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Lawyer breaks down elements of new condo bill

Marci Shatzman mshatzman@tribune.com

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Condo and homeowner associations and cooperatives in Florida are now subject to a bill that went into effect on July 1. Senate Bill 1196 addresses rental restrictions, access to common elements (clubhouse and pool), elections and who is eligible to be a director, collection of rent and assessments and many other new issues that have come up because of the economy.

Donna DiMaggio Berger is executive director of the Community Advocacy Network, created by her law firm of Katzman, Garfinkel & Berger, as a statewide, nonprofit advocacy group to promote positive community association legislation. Berger is the managing partner of the law firm. She speaks on this issue before community coalitions. She answered some questions recently about the new bill.

Q: What's the biggest impact of this bill?

A: Retrofit relief for thousands of condo associations for sprinkler systems and elevator upgrades and hardwire smoke alarms. This bill exempts condos and cooperatives that are less than four stories high with an exterior corridor from installing a manual fire alarm system. Condos and cooperatives can vote to forego putting a sprinkler system in the common areas of a high-rise. It created a moratorium of five years with certain provisions for modifying existing elevators and escalators.

Q: How will it help associations suspend the rights of residents who haven't paid their fees to continue using the common areas?

A: It makes people angry to be sharing common areas, including the clubhouse, tennis courts and swimming pools, with unit owners who haven't paid their condo or homeowner fees for years. HOAs always had that right, but it had to be in their governing documents; now it can be by statute. Condos can suspend use rights of owners more than 90 days delinquent at a regular board meeting. In an HOA, they need to give 14 days notice to the owner they're attempting to suspend and have a meeting of three members not on the board. It will be challenging to enforce this. How are you going to keep them out of the clubhouse? Are you going to post a guard there? Having a right and exercising it are two different things.

Q: What do homeowner boards have to do now about these changes?

A: This bill gave a lot of rights to associations by statute that ordinarily they could only find in their government documents, such as suspending use and voting rights, fining and collecting rent. They will need to have a well thought-out plan of action. This is a brand new law with significant consequences. Parts of this bill undoubtedly will be challenged. The collection of rent will be vulnerable to challenge. There are some issues with wording that leave it open to varying interpretations and impairment to contracts after the fact.

Q: How big a deal is this new law and did it have a rough road to passage?

A: It is a 103-page bill that just missed the government's veto because of the retrofit language. The fire marshals and

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sprinkler companies were pushing hard. CAN and our advisory council members had a big role in getting it passed. The current law only required sprinklers in hallways, not the units. There will continue to be fire incidents...and typically will only impact the unit if it's a concrete block building. The bill allows the communities to decide for themselves whether or not they want to sprinkle.

Q: What's missing and what was gutted from the bill?

A: Condo board member eligibility. We wanted to see it transported to HOA boards. There's nothing in the HOA act that can prevent a felon from serving on an HOA board. We're trying to achieve some parity of the statues. Why should condos restrict felons and not HOAs? Why do we require or condo directors to say they read the documents and or attend a course within 90 days but not HOAs? I would have looked at those types of issues to try and achieve more parities.

Q: Is there anything else you would have liked to see?

A: HOAs with older documents would be exempt from having them extinguished. They should just be exempt [because it's expensive and time consuming to do.] We tried it once before and it got shot down. It would be the right thing to do.

Q: Overall, what do you think of this law?

A: Overall on balance it's an incredibly positive bill. Is it a cure all? Absolutely not. This bill took some bold steps forward.

Q: What will be CAN's next campaign?

A: Rogue board member making bad decisions. Boards not handling hurricane claims correctly, for instance, or where vendors are taking direction from one board member. Your entire investment is at risk because of one board member's decision.

Q: What's your biggest piece of advice for residents in these communities?

A: Ignorance is not bliss in a community association. You need to know what's going on.

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