

# BIG BUSINESS LOOKS TO BE A WINNER THIS SESSION

by Polyana da Costa  
pdacosta@alm.com

Property owners and consumers, beware: Critics warn that a long line of bills aimed at helping big business at your expense will be taken up by the Republican-dominated Legislature at its session beginning Tuesday.

The banking industry is back this year with a scaled-back proposal to take some foreclosures out of the courts and resolve them more quickly.

Bills to allow nonjudicial foreclosures of commercial properties have been filed in the House and Senate. The Florida Bankers Association says the bills are intended to speed up the foreclosure process and lead to a quicker recovery of the real estate market.

But consumer and growth-management advocates say they are concerned about the motives of the backers of many of the bills, which they perceive as consumer-unfriendly measures that favor lenders, insurance companies and builders.

"These bills show that money is power," said Plantation insurance lawyer Jennifer Travieso. "They can afford lobbyists to fight for their cause. [Consumers] can't."

On the real estate front, Senate Bill 1288, spon-



Travieso

## BILLS TO WATCH

**SB 328, H59:** Gives process servers unannounced access to gated communities when serving defendants, including homeowners facing foreclosure.

**SB 712:** Specifies which common elements delinquent condominium owners can be blocked from using, such as pools, gyms, meeting rooms and cable TV services.

**SB 738/HB 127:** Requires that tenants of property seized through foreclosure be given 90 days to move out.

**SB 408:** Revived from last year's session, it allows insurers to withhold full payment of a claim until repairs are completed.

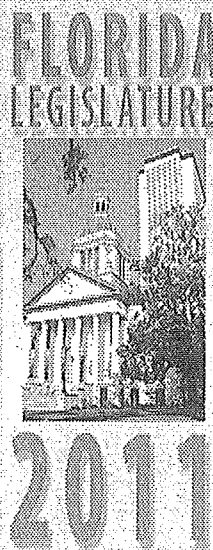
**SB 1288/HB 799:** Allows nonjudicial foreclosures of commercial properties.

**HJR 537:** Proposes constitutional amendment to prevent taxes from increasing on homesteaded and nonhomesteaded properties whose values have declined. It would prohibit increases in annual assessments and millage rates.

**SB 172, 174, 176:** Restores legislation passed last year and currently being challenged in court that made an array of changes to the state's growth-management guidelines.

**SB 1404:** Authorizes expedited environmental permitting for certain commercial or industrial development projects that create a minimum of 50 jobs, or 25 jobs if located in an enterprise zone.

**HB 991:** Similar to SB1404. Changes numerous provisions relating to development and construction, including expedited building permits.



sored by Republican Sen. Alan Hays, would allow foreclosures of commercial properties to be handled outside of courts through the assignment of a trustee. The bill has a House companion, HB 799;

sponsored by Rep. Dana Young, R-Tampa.

If passed, the bill would allow lenders to notify delinquent borrowers of their plans to pursue a **SEE LEGISLATURE, PAGE A10**

# LEGISLATURE: Growth management, insurance also targeted

nonjudicial foreclosure if the borrower does not object in writing within 15 business days after the notice.

Borrowers who reject the procedure can go through the court process.

In 2010, lawmakers passed a similar bill permitting nonjudicial foreclosures of time-share units. A bill to allow nonjudicial foreclosures of residential properties died in a House committee last year.

"The current foreclosure process ties up the court, involves a lot of attorneys and time," Hays said. "The most important things about this bill is convenience and choice. It's more convenient for all the parties involved. Why should we continue to labor through the long court process? Why not offer them an option?"

Anthony DiMarco, executive vice president of government affairs for the Florida Bankers Association, said the bill is "fantastic."

"Foreclosures are taking anywhere from 18 months to two years and even longer for commercial properties," DiMarco said. "The fastest way to recovery is to get through all this. The longer it takes to get this through the court system, the longer it will take to get through the financial crisis."

But commercial real estate attorneys say it's not clear how effective the bill will be if it becomes law.

"From the perspective of lenders, increased efficiency in resolving loan defaults and foreclosures is a good thing," said attorney Stuart Kapp, a partner at Proskauer Rose in Boca Raton. "But from the perspective of borrowers, the inefficiency of the foreclosure process can often be used as leverage to achieve a better workout."

Lenders are normally under more pressure to reach a settlement with a borrower when they face the expensive legal fees involved in the judicial process, said Kapp, who represents lenders, developers and property owners.

Michael Woodbury, an attorney at Woodbury & Santiago in Miami, said he would like to

see something done to speed up foreclosures of commercial properties. But because the bill makes nonjudicial foreclosures optional, it would not provide much relief to lenders, he said.

"In practice, the procedure would only apply to situations where there is a consent to foreclose on the part of the borrower," he said. "When I have consent from the borrower, the foreclosure work already moves very quickly. In a consensual situation, my experience has been that a lender can get to a judgment within three to four months."

DiMarco said the FBA is not pushing for legislation on residential properties, as it did last year, because the Dodd-Frank financial reform law of 2010 limits the use of nonjudicial foreclosures on residential properties.

"Fortunately, that proposed [state] legislation did not pass, as we saw it as a very self-serving, consumer-unfriendly bill," said Donna Berger, an attorney and executive director of the Community Advocacy Network.

She said the organization will be "vigilant" to ensure that language involving nonjudicial foreclosures of residential properties does not make its way into any bills this year.

## PROPERTY INSURANCE

Insurance reform bills also will be on the radar of many of many consumer advocates.

One of several bills affecting property insurance regulations, SB 408, would change how insurers pay for claims. Insurers resolve many claims with a single payment upfront and without proof that repairs have been made.

The bill, sponsored by Sen. Garrett Richter, R-Naples, would allow insurance companies to withhold full payment until the work is completed.

"This bill would be devastating for policyholders," Travieso said. "It's an attempt to try to continue to take away rights

from Florida policyholders [and] giving more rights to insurance companies. It's disturbing."

The bill also gives insurance companies the option to provide coverage against damage from sinkholes, the naturally occurring collapse of the limestone bedrock under structures.

Insurers say claims exceed the total premiums for sinkhole coverage. The companies blame recent rate hikes on the increasing number of sinkhole claims, which they say tripled from 2006 to 2010.

Travieso said the bill is also troubling because it cuts from five to three years the time a policyholder has to file a court challenge when a claim is denied.

"This is very similar to a bill they tried to pass last year," Travieso said. "We were lucky enough to have a governor [Charlie Crist] who saw this bill was going to be no good for policyholders and was able to veto it. I don't know that our current government will do the same."

Hays also said he is drafting a bill he hopes to file by Monday seeking major changes to the state-backed Citizens Property Insurance Corp.

He said the bill is intended to lure private insurers back to Florida, to "reestablish a competitive market" and to reduce the burden of Citizens, which has become the largest insurer in Florida with about 1.3 million policies.

The bill would limit the size of the properties Citizens can insure and limit the number of policies the company can carry. The bill also would allow insurance companies to raise rates without the approval of state regulators.

Citizens has \$450 billion in exposure and less than \$15 billion in reserves, Hays said, setting the stage for a potential financial disaster if a major hurricane hits Florida.

"If it were a private company, it would have been shut down. We need to quit this socialism program, which is what we have going on right now," Hays said. "None of us wants to pay excessive premiums, but I want the people of Florida to have an



Attorney Donna Berger said it was fortunate the residential properties legislation proposed last year did not pass. "It was a very self-serving, consumer-unfriendly bill."

honest picture of the situation."

Travieso said the rhetoric that deregulation of the insurance industry and rate hikes are necessary to protect policyholders has long been used by legislators as an excuse to favor the insurance industry.

"It's very scary, where our legislators are trying to take the insurance industry," she said.

## GROWTH MANAGEMENT

Several developer-friendly bills have a chance of passing this year, said Charles Pattison of 1,000 Friends of Florida.

A controversial bill, which passed in 2009 and was declared unconstitutional by a trial court judge last year, is back in the form of three bills.

The bill made an array of changes to the state's growth management guidelines, which had been in place since 1986. They allowed residential developers to build more houses without expanding roads in certain urban areas. They also allowed counties and cities to create new urban areas, making them exempt from certain road-building, infrastructure requirements.

A Tallahassee Circuit Court judge ruled the bill was an unfunded mandate because it would shift millions of dollars in costs to cities and counties. The case is pending before the 1st District Court of Appeal.

Proponents of the bill said the law was needed to promote

infill development in "dense urban areas," Pattison said. But the legislation's definition of "dense urban areas" included those with one house per acre, which are remote rural areas of low density.

Exempting developers from having to build infrastructure in the low-density areas will simply shift the burden to local government and taxpayers, and remove state oversight and regulations that are in needed to avoid urban sprawl when those areas are being developed, critics say.

Governments and developers are facing uncertainty as a result of the lawsuit, according to an analysis and fiscal impact statement by the staff of a Senate committee.

Three bills — SB 172, SB 174 and SB 176 — would revive the provisions that resulted from the passage of the Senate Bill 360.

Pattison said it's too early to tell what will come out of the bill and others that could further erode Florida's growth management laws.

"We don't know at this point exactly what's out there yet, but we know we have a lot to worry about," he said.

Under Gov. Rick Scott's proposed budget, the Department of Community Affairs, which oversees growth management, will lose 318 positions. The department could possibly be merged with the Department of Transportation; and the Department of Environmental Protection. That would leave no more than 10 employees working on growth management for the state, Pattison said. With a drastically reduced budget and a shortage of staff, there would be few resources which which to coordinate growth in the state.

"Comprehensive planning is part of the solution to this economic crisis," Pattison said. "We don't see it as a job killer."

Polyana da Costa can be reached at (954) 468-2614.