



CAN Short Sheet on Pending Community Association Legislation – as of March 16, 2010

We anticipate 2010 to be one of the most active legislative sessions in memory in terms of community association activity. As you know, we are currently monitoring 50 bills that have the potential to impact the millions of Floridians living in common interest ownership communities. Please find below some of the bills that require your attention as CAN Advisory Council members as you speak with our elected officials. Please note that the list below does not address every bill we are monitoring and that these bills are subject to drastic change. This is a snapshot of what is out there right now.

There are many bills designed to hold lenders more responsible for paying their share of assessments in associations and also many proposals to give associations more flexibility in terms of dealing with delinquencies including the right to collect rent directly from tenants and the right to suspend common area use rights. The bankers have come up with a non-judicial foreclosure proposal that will do little to assist with the current huge backlog of foreclosure filings since any such procedure would only apply to mortgages filed after the effective date of the law (July 1st) and the procedure might very well bog down the associations' efforts.

Our message to our Legislators should be clear: We need as much help as possible to keep financially struggling associations functioning until the market resumes stability. Lenders must be forced to be good neighbors rather than relying on association members to safeguard their collateral. Local city inspectors and fire marshals need to become more informed and more sympathetic to the plight of association members. Both need to adopt a more Solomon-like approach when applying the Life Safety Code to existing structures.

Bills to Support:

SB 1222 (Ring)/HB 561 (Bogdanoff/Hudson) – Condominiums [CPSC]; Removes the H0-6 individual insurance language that was added two years ago. Provides an exemption for certain condominiums from installing a manual fire alarm system as required in the Life Safety Code if

certain conditions are met, provides for self determination when it comes to retrofitting existing buildings with sprinkler systems. Revises the definition of the term "developer" to exclude a bulk assignee or bulk buyer, etc. EFFECTIVE DATE: Upon becoming law.

HB 561 – the amendment by the Insurance Business & Financial Affairs Policy Committee adds subsection (13) to s. 633.0215, F.S., to provide that condominium or cooperative buildings less than four stories in height and that are constructed with exterior corridors are exempt from the requirement to install a manual fire alarm system.

SB 1222 has not yet been put on an agenda but it has been referred to the Regulated Industries Committee (Chair: Dennis Jones/Vice Chair: Ted Deutch).

NOTE: The sprinkler language in these bills is now in jeopardy given that Charlie Crist has stated he will veto the language once again despite assurances only weeks ago from his Chief of Staff, Shane Strum, that the Governor would allow such language to pass. We need to safeguard this language as well as the elevator and fire alarm relief for the millions of financially struggling associations who cannot afford to make these costly upgrades at this time.

It is also important to note that Section 633.025(6) of the Florida Statutes currently provides as follows with regard to Minimum fire safety standards:

With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the minimum fire safety code and that physical limitations may require disproportionate effort or expense with little increase in life safety. *Prior to applying the minimum fire safety code to an existing building, the local fire official shall determine that a threat to life safety or property exists. If a threat to life safety or property exists, the fire official shall apply the applicable fire safety code for existing buildings to the extent practical to assure a reasonable degree of life safety and safety of property or the fire official shall fashion a reasonable alternative which affords an equivalent degree of life safety and safety of property.* The decision of the local fire official may be appealed to the local administrative board described in s. 553.73.

From all of the anecdotal evidence CAN has received, the procedures set forth above are NOT being applied. We have no reports that local fire marshals attempting to enforce the fire safety code are actually undergoing the necessary analysis set forth above and applying the Code only as needed. Our Legislators and our Governor need to be educated on this point.

HB 329 (Robaina) – This bill would allow collection of rents from tenants and permit the suspension of condominium common area use rights and voting rights for delinquent owners. This bill deletes the statutory cap for past due assessments owed by lenders and would require the foreclosing lender to pay all unpaid assessments if foreclosure action isn't completed within one year. EFFECTIVE DATE: 07/01/2010.

NOTE: This bill probably goes too far for the Florida Bankers' Association comfort especially with regard to completely removing the statutory liability caps. As a result, it has little chance of success but CAN supports its goals nevertheless.

HB 959 (Skidmore) - Residential Properties; Revises provisions relating to condominium Life Safety Code requirements, sprinkler systems, fire alarm systems, & smoke-detection systems; provides certain liability for persons acquiring title to condominium by foreclosure or recorded deed; provides requirements & liabilities for certain first mortgagees; provides powers to homeowners' associations, etc. EFFECTIVE DATE: 07/01/2010.

NOTE: Skidmore's bill contains many of the same provisions as Ring's 1222, 1270 and 1272.

HB 1035 (Frishe)/SB 1172 (Bennett) - Senator Bennett is an initiative by the Department of Business and Professional Regulation to update the regulatory scheme for elevator inspections, and the legislation contains a repeal of the provision that requires the retrofit of elevators in residential structures to operate on an independent power source. EFFECTIVE DATE: 07/01/2010.

SB 626 (Jones) - Elevators [CPSC]; Expresses the legislative intent to revise laws relating to elevators. EFFECTIVE DATE: 07/01/2010.

SB 648 (Bennett)/HB 663 (Aubuchon) - Building Safety; Revises provisions of law relating to elevator safety, home inspection services, & building code inspections & enforcement; revises Florida Building Commission authority; exempts specified structures from Florida Building Code requirements; revises specified Florida Building Code provisions relating to air conditioning systems & classroom lighting, etc. EFFECTIVE DATE: 07/01/2010 except as otherwise provided.

SB 780 (Lynn)/HB 987 (Sands) – A lender instituting a foreclosure action must timely pay all fees associated with or owed by that property including association fees, taxes, etc. EFFECTIVE DATE: Upon becoming law.

NOTE: Again, the lender reform goals are worthy but probably go too far to expect any possibility of passing.

SB 1196 (Fasano) – Applies to condos and HOA's. Allows collection of rent, suspension of condominium common area use rights and voting rights, right to collect management company charges as part of association's lien. EFFECTIVE DATE: 07/01/2010.

NOTE: The Fasano bill contains much of the language CAN helped draft last year to assist associations. We have been advised that either 1270 or 1272 below will be combined with this bill.

SB 1270 (Ring) – A condominium that has 1 ½ hour or higher fire-rated walls and that is not a high-rise building need not retrofit the inside of units with fire alarm systems or smoke detection systems. Includes suspension of condominium common area use rights when an owner is 90 days delinquent. EFFECTIVE DATE: 07/01/2010.

SB 1272 (Ring) – Condominium and Homeowners’ Associations: increases the statutory cap for past due assessments owed from lenders from 6 to 12 months. In addition to past due liability, if the first mortgagee institutes a foreclosure action against a unit, the first mortgagee must exercise any property preservation rights available under the mortgage being foreclosed. If lender fails to timely fulfill its obligations, the association may take steps necessary to preserve and maintain the unit in safe condition and assess these costs against the unit. The first mortgagee is liable for any special assessments levied against the unit during the pendency of the foreclosure action for property damage. EFFECTIVE DATE: 07/01/2010.

Bills to Modify:

HB 115 (Ambler)/SB 398 (Dockery) – During the pendency of a foreclosure action, if the unit is occupied by a tenant the association may demand the rent and can evict for non-compliance. Condo boards could suspend common area use rights and voting rights but not utility services. This language is all fine.

However, the bill also contains language which would make it more difficult for a board to borrow funds or commit to a line of credit by requiring the same procedures set forth for passing a special assessment or requires the approval of at least 2/3 of the association membership. Anything that makes it more difficult to obtain funds for struggling associations should be closely scrutinized. Requires access to condominium units to be limited to 24-hour advance notice (except in the case of an emergency) and requires that entry be made by at least two individuals one of whom must be a member of the board or a manager or an employee and one of whom must be an “authorized representative” of the association. The identity of the authorized representative seeking access must be provided to the unit owner prior to entering the unit. In addition, the bill revises the grounds for disciplinary action relating to misconduct or negligence of community association managers and requires the DBPR to enter an order permanently revoking the license of a community association manager under certain circumstances. This last provision may or may not meet with approval from the professional management industry. EFFECTIVE DATE: 07/01/2010.

NOTE: Is the foregoing even a problem so widespread that it necessitates further cluttering up Chapter 718? If so, the language could be improved to avoid wrangling over who is and is not an “authorized representative” of the association.

SB 164 (Lynn) – Would require lender to pay the statutory 6 months cap up front if its foreclosure is not completed within 6 months from filing. Applies only to condos. This bill does

not achieve very much because the 6 months up front could be followed by two years of lender inactivity wherein no further funds would be forthcoming. EFFECTIVE DATE: 07/01/2010.

HB 1069 (Wood)/SB 2248 (Negron) – This bill appears to be an attempt to clarify law regarding a municipality’s ability to establish an alternate code enforcement mechanism. Previously, it just said it could (without specifying how). New law clarifies city has to do it by ordinance. Language is added to clarify that these penalties assessed by the alternate code enforcement system must follow the recordation method provided elsewhere in the chapter, and can constitute a lien on the property. Its adds specific language that each county or city may by ordinance provide that the failure to repair a property in disrepair (or if the property is uninhabitable or a danger) is subject to enforcement action.

The bill states that preconditions to transfer of property are not allowed by ordinance. This is poorly drafted and appears to deprive the City of any ability to hold up sale or transfer of property. Additional language specifically says that a city/county cannot require the registry of abandoned/foreclosed properties.

Many of the other changes deal with procedures on code enforcement, making some more advantageous for the city; some not. It provides clarification that if the city does repairs, it has no liability for damage (which includes all types of damages, or people acting at the City’s behest). Thus, it extends the cloak of immunity around the contractors as well. Of course, there is a “good faith” requirement, but it is not clearly defined. EFFECTIVE DATE: 07/01/2010.

Bills to Oppose:

HB 337 (Roberson)/SB 968 (Justice) - This bill provides that a notice of delinquency must be sent to an owner providing an overall total of assessments claimed broken down by assessment or charge, date owed and late fees or collection charges. The association could NOT pursue its legal rights until after such notice is sent AND if the unit owner objects to the amount claimed within the 20-day period, “until the objection is resolved”. EFFECTIVE DATE: 07/01/2010.

NOTE: This bill MUST be defeated as it creates significant and unnecessary hurdles to an association’s ability to recover delinquent assessments.

HB 419 (Robaina)/SB 864 (Garcia) – This bill contains some beneficial provisions but one very troublesome provision inasmuch as it would prohibit homeowners’ associations from charging any sort of transfer fee in connection with the sale of a lot or parcel. EFFECTIVE DATE: 07/01/2010.

NOTE: We have been advised that Representative Domino refuses to hear this bill in his committee so it is effectively dead as of this writing. Moreover, our CAN lobbyists have already

secured Rep. Robaina's promise to remove this offensive language from 419 should it start moving forward.

HB 125 (Rogers) – Rental Property Foreclosure or Short-sale Actions; Requires lenders to notify tenants or lessees of potential foreclosure or short-sale actions against rental property; requires lenders to provide tenants or lessees first right of refusal to purchase property at fair market value; specifies eligibility requirements to exercise such right; requires lenders to use escrow funds for specified purposes, etc. EFFECTIVE DATE: 07/01/2010.

NOTE: This bill is unnecessary and duplicative as there are already federal protections for tenants in delinquent units provided it the recently passed *Protecting Tenants At Foreclosure Act*.

SB 1166 (Altman)/HB 645 (Stargel) - These bills would take away any limit on the number of group homes that could be located in a planned residential community (defined as a local government-approved, planned unit development that is planned and developed as a whole, is designed to serve the unique needs of residents who have developmental disabilities and may include two or more community residential homes) and allow them to be contiguous. It is not certain whether or not this would remove a private residential community's ability to limit the number of group homes that could be located within their borders and the rationale for this legislation is unclear. EFFECTIVE DATE: 07/01/2010.

NOTE: SB 1166 has only two committee references and it has passed its first committee of reference unanimously. HB 645 has been referenced to 3 committees but has yet to be heard.

SB 2270 (Bennett) - This is the bankers' Non Judicial Foreclosure proposal. It does absolutely nothing to ease the current backlog of pending mortgage foreclosures (since it would only apply to mortgages filed after the effective date of the bill's passage) and kicks the door open to a host of other concerns relating to both consumer rights and the possible impact on an association's own foreclosure process. EFFECTIVE DATE: 07/01/2010.

Neutral:

HB 327 (Robaina)/ SB 840 (Sobel) – Community Associations; Revises definition of term "developer" to exclude bulk assignee or bulk buyer; creates the "Distressed Condominium Relief Act"; specifies responsibilities, liabilities, duties, & limitations of bulk assignees & bulk buyers; provides for transfer of control of board of administration; provides for resolution of conflict between specified provisions of state law; provides certain contract & disclosure requirements, etc. EFFECTIVE DATE: Upon becoming law.

NOTE: The purpose of Bulk Buyer Reform is to encourage investors to purchase units in floundering new developments and failed condominium conversions. Traditionally, purchasers of more than 7 units who sold or leased out those units during the ordinary course of business would be treated as a successor developer and would then be responsible for certain construction warranty items and monetary obligations to the membership. If passed, Bulk Buyer relief will hopefully jumpstart community development but the downside will be that these same “investors” will have no significant obligations to the membership.

HB 713 (Workman) - Regulation of Professions; Assigns certain programs to regulation by Division of Professions of DBPR; specifies that department is responsible for regulation of certain professions & administration of certain examinations; limits applicant's review of failed examination questions; prohibits examinee whose examination materials are confiscated from taking another examination under certain circumstances, etc. EFFECTIVE DATE: 07/01/2010.

SB 576 (Constantine) - Deletes an obsolete deadline for the Department of Environmental Protection to adopt rules regarding water quality credit trading. EFFECTIVE DATE: 07/01/2010.

Bills Relating To Mortgage Foreclosures:

HB 35 (Soto) - Mortgage Foreclosure Actions on Homestead Property; Prohibits deficiency decrees in final judgments in foreclosure actions on homestead property; specifies deficiency decrees as unenforceable. EFFECTIVE DATE: 07/01/2010.

HB 75 (Soto) - Homestead Property Foreclosure Actions; Designates act "Foreclosure Bill of Rights"; provides procedural requirements & limitations for plaintiffs, defendants, & courts in homestead property mortgage foreclosure actions; specifies document production requirements; requires mediation; specifies settlement negotiation requirements; provides criteria for commercial reasonableness of renegotiated loans; requires DBPR to adopt rules relating to appraisal methods, etc. EFFECTIVE DATE: 07/01/2010.

HB 581 (Holder) - Mortgage Foreclosures; Specifies limited statute of limitations for specified deficiency judgments; requires claims for deficiency connected with foreclosure actions to be filed within specified time after foreclosure sale; provides exception for participation in Florida Mortgage Foreclosure Diversion Program; provides exception criteria; establishes Florida Mortgage Foreclosure Diversion Program, etc. EFFECTIVE DATE: 07/01/2010.

SB 854 (Sobel) - Rental Property Foreclosure or Short-sale Actions [SPSC]; Requires lenders to notify tenants or lessees of potential foreclosure or short-sale actions against the rental property. Requires the lenders to provide tenants or lessees a first right of refusal to purchase the property at fair market value. Specifies lender liability for certain costs for failure to comply with certain notice requirements. Specifies time restrictions on tenants or lessees bringing actions for damages, etc. EFFECTIVE DATE: 07/01/2010.

SB 1146 (Constantine) - Foreclosures [SPSC]; Provides requirements for landlords following commencement of a foreclosure action. Provides for security deposits and advance rents to be maintained in a specified manner. Provides for disclosure of the foreclosure action to prospective tenants. Provides an exception to liability for failure to provide notice, etc. EFFECTIVE DATE: 07/01/2010.

Undecided:

SB 630 (Jones) - Community Associations [CPSC]; Expresses the legislative intent to revise laws relating to community associations. EFFECTIVE DATE: 07/01/2010.

NOTE: This bill is just a placeholder at present with no content.

SB 846 (Bennett) - Fire Sprinklers [CPSC]; Prohibits the inclusion of certain local amendments to the Florida Building Code adopted by the Florida Building Commission in the Florida Building Code. EFFECTIVE DATE: Upon becoming law.

NOTE: Not sure whether this language would help or hurt our current sprinkler and Life Safety efforts.

SB 1778 (Aronberg) - Mortgage Foreclosures; Specifies applicability to homestead property and certain foreclosure actions. Provides procedural requirements and limitations for plaintiffs, defendants, and courts in certain foreclosure actions. Provides requirements for landlords following commencement of a foreclosure action. Provides for disclosure of the foreclosure action to prospective tenants. Authorizes a tenant to terminate the lease upon receiving notice, etc. EFFECTIVE DATE: 07/01/2010.

SB 1820 (Bennett) - Mortgage Foreclosures; Specifies a limited statute of limitations for certain deficiency judgments. Establishes the Florida Mortgage Foreclosure Diversion Program. Authorizes mortgagees to obtain an extension of the statute of limitations on mortgage deficiencies under certain circumstances. Authorizes mortgagees to offer mortgagors opportunities to participate in the program. Provides for continued participation in the program after certain deadlines, etc. EFFECTIVE DATE: 07/01/2010.

SB 7060 PROPOSED COMMITTEE BILL for Consideration by Judiciary Foreclosure; Requires that during foreclosure proceedings a landlord continue to hold money deposited or advanced by a tenant in a specified manner. Requires a landlord to disclose the existence of foreclosure proceedings to a prospective tenant. Exempts an agent of a landlord from liability for failing to notify prospective tenants of foreclosure proceedings under certain circumstances, etc. EFFECTIVE DATE: Upon becoming law.