

Final Report



Community Association Living Study Council

March 31, 2009

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INTRODUCTION

The Florida Legislature created the Community Association Living Study Council (Council) in 2008 as an amendment to 718.50151, Florida Statutes. The Council members accepted the charge to, “Review, evaluate, and advise the Legislature concerning revisions and improvements to the laws relating to condominiums, cooperatives, and homeowners' associations”. This document constitutes that advice.

COMMUNITY ASSOCIATION LIVING STUDY COUNCIL MEMBERSHIP

Although the Council was mandated to begin in October 2008, it could not begin until February 2009 when a quorum was appointed. The Council is made up of these five members:

MICHAEL ANDREW, Vice President and Assistant General Counsel, Marriott International, Inc. – Appointed by the Governor.

MARK BENSON, Community Association Manager, Certified County Court Mediator - Appointed by the Governor.

ROSA DE LA CAMARA, Attorney – Appointed by the Speaker of the House.

KEVIN STANFIELD, Deputy Director of the Department of Business and Professional Regulation’s Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) – Appointed by the Director of FCTMH as the ex officio nonvoting member.

LAWRENCE WIGDOR, Community Association Manager, Certified County Court Mediator – Appointed by the Senate President.

Mr. Benson chaired the Council with Ms. de la Camara as Vice-Chair.

Deborah Miller was the staff coordinator provided by the Division of Florida Condominiums, Timeshares, and Mobile Homes.

SCOPE OF AUTHORITY

The authority of the Council, as set out in section 718.50151, Florida Statutes, is as follows:

- Receive, from the public, input regarding issues of concern with respect to community association living, including living in condominiums, cooperatives, and homeowners' associations. The Council will make recommendations for changes in the law related to community association living. The issues that the Council will consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.
- Review, evaluate, and advise the Division concerning revisions and adoption of rules affecting condominiums and cooperatives.
- Recommend improvements, if needed, in the education programs offered by the Division.
- Review, evaluate, and advise the Legislature concerning revisions and improvements to the laws relating to condominiums, cooperatives, and homeowners' associations.

PROCEDURES

The Division established a web page for the Council, <http://www.myflorida.com/dbpr/lsc/division/StudyCouncil.html> , that provides information and an email link to offer suggestions and recommendations.

Hundreds of interested parties got emails inviting input. Local newspapers in Tampa and Miami advertised the hearings. The response was good and bad. It was bad to have so many issues that current legislation and practices could not resolve. It was good to be able to get the public involved offering practical (and some impractical) solutions.

Representative Julio Robaina appeared at a Tallahassee meeting to provide background for HB 1397. Some of the advice offered is based on portions of that bill.

Sign in sheets were provided. At the Tampa meeting there were 50 and at Miami Beach 40 attendees. Speaker forms were provided to list issues and notes were taken on the forms as the speakers addressed the Council.

The number of email response was very gratifying. The report compiled has over 400 comments concerning issues based on subject matter and suggestions. It is apparent in-person hearings are helpful and supplanting that with email communication affords a much broader avenue for participation.

Based on the "Green" mandate and to save trees these reports are not included here but are available by sending an email request to Deborah.Miller@dbpr.state.fl.us .

RECOMMENDATIONS FOR IMMEDIATE ACTION BY THE LEGISLATURE

Once a quorum was attained, the Council held its organizational meeting February 20, 2009. Meetings were scheduled as soon as possible based on notice requirements of the Florida Administrative Weekly. They were March 13, Tampa; March 16, Tallahassee; March 23, Tallahassee; March 27, Miami Beach; and March 30, Tallahassee. The Council expressed approval of the amount of public input and participation in person and by email.

- 1) **Foreclosures:** For residential community associations, consider legislative mechanisms designed to resolve the conflict between association members failing to pay assessments and mortgage holders failing to prosecute foreclosure actions, leaving the owners' associations in limbo with nobody paying assessments. It is imperative associations be made whole from unpaid assessments or the spiral of accelerating foreclosures and bankruptcies will continue.
- 2) **Jurisdiction for non-residential condominiums:** We recommend moving the regulatory framework for commercial condominiums, such as timeshares and condominium-hotels, out of Chapter 718, Florida Statutes and completely into Chapter 721 Florida Statutes.
- 3) **Education:** Support the Division's creation of a booklet of relevant portions of laws and procedures for association administration by post turnover boards to be available from the Division's website for educational purposes.
- 4) **Jurisdiction of Division:** Council recommends review and consideration whether Division staffing is sufficient to adequately process complaints. Also we received public testimony input requesting more expedited, proactive efficient processing and enforcement of complaints by the Division.
- 5) **Alternative Dispute Resolution:** Recommend bringing some community association disputes to small claims court by expanding jurisdiction to include injunctive relief for association "disputes". This can be accomplished by expanding section 34.01, Florida Statutes, to include other disputes rather than just 720.311(2)(a), Florida Statutes.
- 6) **Standardization of Policies and Procedures for Community Association/Omnibus Statute for Residential Housing:** The Council heard owner input, both pro and con, regarding the establishment of one standardized statute for residential housing to encompass all types of residential communities (condominium, cooperative, and homeowners' associations). The Council supports the theory and the proposal for the Office of Program Policy Analysis and Government Accountability to determine the number of HOA's and parcels in Florida to determine if the state should regulate these under a single, statutory

scheme. There was significant support for HOA regulation at the west coast meeting.

- 7) **Roll of Ombudsman:** The Council supports the Ombudsman's role and encourages the appointment of a permanent Ombudsman with appropriate staffing.
- 8) **Board Authority:** The Council does not support a proposed requirement that the actual amount of a special assessment must be provided on the meeting notice (providing an estimated amount will suffice). The Council supports establishing certain limitations regarding a board's authority to borrow funds or obtain a line of credit. If a loan or line of credit exceeds 25% of the annual budget, then approval of a majority of the unit owners present and voting should be necessary.
- 9) **Elections:** The Council supports the requirement of having the candidate's certification form submitted **before** the election. The Council does not support legislating mandatory qualifications for board members such as unit ownership or limitations if owned by a trust.
- 10) **Modernization of Statutes:** The Council supports the authority to redact e-mail addresses from unit owner rosters. The Council supports the use of electronic or digital communication in order to facilitate association business, as long as the association only uses such means of communication for association business.
- 11) **CALSC:** The short term, for the Community Association Living Study Council, did not provide time to complete its charge. For volunteer Council members, it is difficult, if not impossible, to hold appropriate public hearings, receive input, reach consensus, and draft legislation within a six-month time, especially with the broad charge given the Council. Additionally, the term is such that the Council completes its tasks after legislation deadlines; proposed legislation by the Council has the potential of falling into a "black hole" until the next legislative session.
- 12) **Council Membership:** The Council recommends deleting council membership restrictions stated House Bill 1397 except that no member of the Council may be a registered lobbyist.
- 13) **Amend Pending Legislation:** in HB 1397, the Council is opposed to the proposed section 468.436(6), Florida Statutes, authorizing mandatory revocation upon the fifth finding. The word firm must be deleted. There are many "firms" with many offices. If the license of the qualifying CAM is revoked it should not shut down a firm that may be managing over 100,000 unit or parcels. Revocation of the individual CAM license will force a firm to replace a CAM violating the law.

- 14) **Pilot Investigative Program:** The Council supports establishment of a 3-year term pilot program for a task force to investigate economic crimes in community associations. But, it is not appropriate to allow wholesale examination of a private companies “books” with out probable cause, and that part must be removed.

- 15) **Regulatory Council of Community Association Managers:** The Council recommends expanding the role of the Regulatory Council of Community Association Managers by making it a “Board” rather than a “council” This will provide relief to the Division of Professions and relate discipline and education appropriately. This has been recommended by the RCCAM for at least three years. They are anxious to overcome the perceived inability of the division to handle resolution and responsiveness to the protection of the public. Community Association Managers are the only Florida licensees with semi-permanent influence on the day-to-day lives and assets of millions of Floridians.