

2007 COMMUNITY ASSOCIATION LEGISLATIVE UPDATE



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“Condominium Termination Bill”

- ▶ This law makes it easier for condominiums to be terminated if the proposed termination is due to:
 - ▶ “Economic waste” or disrepair. Such terminations are known as “involuntary terminations”. For situations involving an involuntary termination, the percentage required to amend the *Declaration* can now be used to terminate the condominium.
 - ▶ Voluntary terminations. (*ex .* the owners agree to sell the association’s land to a developer) 80% of the owners can vote to terminate the association unless *more* than 10% of the owners file written objections.

Notes:

Assessments, Liens & Foreclosures

- ▶ The association's attorney has to give forty-five days notice to the delinquent owner prior to filing a Claim of Lien. Thereafter, the association's attorney has to give the delinquent owner an additional forty five days notice prior to filing a foreclosure lawsuit.
- ▶ Once during the foreclosure a delinquent owner is allowed to make a "qualifying offer" to pay all assessments that come due while the foreclosure action is pending. Once a qualifying offer is made the legal proceedings are stayed for sixty days. This provision is vague, poorly written and not well thought out.
- ▶ Remarkably this law, provides that a new parcel owner after a foreclosure is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. Technically, this will include lenders that obtain title after a foreclosure. Eventually, somebody will inform the legislature of this predicament and a cap will be placed on a lender's liability for past due assessment or, this provision will be stricken at the next legislative session.

Assessments, Liens & Foreclosures, Continued

- ▶ Interest on delinquent assessments will now bear interest from the date due forward until paid. The interest rate on such delinquencies will be either the rate in the *Governing Documents* or no such provision exists in the *Governing Documents*, 18%.
- ▶ Further, SB144 states that if the association's *Declaration or By-laws* so provide, a homeowners' association can charge an administrative late fee equal to \$25.00 or 5% of each assessment installment amount.



It is important to note that in SB1844 the legislature acknowledges that *Governing Document* provisions allowing associations to charge administrative late fees to a delinquent owner can originate from the association's By-laws. Therefore, associations that cannot presently charge late fees because their *Governing Documents* do not permit them to do so, can now use an easier to pass By-law amendment to authorize charging administrative late fees (as compared to an onerous *Declaration* amendment attempt).

Notes:

Assessments, Liens & Foreclosures, Continued

- ▶ Payments from delinquent owners must now be applied as follows:
 - ▶ First to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.
 - ▶ This provision will mitigate the problems associated with a delinquent owner making a payment into a “lock box” to avoid attorneys’ fees and late fees. Payments improperly placed in a lock box **must** now be applied according to the above formula.

Notes:

▶ Condominiums

- ▶ Declarations burdened with a lender consent requirement for amendments no longer need to obtain said consent if the amendment does not impair that lender's security or lien priority.

▶ Homeowner Associations

▶ Mediation

- ▶ The mandatory mediation procedure for covenant violations has been drastically altered. The association and the owner will now control the process as compared to the Florida Division of Land Sales. Considering the exhausting delays with the existing system, this is a welcome change.

▶ Reserves

- ▶ A majority of owners can require the Board, via a petition, to establish a system of reserves for certain components of the association's property.

▶ Architectural Control

- ▶ More limits were placed on an association's ability to determine the exterior appearance of an owner's property . In particular such guidelines must be expressed or reasonably inferred in the association's *Governing Documents*.

Self Insurance

- ▶ Condominiums that want to become self-insured can now classify expenses associated with such efforts as a common expense.
- ▶ Being self insured will satisfy the standard “adequate insurance” requirements that appear in most *Declarations*.

Notes:

*Don't get
broad-sided
by a change
in the law .*



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All of your information will remain private and confidential, thank you.

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