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HOMEOWNERS ASSOCIATION AND CONDOMINIUM ASSOCIATION RELATED BILLS

February 15, 2018

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2018 Florida Legislative Session Update

The 2018 Florida legislative session is in full swing with a number of proposed bills relating to homeowners associations and condominium association currently being considered. If passed by the legislature and signed into law by the governor, these bills will have a significant impact on operations of homeowners association and condominium associations throughout Florida. Although not all-inclusive, below is a summary of pending legislation which could impact Florida homeowners associations and condominium associations.

HB 123/SB 1366 Condominium and Homeowners Associations

- Creates the "Stand Up for Seniors Act" for condominiums and communities intended and operated for occupancy by persons 55 years of age and older
- Requires homeowners association and condominium associations operating communities for occupancy by persons 55 years of age and older to adopt policies prohibiting "bullying" and "harassment", which terms are defined in the legislation, which shall ensure that members of the association do not subject others to fear or intimidation. Such policy must contain:

    1. A statement prohibit bullying and harassment
    2. A description of the type of behavior expected from members of the association
    3. A requirement that the association investigate any reporting bullying or harassment and a procedure for same
    4. Penalties for (i) a person who commits acts of bullying or harassment and (ii) a person who wrongfully and intentionally accuses another of bullying or harassment consistent with the statutory penalties
    5. A procedure for receiving reports of alleged bullying or harassment, including provisions permitting anonymous reporting

HB 617/SB 266 Marketable Record Title

- Revises the Marketable Record Title Act (MRTA) to streamline preserving and revitalizing covenants and restrictions
- Provides a procedure and requirement relating to preservation of covenants and restrictions affecting a community or association, including requirements relating to the board considering protection and preservation of covenants from extinguishment under the MRTA.
- Permits non-residential property owners' associations to preserve covenants and restrictions
- Allows non-mandatory homeowners' associations to revitalize covenants and restrictions that have expired

HB 377/SB 734 Homeowners Associations

- Increases minimum statutory damages for willfully failing to provide official records from $50 per day (up to 10 days) to $500 per day (up to 30 days)
- If a community manager or management firm is delegated the responsibility of providing access to official records, a member has a claim against the manager or management firm for the damages for denying access, and managers and management firms cannot be indemnified or otherwise reimbursed by the association for such damages.
- Homeowners Association are required to resubmit reports to the Division of Florida Condominiums, Timeshares and Mobile Homes if there is a material change to the information previously provided under 720.303(13). The legislation does not defined what would be considered “material,” but presumably it would apply to the number of parcels governed by the community as well as the amount of total revenues and expenses from the association’s annual budget.
- Removes the ability for homeowners associations to file a lien against a parcel for fines exceeding $1,000.00.
- Changes the requirements which trigger an obligation for a developer to turn over control of a homeowners association to non-developer members, some of which depend on the number of lots within a community.
- Provides that election and recall disputes are eligible for pre-suit mediation, which appears to be in addition to the mandatory non-binding arbitration which is currently required by Chapter 720.
- Provides that the Department of Business and Professional Regulation (DBPR) shall provide binding arbitration at the request of a parcel owner or association for disputes involving rules enforcement, maintenance, assessments, and official records.
- Provides that DBPR shall provide training and educational programs for homeowners association members, directors, and officers.
- Provides that DBPR has enforcement authority over homeowners associations relating to access to official records, financial management, and election disputes. In addition, DBPR may also investigate any complaint made against a homeowners association which is submitted to DBPR.
- Requires sellers of property subject to homeowners associations to provide a copy of the governing documents (including all amendments) and the current operating budget of association to the buyer at least 7 days prior to closing. Buyers may cancel sale within 3 days of receipt of such documents.
- Creates limited causes of action against developers, and prohibits developers from using association funds for non-association purposes prior to turnover.

HB 841/ SB 1274/SB 1530 Condominium and Homeowners Associations

- Removes the conflict of interest provisions added to the Condominium Act last year which prohibit a condominium association from hiring an attorney who represents the association’s management company.
- Increases the time period within which official records must be made available to condominium unit owners from 5 to 10 working days after receipt of a written request for such records.
- Provides additional methods and requirements for electronic notice of condominium board and member meetings, and specifies that owners that consent to receiving electronic notices are responsible for removing or bypassing filters that block receipt of mass e-mails.
- Specifically provides that a recall may be challenged based upon the facial invalidity of written agreements or ballots used to recall directors
- Clarifies the disclosure and approval requirements relating to conflicts of interest relating to an officer or director of a condominium association.
- Requires that certain documents must be permanently maintained in the official records of condominium associations from the inception of the association.
- Refines the list of documents required to be posted on condominium association websites, and limits the association’s liability for inadvertent disclosures of protected information.

- Limits condominium board members from serving more than 8 consecutive years unless approved by 2/3 of votes cast in an election.
- Refines condominium and homeowners association fining procedures.
- Removes the July 1, 2018 sunset date and makes the provisions of the Distressed Condominium Relief Act permanent.
- Authorizes homeowners association board members to communicate by e-mail, but not vote by e-mail.
- Adds new budget and reserve requirements for homeowners associations.
- Revises the Disclosure Summary required to be provided by Chapter 720 to include a disclosure regarding the homeowners association budget and reserves.
- Prohibits nominations from the floor of homeowners association elections in certain circumstances.

HB 873/SB 1238 Homeowners Associations

- Prohibits homeowners associations from hiring an attorney who represents the management company of the association.
- Adds bids for materials, equipment and services to the official records which must be maintained by a homeowners association.
- Requires homeowners associations with 150 or more parcels to have a website, with certain official records and notices posted.
- Requires copies of financial reports to be provided to owners, or within 5 business days of an owner's request.
- Prohibits the use of debit cards for association expenses.
- Revises homeowner association recall procedures.
- Creates new criminal penalties for officers, directors, or managers for soliciting or accepting "kickbacks," as well as other violations.
- Specifies standards of conduct for officers, directors and agents of a homeowners association, and provides for civil and criminal penalties for breaches and/or failures to perform his or her duties in certain instances.
- Limits the associations authority to suspend the voting rights of an owner for non-payment of a fee, fine or other monetary obligation to the association that is more than $1000.00
- Limits homeowners association board members from serving more than 8 consecutive years unless approved by 2/3 of the total voting interests of the association or there are not enough candidates to fill vacancies on the board.
- Provides additional conflict of interest provisions relating to, among other things, (i) contracts between an association and board member or company owned or operated by a board member or person who has a financial relationship with a board member or officer or relative of a board member, (ii) disclosure requirements

HB 1061/SB 1432 Condominium Fire and Life Safety Systems

- Requires buildings with three or more stories that do not contain fire sprinkler systems in the common areas to be marked with a warning sign or symbol approved by the State Fire Marshal
- Exempts buildings of 75 feet or less and authorizes buildings greater than 75 feet to opt out of retrofitting fire sprinkler systems or other engineered life safety systems by vote of 2/3 of all voting interests in the condominium.
- Extends opt-out deadlines for fire sprinkler and engineered life safety system retrofitting until December 31, 2018, and extends actual retrofitting deadlines.

HB 625/SB 1768 Condominium and Homeowners Associations

- Requires the DBPR to establish an Office of Community Association Hearings to employ community association hearing officers instead of arbitrators to conduct arbitration hearings and with the authority to impose certain sanctions.
- Alternative dispute resolution procedures for homeowners association are administered and conducted by DBPR, Office of Community Association Hearings, and community association hearing officers as opposed to the current pre-suit mediation procedures set forth in Chapter 720.
- Allows DBPR to certify attorneys who are not employed by the DBPR to act as community association hearing officers under certain conditions
- Revises the provisions related to alternative dispute resolution for condominium and homeowners associations.

As the legislative session progresses, these bills will continue to change. As in past years, we are tracking the proposed legislation relating to homeowners associations and condominium associations.

For more information, please contact the author Jeffrey Margolis on our Business, Finance & Tax Team.

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