other government agency.
- ❖ Negotiating terms of contracts of Board approval.  
**Query** - Does this not necessarily involve document drafting, and might that not be close to the practice of law?

## 2. HB 7037 Community Association Managers Signed into law 6/13/2014 – Effective 7/1/2014

---

- ❖ Complying with the governing documents of the community and applicable law to the extent necessary to carry out any of the forgoing management tasks.  
**Query** - does this not call for the exercise of some judgment as to what and how the requirements of law should be implemented to do the management tasks?
- ❖ At least one man suspects that at least some of this new law will not survive a review by the Florida Supreme Court, if and when that occurs.

## 2. HB 7037 Community Association Managers Signed into law 6/13/2014 – Effective 7/1/2014

---

- ❖ In addition to adding to the definition of what is “management”, the bill puts fill-in-the-blank forms for notices of intent to lien, notices of intent to foreclose, and for releases of lien, into Chapters 718, 719 and 720, Fla. Stat. **Query** - what happens if the form is filled out incorrectly, such as the names of all owners are not listed on the notice of intent to foreclose, or the release of lien is recorded in the wrong county?

## **2. HB 7037 Community Association Managers Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ❖ Finally, the bill re-enforces the fiduciary relationship between the manager and the client. However, it also allows the manager to negotiate with the client to avoid liability for ordinary negligence (but not for gross negligence or intentional bad conduct). In other words, managers can negotiate away liability for professional malpractice, something that lawyers are not permitted to do. This may be another area where the Florida Supreme Court also weighs in.



### **3. HB 807 Omnibus Community Association Bill** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

By Representative Moraitis

This is the general community association bill for 2014, into which a potpourri of all the good and bad ideas that stuck to the wall were thrown. Since all bills are required to be on a single subject, the single subject of “residential properties” was broad enough to hold almost two dozen statutory changes to the three major community association statutes, and then some others as well. Here are the changes in the order they appear in the bill (similar changes to multiple statutes are grouped together).....

### **3. HB 807 Omnibus Community Association Bill** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

Timeshares –

- ❖ Chapter 509, Fla. Stat. – which regulates public lodging establishments, including resort condominiums. Where units are routinely available for short-term rentals, now separately regulates timeshares, including hotels that offer timeshare accommodations. Can you guess who was behind this part of the bill? Have you seen “The Queen of Versailles”, or “Bambi?”

### **3. HB 807 Omnibus Community Association Bill Signed into law 6/13/2014 – Effective 7/1/2014**

---

#### Extension of HOA Covenants –

- ❖ Chapter 712, Fla. Stat. – the Marketable Record Title Act (MRTA) – which provides a system for extending recorded HOA covenants of record every thirty years, has been amended to provide that after the statutory process has been followed and the members given notice of the Board meeting at which the Board will vote on the extension, and then given notice that the extension has been approved, and the appropriate affidavit recorded in the official records, that no further notice has to be sent by the clerk of court to each member.

### **3. HB 807 Omnibus Community Association Bill** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

#### Unit Access –

- ❖ Section 718.111(5), Fla. Stat., which already gives a condo association an “irrevocable right of access to each unit” has had **additional access rights** fleshed out with regard to “abandoned’ units. The Board may in its discretion enter such units to (a) inspect, (b) repair the unit and/or common elements, (c) conduct mold remediation, and (d) turn on utilities. A presumption of abandonment arises if, without any prior notice of absence, (i) no tenant has been seen for four (4) weeks and the unit is in foreclosure, or (ii) no tenant has been seen for two (2) months and after reasonable efforts the association can’t locate the owner.

### **3. HB 807 Omnibus Community Association Bill Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ❖ When a unit is abandoned, in the absence of an emergency, two days notice, mailed or given electronically to the owner (if the owner has consented to receive electronic notices), is necessary prior to entry.
- ❖ All maintenance costs are recoverable as a lienable expense under Section 718.116, Fla. Stat.
- ❖ The Association may petition for a receiver to rent abandoned units for the benefit of the association to offset its expenses in maintaining and protecting the unit, including the receivership costs. So there is now statutory authority for so-called blanket receiverships!

### **3. HB 807 Omnibus Community Association Bill Signed into law 6/13/2014 – Effective 7/1/2014**

---

#### Condo Insurance –

- ❖ Section 718.111(11), Fla. Stat. – the condo insurance statute has finally had an important hole plugged. If there is a casualty loss that is not of a type that is not insured by the association's master policy, then the obligations of the association and the unit owners to repair and replace the damaged property will be as set forth in the governing documents of the community. Until now, this scenario was simply not addressed by the statute.

### **3. HB 807 Omnibus Community Association Bill Signed into law 6/13/2014 – Effective 7/1/2014**

---

#### Official Records – Community Directories

- ❖ Sections 718.111(12), 719.104(2) 720.303(5) have all been similarly amended to allow members to consent to disclosure of telephone numbers and other exempt contact information for publication in community directories.

#### Official Records – Surrender by departing community officials

- ❖ The same sections in the Condo and Co-op Acts are amended to require directors and committees to surrender records and property within five (5) days after an election under threat of penalties to be set by the Division.

### **3. HB 807 Omnibus Community Association Bill** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

#### Board Meetings

- ❖ Skype and video conferencing join speaker phones as other real time electronic means of communications as acceptable means of attending board meetings.

#### Email

- ❖ The statute adopts what we have all been telling our clients for years – they may communicate by email as long as they do not vote or make decisions in that manner – condos only.



### **3. HB 807 Omnibus Community Association Bill** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

Condo as prior unit owner –

- ❖ Section 718.116(1), Fla. Stat. has been amended to provide that for purposes of joint and several liability of prior owners for back assessments, an association that acquires title to a unit is not considered a “prior owner.”

Condo termination –

- ❖ Can't be tried more frequently than once every 180 days. Who says there is no rest for the weary?

### **3. HB 807 Omnibus Community Association Bill Signed into law 6/13/2014 – Effective 7/1/2014**

---

#### Demise of Condo Living Study Council -

- ❖ As a former member of the predecessor of the council I bid farewell to this entity that died from lack of interest. It is too bad, because this council could have done much more good than it did. On the whole its record was poor.

#### Extension of the “Distressed Condominium Relief Act” –

- ❖ No big surprise here. Originally scheduled to sunset in 2012, then 2014, it has now been extended until 7/1/2016. I predict that the next amendment will make it a permanent part of the statute – and change its name.

### **3. HB 807 Omnibus Community Association Bill Signed into law 6/13/2014 – Effective 7/1/2014**

---

Co-op catch-up time –

After-the-fact changes to the Co-op Act to parallel the provision of the Condo Act on:

- ❖ Financial reporting – Section 719.106 becomes like 718.111(13), Fla. Stat.
- ❖ Disqualification of delinquent owners from serving of co-op Boards – Section 719.106(1) becomes like 718.112(2)(d), (n) and (o), Fla. Stat.
- ❖ Emergency powers in disasters – Section 719.128 becomes like 718.1265, Fla. Stat.

### **3. HB 807 Omnibus Community Association Bill Signed into law 6/13/2014 – Effective 7/1/2014**

---

#### HOA provisions - Miscellaneous changes

- ❖ Board meetings must be held in locations that are handicap-accessible, if requested by a person with the right to attend the meeting. Note that advance notice period is not stated, and this could be a problem.
- ❖ The same is true as to members' meetings.
- ❖ Provision of amendments – a copy of an approved amendment within 30 days after recording is no longer required. Now only the recording information need be given, along with an offer of a copy at no charge *if the content of the proposed amendment and the as-adopted amendment are the same.....*

### **3. HB 807 Omnibus Community Association Bill** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ..... However, this raises the question as to how a proposed amendment and an as-adopted amendment could change?
- ..... Also, still left unanswered is what is the remedy if the amendment or the recording information are not timely provided?
- ❖ Finally, the same emergency powers given to condos and now to co-ops are also given to HOAs as well, in new Section 720.316, Fla. Stat. but what does “association property” mean in the HOA context?”

## **4. HB 489 Notice of Reserved Subsurface Rights** **Signed into law 5/14/2014 – Effective 10/1/2014**

---

By Representative Spano

- ❖ Creates a new Section 689.29, Fla. Stat. and a form to be given by a seller of residential property to a buyer if the seller intends to retain a right of entry and/or any right to subsurface mineral extraction. However, the statute fails to provide a remedy for breach of its terms, i.e. for failure to give the required notice to a buyer.

## **5. SB 542 State Flood Insurance Program** **Signed into law 6/13/2014 – Effective immediately**

---

By Senator Brandes

- ❖ Creates Section 627.715, Fla. Stat. which sets forth a state option to allow admitted personal lines carriers to offer flood insurance on residential properties as an alternative to the National Flood Insurance Program. Condominiums and other multifamily properties that are treated as residential would not be eligible for this program.

## **6. HB 1089 Citizens Insurance Phase Out Pt I** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

By Representative Raschein

- ❖ Makes condominiums ineligible for windstorm coverage from Citizens in more than half the units are rented for thirty days or less more than eight times in a calendar year. In other words, resort condominiums need to look elsewhere for windstorm coverage.



## **7. HB 1672 Citizens Insurance Phase Out Pt II** **Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ❖ The Legislature has also taken steps to prohibit Citizens from competing with private insurers, by (a) limiting its ability to offer new multi-peril policies after 7/1/2014; by (b) prohibiting agents and adjusters from taking fees in connection with inspections of property when used to set premiums; and (c) preventing adjusters from acting as an attorney in fact for an injured party in the selection of a contractor or other remediator. Talk about your anti-competitive Republican Legislature!

## **8. SB 356 Further Neutering Local Regulation of Vacation Club**

**Signed into law 6/13/2014 – Effective 7/1/2014**

---

- ❖ The “business end of Section 509.032(7), Fla. Sta. now reads as follows:

*A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals [in residential communities]....*

Enough said??

# Community Association Law

---

## Legislative Report

### 2014 Session

Questions ??