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## MARCH 2015 LEGISLATIVE UPDATE

### 9 Months After Foreclosure Bill Still In Committee

HB 486 and SB 1368, which would modify the current structure of what an Association can receive after foreclosure assessments, are both stuck in committee. Both bills would eliminate the requirement that a condominium association file a lawsuit to lock in the right to recover some assessments if a property changes hands via foreclosure. While the bills would allow a condo association to recover up to the value of 9 months of regular monthly assessments (up from six), they limit the ability of the association to collect its attorneys' fees and costs because the maximum recovery is set at the 9 month total. Stay tuned for developments.

### Modifications To Closed (Executive) Sessions And Calling Meetings For Condos Coming Soon

A bill that appears to alter how closed sessions take place and how meetings must be called has already unanimously passed the House and has headed to the Senate. HB 2640 appears to allow closed sessions to take place outside of board meetings, but retains the requirement that any vote on closed session issues be made at an open meeting. It also allows meeting to take place over conference call and other technological means whereby all participants can communicate with each other.

The biggest change in HB 2640 involves how to call board meetings. Notice of board meetings must be given to the Board members, posted in entranceways and emailed to those who have opted in to receiving email communications at least 48 hours in advance of the meeting. If, and only if, the declaration, by-laws or plat require notice of board meetings to be given to all owners, then the Board would have to mail or deliver the notice of meeting to those members at least 48 hour in advance. Since some associations lack language requiring notice to be given to all owners, those associations could save on their postage fees.

### Ratification In Event Of An Emergency Close To Becoming A Reality, Non-Emergency Not As Close

Last issue we discussed several of the bills that are a reaction to the recent *Palm II* case. We are happy to report that HB 2641, a bill that allows condo boards to take action outside of meetings to confront emergencies and follow a process to properly ratify those actions has unanimously passed the House. If there is an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners, a condo board can take action. The board must give notice to all unit owners within 2 days of the emergency event and must describe the actions taken to address the emergency within 7 days. The board must then call a meeting an officially ratify the action at a meeting within 30 days after the emergency event. Finally, the notice of meeting must specifically state that the board will vote to ratify and confirm emergency actions taken.



The companion bill for HB 2641 is HB 2646. That bill would create a framework for a condo board to take any actions outside of a meeting and ratify them at a later date. In order to take action outside of a meeting, the following must occur:

- 1) all members of the board sign a resolution or other document that states the action to be taken,
- 2) the signed document states the date of the consented to action,
- 3) the consent is ratified at a meeting within 30 days of the approval of the action,
- 4) a copy of the unanimous action is attached to the meeting minutes,
- 5) at least one board member states his or her reasons for consenting to the action and
- 6) a summary of the board members' reasons for consenting to the action is included in the minutes.

If there are less board members than would constitute a quorum if the actual number of board members required by the declaration or by-laws, then the board cannot utilize the ratification process. Thus, if there is only one board member currently on a three person board, two board members on a four person board or three board members on a seven person board, ratification is unavailable. This bill passed unanimously out of committee but may have run into some opposition that is slowing it from reaching a vote.

#### **Bill Changing Definition Of A Meeting Temporarily Halted**

One of the bills introduced as a reaction to *Palm II* is HB 2645, which would modify the definition of a meeting for condominium and master associations. Pursuant to the bill a "meeting" would not include "any mere discussion, conference or working session at which no formal vote is taken." This would allow boards to work more effectively and efficiently, permitting workshops of the Board to get organized. It also would allow board members to discuss issues without having to worry about whether they are improperly engaging in meetings. Unfortunately, the bill was not advance on March 17<sup>th</sup> when it was scheduled to be read and debated for its second time. This may be an indication that opposition is attempting to stop the bill, likely in the name of transparency.

#### **Bill To Expand Condo Boards' Authority To Act Narrowly Passes House**

HB 2644 seeks to clear up language in the Condo Act concerning limitations on a board's ability to act is making its way through the General Assembly. The bill states that any provision in the declaration or by-laws of a condominium association is void if it restricts a board's ability to pursue legal remedies in a representative capacity. This would include any requirement that the association obtain unit owner approval or which requires the association to arbitrate any dispute with any developer, declarant or other non-unit owner. This bill would remove potential hurdles to litigation against developers and other parties. The bill had significant opposition which could make for a difficult time getting through the Senate.

#### **Condo Amendment Bill Passes House Easily**

A bill that provides technical modification to the amendment section of the Condo Act has passed the House and is on its way to the Senate. HB 2643 clarifies that if the declaration or by-laws requires the



association to obtain the approval of or give notice to mortgagees or other lienholders, it has to do so for the amendment to be effective. However, it also makes it clear that unit owner approval and mortgagee/lien holder approval is not necessary for amendments that are conforming the declaration or by-laws to correct errors, omissions or inconsistencies with applicable law – often called an amended and restated declaration. Both changes are clarifications of the current practice. We hope that in the future they will add changes that require mortgagees and lienholders to respond within 30 days of receipt of a certified mailing or their consent is deemed given.

#### **Common Interest Boards May Not Be Able To Make Some Substantive Changes Anymore**

When adopted, a quirk in the Common Interest Community Association Act specifically allowed the Board to make changes to provisions in the declaration, bylaws and other documents if they conflict with the Act. Thus, a board could make substantive change to that provision that does more than just bring the document into compliance with the law. HB 2642 would seek to close that gap and remove the Board's authority. The board would still be able to adopt an amended and restated declaration since that it permitted under a different section of the Act. The bill passed the House unanimously and is on its way to the Senate where it will likely be fast tracked. Associations seeking to utilize this provision should make their changes soon.

#### **Bill That Would Allow Common Interest Boards To Appeal Property Taxes On Behalf Of Owners Appears To Be Going Nowhere**

Condo associations have the ability to appeal the property taxes for the whole association if the two-thirds of the board or a majority of the members approve the action. There is no like provision for common interest community associations and courts have required individual owners to opt-in which muddies the process. HB 3479 would put common interest community associations on equal footing with condos. Unfortunately, the bill appears to be stuck in committee and will not be adopted anytime soon.

#### **Bill Permitting CICAA Associations That Are LLCs To File Forcibles Passes Senate**

Last issue we discussed the rare but ever increasing issue of common interest community associations being organized as LLCs rather than not-for-profit corporations. Under current law, those LLC associations cannot use the Forcible Entry and Detainer Act to collect past due assessments. SB 1374 would specifically allow LLC common interest community associations to file forcibles. The bill passed unanimously out of the Senate and is currently in the House. If it is eventually signed into law, the bill would become effective immediately.

#### **Bill Requiring Forcible Cases To Be Filed Under Seal And Kept Confidential Appears To Be Beaten**

A bill that would have required every case filed under the Forcible Entry and Detainer Act to be seal appears to be stuck in the Senate. When a case is sealed, it is kept from the public and it may not be viewed by non-parties or those with court orders. The case would be unsealed if the association received a judgment in the case. This bill would have made the process confusing and more difficult for both associations and unit owners.



**Bill That Would Expand Application Of CICA And Minutes Requirements Stuck In Committee**

A bill that would make the Common Interest Community Association Act apply to all non-condos and non-master associations that have more than 10 units appears to be stuck in committee. SB 1521 would also require that any action discussed during a closed session be noted generally in the minutes of the meeting. It would also require minutes for any board meetings, member meetings or committee meetings to be made available to the members within 30 days of the meeting or if there is a subsequent meeting within 30 days, at least one day before the meeting. The bill would require the Board to make draft minutes available in the event they have not been approved.

If we can be of any assistance in explaining these bills, please do not hesitate to contact our firm.