

# Community Association Law

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## Legislative Report

### 2015 Session

**August 25, 2015**

**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. He was a partner in a Boston-area law firm prior to becoming a member of the Florida Bar and moving to Florida and thereafter he became a partner in a major Florida law firm, but left to start Wean & Malchow, P.A. which is celebrating its 20<sup>th</sup> anniversary in 2015. Despite its goal of remaining a small and personal operation, 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 serves as Chair of both Orange County's Planning & Zoning Commission. He is also a members Orange County's Animal Services Advisory Board. 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. As it starts its 5<sup>th</sup> year, it has photographed over 12,000 animals. It was given Orange County's "Distinguished Citizen Award for 2015."

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### **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 twenty (20) 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

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- ❖ 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. HB 71 Service Animals**

## **Signed into law 6/11/2015 – Effective 7/1/2015**

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By Representative Smith

- ❖ The bill tries to summarize and incorporate federal law on service animals (but not emotional support pets) into Florida law – Section 413.08, Fla. Stat. A “service animal” is a dog or miniature horse that has training to do work and “....emotional support, well-being, comfort, or companionship do not constitute work.” Public accommodations may ask what work the animal is trained to perform.

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- ❖ The bill also defines a “public accommodation.” While this surely will include resort condominiums and others with short term rentals, its reach may be broader, including, “place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.”
- ❖ There are criminal penalties for misrepresenting either an animal or a trainer as being service animal qualified when either is not.

## **2. HB 87 Construction Defects**

**Signed into law 6/16/2015 – Effective 10/1/2015**

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By Representative Passadomo

- ❖ Amends – again – chapter 558, Fla. Stat. dealing with alternate dispute resolution of construction defect cases. The main change in this year's statutory changes are to place added burdens on claimants. They are:
  - ❖ to provide a description of the location of each defect based at least on a visual inspection, and
  - ❖ produce all non-privileged discoverable records and reports upon request under threat of sanctions

### **3. HB 643 Condominium Termination**

**Signed into law 6/11/2015 – Effective 6/11/2015**

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By Representatives Sprowls and Grant among others

- ❖ Amends section 718.117 to address the hardships that arose after the first comprehensive uniform termination statute was adopted in 2007, when the housing market crashed and suddenly fair market buyouts were paying far less than what many owners had paid for their units.
- ❖ A Termination Trustee values units pays awards, liens, costs and expenses of clearing title to the property.
- ❖ The statutes has been substantially rewritten to put into place a large number of procedural and substantive safeguards, including;

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- ❖ Providing that original buyers who have homestead protection and who are current in all charges must be paid at least what they paid for their units by a bulk buyer.
- ❖ All other owners must be offered 100% of fair market value as determined by an appraisal.
- ❖ Ten (10%) percent of the members can stop a termination plan.
- ❖ No voting rights can be suspended when it comes to voting on termination.

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- ❖ Persons who have homestead rights have to be offered a chance to lease back their units for one year after termination.
- ❖ Payoffs of outstanding mortgages on units must be made.
- ❖ Affiliations between interested parties must be fully disclosed.
- ❖ Resort to arbitration before the Division may be had to challenge whether the plan was properly approved, whether the proceeds fairly apportioned between the unit owners, and whether all lien holders will be paid.

## **4. HB 305 Unlawful Squatters**

**Signed into law 6/2/2015 – Effective 7/1/2015**

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By Representative Harrison

- ❖ Creates Section 82.045, Fla. Stat.
- ❖ Allows a law enforcement officer to act on the basis of an affidavit from a person entitled to possession of property to remove a “transient occupant” from a property if the person fails to move after being directed to do so.
- ❖ The “transient occupant” is then treated as a trespasser.
- ❖ The statute lists a number of factors that help determine whether the person qualifies as a “transient occupant.”

## 5. HB 791 Omnibus Association Bill for 2015 Signed into law 6/2/2015 – Effective 7/1/2015

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By Representative Moraitis

- ❖ This is the annual catch-all community association bill for 2015. It does a number of things, some good, some bad, and some neutral. Here is the rundown:
  - ❖ For all types of associations, proxies need not be originals. As long as the copy is a “reliable reproduction” it can be accepted.
  - ❖ **For condominiums** the insurance statute, sec. 718.111(11)(j), Fla. Stat. has been corrected to finally plug the holes that have existed when “insurable losses” have not been covered by the policy. They are handled by resort to the documentary maintenance provisions.

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- ❖ For condominiums and coops the catch-all for official records have been narrowed somewhat by inserting the word “written” into the phrase, “*All other written records of the association not specifically included in the foregoing....*” thereby eliminating records kept in other formats, including video and audio formats, but leaving open for the moment, the treatment of electronic images.
- ❖ Notice of association meetings (except **condo, co-op and HOA** recall meetings) may be given electronically, ***without*** the need for the authority to do so appearing in the bylaws of the community. All that is needed is the consent of the member to receive it in this fashion.

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- ❖ For condominiums it is no longer necessary to have all of the all line items shown in section 718.504(21), Fla. Stat. Only those that are applicable need be included in the budget.

For **condominiums, co-ops and HOAs**, it establishes a system allowing their boards to adopt systems for electronic voting. These systems must do the following:

## **5. HB 791 Omnibus Association Bill for 2015** **Signed into law 6/2/2015 – Effective 7/1/2015**

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- ❖ Permit voters to consent, and to withdraw their consent to voting electronically.
- ❖ Provide a system to authenticate the voter's identity and to keep the ballot secret and not tied to the voter's identity.
- ❖ Provide a method to verify that the voter and the electronic voting system can communicate with each other.
- ❖ Transmit a receipt and store the ballot for later inspection and recounting.

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- ❖ Consider persons voting electronically to be present for purposes of establishing a quorum at a members' meeting.
- ❖ Not permit new business of a substantive basis to be presented for vote other than what is on the electronic ballot.
- ❖ It is left to the board of the association to adopt rules to flesh out the electronic voting system.

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- ❖ In condominiums, co-ops and HOAs, the results of a bad 2014 case, St. Croix Lane Trust v. St. Croix at Pelican Marsh, have been legislatively reversed, by language that makes it clear (again) that restrictive endorsements on assessment payments do not constitute an accord and satisfaction and can be ignored and applied per the various statutes.
- ❖ For condos, co-ops and HOAs the method of fining and suspension through use of the impartial committee is clarified to ensure that the impartial committee merely approves or vetoes the actions of the Association in levying a fine or suspension.
- ❖ At last, the Condo Act and the HOA statute now properly states that when voting rights are suspended the suspended votes are subtracted from the total number of voting interests in the community.

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- ❖ When a condo owner owns multiple units, the use rights of all of them can be suspended for violations and delinquencies even though the violation or delinquency only relates to fewer than all of them.
- ❖ Once again, the Distressed Condominium Relief Act has been extended, this time from 7/1/2016 to 7/1/2018. 2020, anyone?
- ❖ We turn now to changes that are exclusive to HOAs. First, the statute, Chapter 720, Fla. Stat, has been formally given a name. It is now, the “Homeowners’ Association Act.” Catchy.

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- ❖ The definition of the “governing documents” of an HOA is expanded to include the rules and regulations adopted under the authority of the other governing documents.
- ❖ The statute has been helpfully clarified that the failure to record an amendment within 30 days – the time frame stated in the statute to take this action – does not effect the validity of the amendment.

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- ❖ The statute addresses the eligibility of delinquent HOA candidates to run and serve on the Board. Eligibility is determined as of the last day the person could be nominated for the board either by others or by one's self. Such persons may not be listed on the ballot. Persons who are serving and who fall more than 90 days delinquent in any monetary obligation are deemed to have resigned from the board.

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Questions ??