COMMUNITY COUNSEL

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2018 LEGISLATIVE SESSION IS ONE FOR THE BOOKS

Each August the members of CAI-FLA, the legislative action arm of the community association institute in Florida assemble in person and toss about ideas and proposals for legislative initiatives for the coming legislative session. Too often the main proposals involve fixing something broken in the session or sessions just ended, but the larger goal is always to better the operation and the lot of Floridians who live in common interest ownership and common purpose communities. That is in August.

By November, when Legislative Committees are in full swing, the idealism has stopped, the blood has drained from the delegates' faces and damage control is in full swing. At this point a bill sponsor has been found and the task is to try to stay on top of the bill much like trying to control a bucking bronco at the rodeo. Both the bill sponsor and various cronies and colleagues are all over the bill like crocodiles on a meal, and when the beast finally lumbers away what remains can be a frightening zombie with no resemblance to the idealism of late August. Let's look at the carcass that was once CAI-FLA's proud HB 841. At this time the delegates are being pelted with add-on proposals to:

1. Amend Chapter 720, Fla. Stat. to impose severe restrictions on the right of an HOA to regulate and approve rentals in their communities, including the ability of the members to amend their documents in any way affecting rentals. While most HOAs don't restrict rentals, those that do find they need to address issues such as a proliferation of student housing or short term rentals. This proposal would further hinder efforts by residents and boards to address these critical issues, and would prevent boards with approval powers from inquiring into the relationship between the proposed occupants. So much for attempting to enforce existing single family occupancy restrictions….

2. Compel condominium associations to permit owners to install electric vehicle charging stations so long as the owner is responsible for the cost of installing the service and the meter that measures the amount of electricity used to charge the vehicle. Several versions of this add-on provision have been circulated—as a means of self defense—to keep the sponsor confused and to try to find better wording to correct a flawed concept. The wording would make the owners liable for damages caused by their usage and for repairs needed; to ensure that the electrical service is safe; and to permit the Association to treat an expansion of services as a material alteration requiring approval under Section 718.113(2), Fla. Stat.

3. Create a carve-out from Chapter 720 for residential communities of a certain size that would otherwise be subject to regulation under Chapters 718, 718, 720, or 721, Fla. Stat., i.e. those which are least 100 acres and have at least 1000 dwellings and which have not been turned from developer control over as of July 1, 2018. As to such associations Chapter 720. Fla. Stat. would become optional. They could opt in at a later date, but could remain outside its purview with an appropriate disclosure. Since the party at interest here is a relative of the Speaker of the House, this one "has legs." Not a good thing.

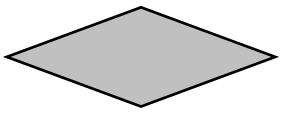
RECENT CASES

- CONDOMINIUM ASSOCIATION ENTITLED TO EXCESS PROCEEDS FROM TAX SALE WITHOUT NEED OF HAVING FILED A LIEN. LIEN IS AUTOMATIC BY STATUTE.
- RULES OF CONSTRUCTION REQUIRE THAT ALL PARTS OF DOCUMENT BE GIVEN EFFECT USING ORDINARY, EVERY DAY ENGLISH. AS SUCH, ASSOCIATION WAS ON NOTICE OF AN OWNER PAINTED PROPERTY, EVEN WITHOUT A WRITTEN APPLICATION.

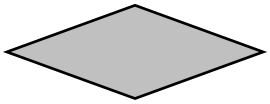
THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

WEAN & MALCHOW, P.A.
646 EAST COLONIAL DRIVE, ORLANDO, FLORIDA 32803
TEL: (407) 999-7780 FAX: (407) 999-LAW1 E-MAIL: W-M@WMLO.COM
WWW.WMLO.COM

In **Calendar vs. Stonebridge Gardens Section III Condominium Association, Inc.**, 42 Fla. L. Weekly D2628a (Fla. 4th DCA, December 13, 2017) Owner appealed an order disbursing surplus funds from a tax sale of Owner's condominium unit to Association, based on Association's claim for unpaid assessments. Owner contended the trial court erred in ordering the funds to be distributed to Association where it did not record a claim of lien or obtain a final judgment. On appeal to the Fourth District Court of Appeal, the Court noted that condominiums are governed by Chapter 718 of the Florida Statutes. Section 718.116 clearly states that an Association has a lien on each parcel, and implies that a claim of lien against a unit owner for assessments becomes necessary only in cases where a mortgagee is asserting a claim. The appellate court affirmed that the Legislature gave condominiums a statutory lien on each condominium unit to secure payment of assessments without the necessity of filing a claim of lien in the public records. As such, the appellate court held that Association was not required to file a claim to validate its lien and was therefore entitled to disbursement of the surplus proceeds.



In **Lamar vs. Wheeler's Landing Homeowner's Association, Inc.**, 25 Fla. L. Weekly Supp. 776a (Fla. 13th Cir. Ct., 11/1/2017) Owner was a homeowner in Association for approximately 14 years prior to the start of the litigation. Association is a small neighborhood of only 36 homes. Association is run somewhat informally by its board. The declaration requires Association to maintain an architectural review committee. The ARC consists of only three people, and it is charged with the responsibility of approving so-called major improvements to neighborhood homes. ARC approval requires the consent of two out of the three ARC members. Homeowners making *major* changes to their homes are required to obtain ARC approval before making the improvements. Homeowners are required to submit an application for approval with detailed plans. There is some disagreement as to what constitutes a change major. In the context of this case, painting one's home the same or a similar color is not considered major, but a color change is considered major. Owner painted her home without ARC approval in a yellow-brown color which was different that the original color. Association filed suit more than one year after Owner allegedly violated the governing documents by painting her home a different color without ARC approval. Owner began painting her home on July 27, 2013. While there was a dispute over whether Owner obtained informal approval from a single board member who was also a member of the ARC, there was no dispute that Association was on notice of the color change as the paint was being applied to the home. Over a year later on October 12, 2014, Association sued Owner based upon her failure to obtain ARC approval for the color change to the home. The county court entered judgment against Owner and found that she violated the declaration by failing to obtain approval before painting her house. The judgment required her to obtain approval from Association. In so doing, the county court rejected Owner's defense that the declaration provided that Association's failure to act within one year constituted de facto approval. Specifically, the declaration provided in relevant part that if *". . . . no suit to enjoin or remove any structure; activity; use; change; alteration or addition in violation of any provision contained in this Declaration is commenced within twelve months following its completion, approval also will be deemed given as to all persons with knowledge of such violation. . . ."* The county court held that Owner's failure to submit a *written* application resulted in a failure to trigger the above-cited review procedure. On appeal to the circuit court, the court held that the language of the declaration was clear and unambiguous. The ARC's failure to act on a written application within 60 days constituted approval by the ARC. However, the second portion of the declaration bars enforcement against *all persons with knowledge of such violation* unless an action is commenced within one year. Therefore, the circuit court reversed the county court and remanded the case for entry of judgment in favor of Owner. The circuit court also granted Owner's motion for attorneys' fees and costs.



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