BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

FLORIDA REAL ESTATE LEGISLATION TO WATCH IN 2023

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Ahead of the 2023 Florida Legislative Session, several real estate related bills have been introduced in the Florida legislature that will be considered by lawmakers during the upcoming Legislative Session which begins in March.

Florida lawmakers will consider bills that would require sellers of residential and commercial property to disclose information relating to flooding and flood risks to buyers. Pursuant to SB 484, sellers would be required to disclose to buyers in writing (i) whether the property has suffered damage from flooding and, if so, the number of times the property has been subject to flooding, (ii) whether the property or any portion of the property is located in a designated flood-hazard zone, (iii) whether the seller has maintained flood insurance on the property, (iv) whether the seller has received federal assistance for flood damage to the property, (v) whether flood damage insurance claims have been filed, and (vi) whether a Federal Emergency Management Agency elevation certificate is available for the property. A similar bill, HB 325, was introduced in the Florida House of Representatives.

Other proposed legislation includes HB 359 and SB 450, which include amendments to Chapter 163, Florida Statutes, relating to comprehensive plans and comprehensive plan amendments. The proposed legislation would require those that challenge proposed development of undeveloped land to pay attorneys' fees in the event such challenge is unsuccessful. Both bills provide that the prevailing party in a challenge either through an administrative proceeding challenging a comprehensive plan or amendment to a comprehensive plan, or a legal action challenging a local government decision on a development order, is entitled to recover attorneys' fees and costs incurred in challenging or defending a plan or plan amendment, including appellate fees and costs. Critics argue that if the bills pass, people will be deterred from challenging proposed development and will lead to greater sprawl.

Additional legislation includes SB 102 and HB 627 which address affordable housing and seeks to, among other things, ease regulation, and offers tax incentives for affordable housing development. The proposed legislation would exempt developments constructed in the last 5 years from property taxes for each unit targeted at low- and middle-income families if the property has at least 70 units that offer rents at least 10% below market rate, and would allow municipalities and counties to grant ad valorem tax exemptions to property owners who allocate units for those earning 50% or less of the area median income. The bill also seeks to ease some regulatory burden by preventing local governments from requiring zoning changes for multifamily projects in commercial areas if at least 40% of the units are set aside for households earning 120% of the area's median income.

Other real estate related bills which have been introduced include, among others, HB 41: Land Development Initiative and Referendum Process, prohibiting an initiative or referendum process in regarding to any amendment to land development regulations; HB 85 and SB 360: Causes of Action Based on Improvements to Real Property, reducing the statute of limitations and statute of repose for construct defect litigation; SB 88: Task Force on Workforce Housing for Teachers and Expansion of Schools, establishing a Task Force on Workforce Housing for Teachers and Expansion of Schools; SB 220 and HB 229: Taxation of Affordable Housing, authorizing counties and municipalities to grant an ad-valorem tax exemption for property used to

provide affordable housing; and SB 556 and HB 395: Hurricane Protection for Condominium Associations, amending the Condominium Act to require declarations of condominium to specify the entity responsible for installation, maintenance, repair and replacement of hurricane protections, authorizing boards to install or require unit owners to install hurricane protection, and prohibiting boards from refusing to approve certain hurricane protections.

The Berger Singerman Team will continue to monitor and follow legislation making its way through the Florida Legislature during the 2023 Regular Session.

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