CALL 2015 Legislative Guide for Community Associations

The Florida Legislature's 2015 Amendments to Laws Affecting Community Associations

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If you are reading this guidebook you are either a volunteer director in one of Florida’s many shared ownership communities, you manage one of these communities or you own or work for a company which provides services to these communities. In order to best serve your communities, you must stay current and understand the laws which pass each year in Florida and impact condominiums, cooperatives, homeowners’ associations, timeshares and mobile home communities.

More than a decade ago, Becker & Poliakoff created a statewide not-for-profit association advocacy initiative known as the Community Association Leadership Lobby or CALL. By creating a vehicle which allows the voices of community association members to be heard throughout the legislative process, we have been able to pass positive legislation over the years and head off harmful proposals. The guidebook in your hands reflects the many hours of work our CALL Team spends each year ensuring that your community’s needs are understood by our public policy makers.

In addition to our legislative news, the law firm of Becker & Poliakoff has been growing our statewide community association presence to better serve the communities we represent. A number of well-known attorneys who built their own successful practices over many years have joined our team to provide the largest source of legal talent to Florida’s shared ownership communities. Notably, Steve Mezer in the Tampa area, Doug Christy in Tampa and Sarasota, Jane Cornett and Buddy Goodge in the Treasure Coast, Harry Carls and Robert Taylor in Central Florida and Donna DiMaggio Berger and Howard Perl in South Florida. We are also pleased to have former CALL Co-Executive Director and Firm Shareholder, David Muller, recently relocate to our Naples Office.

Each year, we continue to strive to bring value and innovative services to our clients and 2015 is no different as we roll out a series of convenient online classes for board members and managers, as well as complimentary insurance benchmarking services to help our client communities better document their condition pre-storm. For those of you who are clients of the Firm, our annual meeting notice questionnaire has gone high-tech and will make our preparation of your annual meeting notice package using online resources even more convenient for you.

What follows is a summary of this year’s legislation. Legislative material can be dense and this guidebook is one vehicle for disseminating this information to our clients and friends. We will also be teaching our Legal Update class statewide to further break down this information for you. Our class listing can be found at www.bplegal.com/events.

As always, it is both our pleasure and our mission to serve the significant percentage of Florida’s population which resides in shared ownership communities.

Very Truly Yours,

Ken S. Direktor, Esq.
Chair, Becker & Poliakoff Community Association Practice Group
The 2015 Florida Legislative Session was one of the most unusual in recent history. In a surprise move, the House of Representatives adjourned three days early in a dispute with the Senate over the budget and Medicaid expansion. As I walked around the Capitol that day, it was clear that the early adjournment sine die had caught everyone off guard, including legislators, veteran lobbyists and staffers. Although the House and Senate were able to put aside their differences and finish up their work on the budget during the special session, deep divisions remain which will likely set the tone for next year’s session.

One of the benefits of the early adjournment was that some troublesome bills that could have passed during the last week ended up “dead.” One of these was the “estoppel certificate” bill that would have re-written the laws dealing with estoppel certificates. CALL opposed the bills throughout the process. I spoke in opposition to the bills at committee meetings in the House and Senate. I also met with the House and Senate sponsors and members of the House and Senate committees that heard the bills. The bill changed throughout the process for the better, but in the end there were still significant concerns. The last version of the bill set caps on the amount that associations can charge for estoppel certificates, prohibited associations from collecting the fee in advance, and prohibited associations from collecting the fee if the certificate was not timely provided.

Another bill that we lobbied against that also stalled early in the process was a bill that would have shortened the “statute of repose” from 10 years to 7 years. The statute of repose operates as an absolute bar to an owner’s (including community associations) right to have its dispute regarding faulty construction resolved in the manner provided by law. The bill passed narrowly in its first committee in the House of Representatives, but we were able to raise enough concerns that the bill was never heard in any other committee or in the Senate.

On a positive note, some good bills passed this year, including HB 791 by Rep. Moraitis and Rep. Fitzenhagen, which encourages the use of electronic notice and electronic voting. This guide includes a summary of HB 791, and other bills of interest to community associations.

It is important that you are engaged in the legislative process. You can do that by staying informed about the bills that are filed in Tallahassee, and by reaching out to your local legislators to explain the needs of your community. The CALL website, www.callbp.com provides useful tools and information to enable you to be a strong advocate for your community.

On behalf of our CALL Team, I thank you for your support and trust that you will find this guide to be useful and informative.

Sincerely,

Yeline Goin, Esq.
Executive Director
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The more than three dozen attorneys in Becker & Poliakoff’s Community Association Law Practice Group provide the entire spectrum of legal services needed by condominium, cooperative, time shares and homeowners’ associations throughout Florida. Each of our attorneys plays an integral role in the success of our client communities by assisting the Board and management to operate safely within the bounds of the pertinent statutes and the associations’ governing documents as well as navigating more complicated legal matters when they inevitably arise in the lifespan of every community.

Contact us today to see how we can help you and your association achieve your goals.

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Representative George Moraitis, Sponsor of HB 791: “We had another great session this year in Tallahassee, and it was once again a privilege to work with CALL and the attorneys at Becker & Poliakoff. CALL is a very important voice in our state capitol as an advocate for our community association residents on a variety of issues. This year, CALL was very instrumental in helping me pass HB 791 which gives Associations greater flexibility in their voting procedures by allowing electronic voting to be implemented. I look forward to continuing to work closely with CALL as we prepare next year’s legislative agenda and further our efforts to assist the citizens of our state living in community associations.”

Representative Heather Fitzenhagen, Sponsor of HB 791: “I would like to thank Rep. George Moraitis for allowing me to amend my “E-Voting” language to his very good bill (HB791). The passage of my E-voting amendment onto HB791 is undoubtedly a huge victory for Floridians and the thousands of community associations statewide. This legislation, in part, will allow community associations save precious dollars, while conducting more thorough and secure electronic voting as an option for its members.”

2016 Legal Update

Each year, the Florida state legislature enacts changes to laws governing its more than 60,000 community associations.

Don’t miss our FREE 2016 Legal Update classes where you will learn how to implement all of the laws passed this year impacting condos, co-ops, HOAs, timeshares and the community association management profession.

Check out our events page at [www.bplegal.com/events](http://www.bplegal.com/events) for a 2016 Legal Update class at a time and location near you.
HB 791: RELATING TO RESIDENTIAL PROPERTIES
Chapter 2015-97, Laws of Florida, Effective Date: July 1, 2015

DIGITAL OR ELECTRONIC TRANSMISSION OF PROXIES

Condominiums, Cooperatives & Homeowners’ Associations
§617.0721, Florida Statutes

- Notwithstanding any provision to the contrary in the articles of incorporation or bylaws, any copy, facsimile transmission, or other reliable reproduction of the original proxy may be substituted or used in lieu of the original proxy for any purpose for which the original proxy could be used if the copy, facsimile transmission, or other reproduction is a complete reproduction of the entire proxy.

NOTE: The previous law did not specifically authorize owners to transmit a copy of their proxy to the association (for example, by fax or as an email attachment). The intent of this language is to facilitate voting. Many owners are not available to be at meetings in person and may wish to bypass U.S. mail and send their proxy to the association in some other fashion. The language is similar to what is currently in Section 607.0722(10), Florida Statutes, which governs corporations for-profit.

ELECTRONIC NOTICE TO OWNERS

Condominiums, Cooperatives & Homeowners’ Associations
§§718.112(2)(d)6, 719.106(1)(d)3., 720.303(2)(c)1., Florida Statutes

- The previous law provided that in order to send notice to owners electronically, the bylaws must provide for electronic notice and the owner must consent in writing.
- The new law removes the requirement that electronic notice be authorized by the bylaws.
- Therefore, as long as the owner consents in writing, the association can provide the owner with electronic notice of board meetings and membership meetings. This new law does not apply to meetings of members to recall board members or to committee meetings in condominiums or co-operatives. No similar exception in homeowners’ associations.

PRACTICAL POINTER: Associations should develop a form authorization for electronic notice and send it to all current owners and include it in new owner packages.
ELECTRONIC VOTING

Condominiums, Cooperatives, & Homeowners’ Associations

§§718.128, 719.129, 720.317, Florida Statutes (NEW)

- Associations may conduct elections and other unit owner votes through an internet-based online voting system if a unit owner consents, in writing, to online voting and if association provides each unit owner with:
  - A method to authenticate the unit owner’s identity to the online voting system;
  - For elections to the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot (N/A for Homeowners’ Associations);
  - A method to confirm, at least 14 days before the voting deadline, that the unit owner’s electronic device can successfully communicate with the online voting system.

- The online voting system must be:
  - Able to authenticate the unit owner’s identity;
  - Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit;
  - Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote;
  - For elections to the board, able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie an election ballot to a specific unit owner;
  - Able to store and keep electronic votes accessible to election officials for recount, inspection and review purposes.

- A unit owner voting electronically shall be counted as being in attendance for purposes of a quorum.

- A substantive vote of the owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section. (This provision applies to condominiums and to co-operatives. It does not apply to homeowners’ associations as Chapter 720 allows the use of general proxies.)

- In order to implement electronic voting, the board must adopt a resolution. The resolution must:
  - Provide notice to the unit owners of the opportunity to vote through an online voting system;
  - Establish reasonable procedures and deadlines for unit owners to consent, in writing, to online voting, and
  - Establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent.

- Written notice of the board meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting, and evidence of compliance of the 14 day notice requirement must be made by affidavit executed by the person providing notice and filed with the official records of the association.

- The owner’s consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board resolution.

PRACTICAL POINTER: An association that wants to implement electronic voting should begin the process by finding a company that has an electronic voting program that meets the requirements of the statute, and adopting a board resolution authorizing electronic voting. The board resolution should specify the procedure for obtaining owner consent for electronic voting.
FINES/ PENALTIES (PROCEDURE)

Condominiums, Cooperatives, & Homeowners’ Associations
§§718.303(3), 719.303(3), 720.305(2), Florida Statutes
- The new law clarifies that it is the board of administration of the association that is responsible for levying any fines.
- The committee formed to hear cases regarding potential fines may not include board members or persons residing in a board member’s household. (Cooperatives--This is already the law in the Condominium and Homeowners’ Association Act).
- The role of the fining committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.

PRACTICAL POINTER: The board should review its fining procedures to ensure that they are consistent with the requirements of statute.

APPLICATION OF PAYMENT/ASSESSMENTS

Condominiums & Cooperatives
§718.116(3) and (5), 719.108(3), Florida Statutes
- Clarifies existing law that the application of payment provision, which requires any payments to be applied first to interest, then late fees, then to costs and reasonable attorney's fees, applies notwithstanding Section 673.3111, Florida Statutes, any purported accord and satisfaction, or any restrictive endorsement, designation or instruction placed on or accompanying a payment.
- Clarifies that the claim of lien secures administrative late fees (in addition to the unpaid assessment, interest, costs and attorney's fees). (Condominiums—This is already addressed in the Cooperative Act).

NOTE: Current law provides for a specific order in which payments received from a unit owner are to be applied (first accrued interest shall be paid, followed by any administrative late fees, then any costs and attorney's fees, and finally, the delinquent assessment). The new law clarifies that the required distribution of delinquent assessment payments applies in spite of any purported “accord and satisfaction.” The statute is contrary to the finding of the Second District Court of Appeal in the case of St. Croix Lane Trust & M.L. Shapiro, Trustee v. St. Croix at Pelican Marsh Condominium Association Inc., 144 So.3d 639 (Fla. 2nd DCA 2014). In that case, the court held that if a check is tendered for less than the total amount of a disputed claim, the acceptance creates an accord and satisfaction if the tender is accompanied by an offer to settle for the tender amount. The case raised concerns as to whether an association could accept partial payment for a delinquent assessment. This legislative change puts to rest those issues with respect to condominiums and cooperatives and clarifies that the association may accept partial payments.

Homeowners’ Associations (N/A): The new law does not amend the homeowners’ association statute with respect to application of payments and accord and satisfaction. Therefore, homeowners’ associations will still need to proceed with caution when an owner sends partial payment.
**OFFICIAL RECORDS**

**Condominiums & Cooperatives**  
§§718.111(12), 719.104(2), Florida Statutes  
- Amends the official records “catch-all” provision which previously provided that “all other records of the association...which are related to the operation of the association” are official records. The new law clarifies that these “other” records are “written” records.

**NOTE:** The “written records” catch-all provision is already in Chapter 720, Florida Statutes, which governs homeowners’ associations. This makes the condominium and cooperative statutes consistent with the homeowners’ association statute.

**PRACTICAL POINTER:** The Board may wish to consider adopting a records retention policy for non-written records such as meeting and security recordings.

**SUSPENSION OF VOTING AND USE RIGHTS**

**Condominiums & Homeowners’ Associations**  
§§718.303(5) and (7), 720.305(5) and (6), Florida Statutes  
- If an owner or member’s voting rights have been suspended for any reason, the total number of voting interests in the association will be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose.

**NOTE:** The votes of the suspended member(s) must be reduced from the total number of voting interests of the association when calculating the vote needed for any action. For example, if there are 100 voting interests in the association and there are 5 voting interests suspended, then when calculating the voted needed for an action, it will be based on 95 voting interests.

- The suspension of voting rights or right to use common elements applies to a member and, when appropriate, the member’s tenants, guests or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple parcels owned by a member.

**NOTE:** This will allow the association to suspend the use rights or voting rights with respect to all of the units owned by the member. For example, if a person owns two units and is delinquent in paying assessments on one unit but not the other, the association may suspend that person’s voting rights with respect to both units.

**Cooperatives (N/A):** These provisions were not added to the Cooperative Act, even though the Cooperative Act contains provisions dealing with the suspension of voting and use rights.
For more than four decades Becker & Poliakoff attorneys have been helping communities pursue their rights against developers and design professionals for defects associated with new construction, renovation and repair projects.

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EXTENSION OF DISTRESSED CONDOMINIUM RELIEF ACT

Condominiums
§718.707, Florida Statutes
- Extends the “Distressed Condominium Relief Act” also known as the “bulk buyer law” until July 1, 2018. Currently, the bulk buyer law is set to expire on July 1, 2016.

Cooperatives & Homeowners’ Associations (N/A)

INSURANCE

Condominiums
§718.111(11), Florida Statutes
- Removes the provision that requires the association to be responsible for all “uninsured losses”.
- Clarifies that in the absence of an insurable event, the responsibility for the reconstruction, repair or replacement will be determined by the “maintenance” provisions of the declaration or bylaws.

NOTE: This is a glitch fix. It is intended to clarify that the association’s obligation to subsidize insurance shortfalls for items that may otherwise be the unit owner’s responsibility is limited to situations where the association is responsible to insure the damaged element. It is also intended to clarify that in the absence of an insurable event, it is the maintenance provisions of the declaration or bylaws that will control who is responsible for reconstruction, repair, or replacement.

PRACTICAL POINTER: Associations should review their condominium documents regarding maintenance responsibilities to ensure that they are consistent with their intent and the law.

Cooperatives & Homeowners’ Associations (N/A)

SHORT TITLE FOR CHAPTER 720, FLORIDA STATUTES

Homeowners’ Associations
§720.3015, Florida Statutes
- Provides a “short title” for Chapter 720, Florida Statutes.
- Chapter 720 may be cited as the “Homeowners’ Association Act.”

Condominium & Cooperatives (N/A)
DEFINITION OF GOVERNING DOCUMENTS

Homeowners’ Associations
§720.301(8), Florida Statutes
- Amends the definition of “governing documents” to include rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Condominium & Cooperatives (N/A)

FINES (AMOUNT)

Homeowners’ Associations
§720.305(2), Florida Statutes
- A fine levied by a homeowners’ association may exceed $100 per violation if provided in the governing documents.

NOTE: The previous law provided that a homeowners’ association could levy a fine of up to $100 per violation. Now an association may fine more than $100 per violation, if provided in the governing documents. For a continuing violation, the law did not change. A fine may not exceed $1000 in the aggregate, unless provided in the governing documents.

SUSPENSION OF USE RIGHTS (VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS)

§720.305(2)(a), Florida Statutes
- Amends the suspension of use rights provision to state that a suspension may not “prohibit” an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

NOTE: The law previously provided that a suspension may not “impair the right” of an owner or tenant to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The previous law raised the question regarding whether homeowners’ associations could for example, turn off gate transponders and require owners to enter the gates through the visitor entrance. The new language may give homeowners’ associations additional rights related to vehicular entry of owners who are delinquent in their assessments.

Condominium & Cooperatives (N/A): The Condominium and Cooperative Acts do not have the “impairment” language that was in the Homeowners’ Association Act. Those statutes state that the associations may not suspend the use of “common elements needed to access the unit.”
HB 791: RELATING TO RESIDENTIAL PROPERTIES
Chapter 2015-97, Laws of Florida, Effective Date: July 1, 2015

AMENDMENTS

Homeowners’ Associations
§720.306(1)(b), Florida Statutes
- The failure to provide notice of recording a homeowners’ association amendment does not affect the validity of the amendment.

NOTE: The law provides that within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association. The copies of the notice may be provided electronically to those owners who previously consented to receive notice electronically.

Condominium & Cooperatives (N/A): The Condominium and Cooperative Acts do not require the association to mail a copy of the amendment after it has been recorded.

BOARD MEMBER ELIGIBILITY

Homeowners’ Associations
§720.306(9), Florida Statutes
- A person who is delinquent on the last day that he or she could nominate himself or herself to the board, is not eligible to be a candidate and may not be listed on the ballot.
- A person serving on the board who becomes 90 days delinquent in the payment of any monetary obligation shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law.

Condominium & Cooperatives (N/A): The above described provisions regarding board eligibility are already included in the Condominium and Cooperative Acts.
Representative Chris Sprowls, Sponsor of HB 643: “I filed HB 643 to assist condominium owners who were being forced from their homes as a result of Florida Statute 718.117. The bill sought to balance the unique form of ownership that is condominiums with the property right of the condo owner.”

Representative James “J.W.” Grant, Sponsor of HB 643: “No Floridian should ever have their private property rights be trampled on because of poor public policy that allows for the exploitation by a few. Our bipartisan coalition took the first step in ensuring that citizens in this state cannot be forced to sell their homesteaded property against their will and in many cases, for significantly less than fair value. We still have more work to do, but HB 643 was a significant step in the fight to protect the property rights of Floridians, and I will continue that fight as long as I am in office.”

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**Condominiums**

§718.117, Florida Statutes

The new law makes changes to the laws regarding condominium terminations. Currently, the law allows an “optional termination” if 80% or more of the members vote in favor of termination, and no more than 10% reject the termination. The new law, among other things, provides:

- The total voting interests of the condominium must include all voting interests when considering a plan of termination, and a voting interest may not be suspended for any reason when voting on termination.
- If 10 percent or more of the total voting interests of the condominium reject a plan of termination, another plan of termination may not be considered for 18 months after the date of the rejection.
- An optional termination vote may not take place until 5 years after the recording of the declaration of condominium, unless there is no objection to the termination.
- If members of the board are elected by a bulk owner, unit owners other than the bulk owner may elect at least 1/3 of the members of the board before the approval of any plan of termination.
- If a “bulk buyer” owns 80% or more of the voting interests in a residential condominium association, the plan of termination is subject to the following:
  - If the former units are offered for lease to the public after termination, each unit owner in occupancy immediately before the termination may lease his or her former unit 12 months on the same terms as similar unit types are being offered to the public;
  - A “homestead” unit owner is entitled an additional payment for relocation costs in an amount equal to 1% of the termination proceeds;
  - All owners other than the bulk owner must be compensated at least 100% of the fair market value of their units, as determined no earlier than 90 days before the date that the plan of termination is recorded by an independent appraiser selected by the termination trustee;
  - For an original purchaser from the developer whose unit is “homestead” or is an “owner occupied-operating business”, and who is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit, the fair market value shall be at least the purchase price paid for the unit.
The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination.

If the unit owner is current in the payment of assessments and other monetary obligations to the association and any mortgage encumbering the unit, the lesser of the mortgage balance or the termination proceeds shall be deemed to have satisfied the first mortgage in full.

The plan of termination must disclose: (1) the identity of the person or entity that owns or controls 50 percent or more of the units, and if an artificial entity, a disclosure of the natural person or persons who manage or control the entity and the natural person who owns or controls 20 percent of the artificial entity that constitute the bulk owner; (2) the units acquired by any bulk owner, the date each unit was acquired, and the total compensation paid to each prior unit owner by the bulk owner; (3) the relationship of any board member to the bulk owner or any person affiliated with the bulk owner.

The termination proceeds allocated to a unit may be offset by the following, including attorney's fees and costs:

- All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the association;
- All costs of clearing title to the owner's unit;
- All costs of removing the owner from the unit if the owner fails to vacate the unit as required by the termination plan;
- All costs related to the breach of the plan;
- All costs related to the removal and storage of personal property remaining in a unit;
- All costs related to the appointment of a receiver or attorney ad litem acting for the owner if the owner is unable to be located.

The plan of termination may be voted on at a meeting of the unit owners, or by written action. If the vote is at a meeting, the owners may vote to reject the plan in person or by proxy, or by delivering a written objection to the association at or before the meeting. If the termination is approved by written consent or joinder without a meeting, a unit owner may deliver a written objection within 20 days after the date that the association notifies the nonconsenting owners that the plan of termination has been approved by written action.

The new law includes additional provisions regarding the use of the common elements after termination; the withdrawal of a termination plan before the sale of the condominium property; scrivener's errors in the plan of termination; valuation of the common elements; and obligations of lienholders.

A unit owner or lienholder may contest a plan of termination by initiating a petition for mandatory non-binding arbitration pursuant to Section 718.1255, Florida Statutes. The unit owner or lienholder may only contest: (1) the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners; (2) that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by law; and (3) that the required vote to approve the plan was not obtained.

The arbitrator will have the authority to void the plan or grant other relief. The arbitrator shall automatically void the plan if the required disclosures are omitted, misleading, incomplete, or inaccurate.

Cooperative and Homeowners’ Associations (N/A)
Representative Jimmie T. Smith, Sponsor of HB 71: “The goal of HB 71 is to clarify what a service animal is, and the types of disabilities that may legitimately entitle someone to a service animal. The ultimate goal is to provide a better quality of life for disabled persons, including persons with disabilities that are not readily visible. Lastly, we will help those who legitimately need a service animal by penalizing those who misrepresent the need for a service animal.”

§413.08, Florida Statutes

- Amends the definitions for “individual with a disability” to mean a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual.
- Amends the definition for “major life activity” to mean a function such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- Adds a definition for “physical or mental impairment” to mean a (1) physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; or (2) a mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, such as an intellectual or developmental disability, organic brain syndrome, traumatic brain injury, post traumatic stress disorder, or an emotional or mental illness.
HB 71: RELATING TO SERVICE ANIMALS
Chapter 2015-131, Laws of Florida, Effective Date: July 1, 2015

- Extends the term “public accommodation” to include timeshares that are transient public lodging establishments, but exempts air carriers covered by the Air Carrier Access Act of 1986.
- Amends the definition of a “service animal” to mean an animal that is trained to do work or perform tasks for an individual with a disability. The work done or tasks performed must be directly related to the individual’s disability. It also limits the term “service animal” to a dog or miniature horse.
- Requires public accommodations to modify their policies to permit the use of service animals.
- While a public accommodation may ask if the animal is required because of a disability, they are not allowed to ask about the specific nature or extent of the individual’s disability. A public accommodation may ask if an animal is a service animal required because of a disability and what work or tasks the animal has been trained to perform.
- Specifies that a service animal is to be kept under the control of its handler, and must have a harness, leash, or other tether, unless the handler is unable because of a disability to use a harness, leash, or tether, or it would interfere with the service animal’s safe, effective performance of work or tasks, in which case, the service animal must be otherwise under the handler’s control by means of voice control, signals, or other effective means.
- Authorizes a public accommodation to remove the service animal if it is out of control and the animal’s handler does not take effective action to control it, the animal is not housebroken, or the animal’s behavior poses a direct threat to the health and safety of others.
- Interfering with the right of a disabled individual with a service animal to access a public accommodation is a second degree misdemeanor, and the criminal penalty has been revised to include 30 hours of community service for an organization that serves individuals with disabilities.
- A person who knowingly and willfully misrepresents himself or herself, through conduct or verbal or written notice, as using a service animal or being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, and must perform 30 hours of community service for an organization that serves individuals with disabilities or with another entity or organization at the discretion of the court, to be completed in not more than 6 months.
- With respect to housing accommodations (such as community associations), the law states that it does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another Florida law with regard to other assistance animals.

NOTE: The primary purpose of this new law is to address service animals (either a dog or miniature horse) in places of public accommodation. Some community associations may be considered places of public accommodation depending on their rental policies and/or whether they have areas that are accessible to the public.

NOTE: The Fair Housing Act, which applies to housing accommodations such as community associations, requires that in certain cases, associations must waive their “pet rules” for service animals and emotional support animals. If an association receives a request for an emotional support animal (which is not addressed by this new law) or a service animal, it should consult with its association attorney for advice.
Imagine opening the Sunday paper and seeing a story about a law that guarantees any size pet or breed in condos, even if an association has rules prohibiting such animals. Or, a law prohibiting associations from regulating leasing in any manner. Has this happened yet? No, but outlandish laws do pass on a variety of topics that can impact the significant percentage of Floridians living in shared ownership communities. Getting involved is more important than it has ever been.

The Community Association Leadership Lobby (CALL) was created in 2003 by the law firm of Becker & Poliakoff to provide a unified voice to the millions of owners in Florida’s condominium, cooperative and homeowners’ associations. Our first battle was waged to allow owners in older high-rises to decide for themselves whether they wanted to retrofit their buildings with expensive fire-sprinkler retrofits. Opt-out rights became the law of the land as a result. CALL continues to lead the way to promote positive community association legislation and to ensure that harmful legislative proposals are swiftly defeated. You can lend your voice to the process by joining CALL and being part of the story rather than reading about it after the fact.

WHAT DOES CALL DO?
CALL helps community leaders engage with legislators to work collaboratively on legislation impacting shared ownership housing properties. CALL’s goals are accomplished through our full time lawyer and lobbyist in Tallahassee who monitors bills and works closely with legislators and staff to ensure CALL’s legislative priorities are being met.

HOW DOES CALL ACCOMPLISH ITS GOALS?
CALL members are connected through social media and monitor the CALL website (including news feeds, blogs, and legislative alerts) to stay up to date on legislation, committee hearings, and the latest legislative changes impacting communities. CALL members also have access to Legislator Connect on the CALL website which allows members to communicate directly with the legislative and executive branches. CALL also provides educational presentations on legislation and other topics of interest (in person and online) for enhanced civic engagement. Please visit the CALL website, www.CALLBP.com, to learn more.

INTERESTED IN BECOMING A MEMBER OF CALL?
Annual retainer clients of Becker & Poliakoff are automatically members of CALL. Other associations may join CALL for a yearly membership fee. CALL membership includes access to the password-protected areas of the CALL website, year-round CALL email alerts explaining and tracking Florida legislation and other timely topics impacting shared ownership communities, and advance registration for Firm and CALL events. To become a member of CALL, or to obtain your association’s password for the CALL website, please contact Diana Zayas-Bazan at 954-364-6012 or via email at call@bplegal.com.
HB 33A (Representative Gaetz), Relating to Taxation
(Chapter 2015-221, Laws of Florida, Effective Date: July 1, 2015)

Among other things, the new law amends Section 193.0235, Florida Statutes, regarding the definition of “common element” for purposes of ad valorem taxes and non-ad valorem assessments against subdivision property. The definition now includes property located within the same county as the subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision.

HB 87 (Representative Passidomo), Relating to Construction Defect Claims,
(Chapter 2015-165, Laws of Florida, Effective Date: October 1, 2015)

The new law amends Chapter 558, Florida Statutes, dealing with construction defects, as follows:
- Amends the “legislative findings” to include that the law is intended to allow the parties to resolve the claim “through confidential settlement negotiations” without resort to further legal process.
- Amends the definition of “completion of a building or improvement” to mean the issuance of a certificate of occupancy, “whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorized issued by the governmental body having jurisdiction.”
- The law previously required the notice of claim to describe the claim “in reasonable detail sufficient to determine the general nature of each alleged construction defect and a description of the damage or loss resulting from the defect, if known.”
- The new law amends the notice of claim requirement to require that the claim describe in reasonable detail the nature of each alleged construction defect and, if known, the damage or loss resulting from the defect. It further provides that the claim must be based upon at least a “visual inspection” and the notice must identify the location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant is not required to perform destructive or other testing before providing the notice of claim.
- The written response to the notice of claim by the contractor must include one or more of the offers or statements specified in Section 558.004(5)(a)-(e) as chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the information required for that offer or statement.
- Amends the provision dealing with providing notice to the person’s insurer and states that such notice shall not constitute a claim for insurance purposes “unless the terms of the policy specify otherwise.”
- With regard to exchanging information when a claim has been filed, the law has been amended to remove “any documents detailing the design drawings or specifications.” The law adds “maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect indentified in the notice of claim and any resulting damages.” The new law also allows a party to assert any claim of privilege with respect to any of the disclosure obligations specified in Chapter 558.
MISCELLANEOUS BILLS OF INTEREST

**HB 715 (Representative Raschein), Relating to Eligibility for Coverage by Citizens Property Insurance Corporation (Chapter 2015-94, Laws of Florida, Effective Date: July 1, 2015)**

The prior law prohibited Citizens Property Insurance Corporation (Citizens) from insuring major structures that were newly-constructed or substantially-improved if located seaward of the coastal construction control line or within the Coastal Barrier Resources System. The new law retains the prohibition on Citizens eligibility for new construction. However, with regard to major structures that are rebuilt, repaired, restored or remodeled, the prohibition applies if the total square footage of the finished area is increased by more than 25 percent. Therefore, Citizens may insure substantially improved structures if the total square footage of finished area is not increased by more than 25%.

**HB 779 (Representative Jones), Relating to Rental Agreements (Chapter 2015-96, Laws of Florida, Effective Date: June 2, 2015)**

The new law provides that a bona fide tenant must be given at least 30 days’ notice before eviction from a foreclosed home. The 30 days begins to run when the Notice of Tenant Termination is delivered to the tenant. The new law does not apply if the tenant is the mortgagor, child, spouse, domestic partner, or parent of the mortgagor in the foreclosed home.

**SB 1094 (Senator Brandes), Relating to Peril of Flood (Chapter 2015-69, Laws of Florida, Effective Date: July 1, 2015)**

The legislation makes several changes to Florida Statutes pertaining to the peril of flood and flood insurance and is a continuation and update of last year’s legislation which was adopted to encourage new flood policies as an alternative to the National Flood Insurance Program (NFIP). Note that law does not apply to commercial or commercial residential policies, and therefore, a condominium association would have to continue to obtain flood insurance through the NFIP. Some of the changes include requirements with respect to a local government’s comprehensive plan’s coastal management element, and requirements of surveyors and mappers with respect to elevation certificates submitted to the Division of Emergency Management. The new law also allows insurers to sell flexible flood insurance, which differs from standard or preferred coverage. Flexible flood insurance must include one or more of the following: (1) an agreement that flood coverage is in a specified amount, such as the amount of the outstanding mortgage; (2) a deductible authorized under Section 627.701, including in an amount authorized for hurricanes; (3) a requirement that flood loss be adjusted in accordance with Section 627.7011(3) or adjusted only on the basis of the actual cash value of the property; (4) a restriction limiting flood coverage to the principal building; (5) a provision including or excluding coverage for additional living expenses; and (6) a provision excluding coverage for personal property or contents. The new law also removes language that specifies a supplemental flood insurance policy does not include flood coverage for the purpose of excess coverage over any other flood insurance policy. Removing this language from law allows supplemental flood insurance to provide coverage in excess of other coverage. The section also clarifies that deductibles for flood coverage and flood insurance policy limits must be prominently noted on a policy’s title page.
HB 307 (Representative Latvala), Relating to Mobile Homes
(Chapter 2015-90, Laws of Florida, Effective Date: July 1, 2015)

HB 307 makes several changes to the Florida Mobile Home Act, Chapter 723, Florida Statutes, which regulates residential tenancies for mobile home parks. This comprehensive legislation was drafted with input from both the owners of mobile home parks, and the residents. Specifically, the new law:

- Adds a number of new definitions to Chapter 723 including electronic transmission, homeowners’ association, homeowners’ committee, mediation, mobile home lot, offering circular.
- Requires the Division of Florida Condominiums, Timeshares, and Mobile Homes to approve training and educational programs by approved providers for board members of mobile home owners’ associations and mobile home owners.
- Requires mobile home owners to comply with all building permits and construction requirements for the construction on the mobile home and lot and be responsible for any fines imposed by the local government for noncompliance.
- Requires the mobile home owner to require that persons on the premises with the mobile home owner’s consent to conduct themselves in a manner that does not unreasonably disturb other residents of the park.
- Provides that a mobile home owner’s right to a 90-day notice of a lot rental increase, reduction in services or utilities, or change in the rules and regulations may not be waived.
- A written request must be sent to the park owner by the negotiating committee to discuss those matters addressed in the 90-day notice, and may include a listing of any other issue, with supporting documentation, that the committee intends to raise and discuss at the meeting. The meeting shall take place no later than 60 days before the effective date of the change.
- Renewal provisions in automatically renewable leases are not assumable unless otherwise provided in the mobile home lot rental agreement or unless the transferee is the home owner’s spouse. The right to assume the lease by a spouse may be exercised only one time during the term of the lease.
- A member of the board of the Florida Mobile Home Relocation Corporation must be removed by the Secretary of the Department of Business and Professional Regulation if requested by the association that originally nominated the board member. The new law also provides for procedures for the nomination and appointment of a replacement.
• The new law also establishes specific requirements for homeowners’ association’s bylaws including quorum, voting and proxy requirements; board of directors’ and committee meetings; the right of owners to attend and speak at meetings; board member vacancies; term of directors; fiduciary duty of officers and directors; member meetings; minutes of meetings; manner of sharing assessments; annual budget; amendment of articles of incorporation and bylaws; recall of board members; and alternative dispute resolution including binding arbitration of recall disputes.

• Requires that within 90 days of being elected or appointed to the board of a homeowners’ association, a newly elected or appointed director must certify by “an affidavit” that he or she has read the association’s current articles of incorporation, bylaws, and the mobile home park’s prospectus, rental agreement, rules, regulations and written policies and will to uphold such documents and will faithfully discharge his or her fiduciary responsibility to the association members. In lieu of the written certification, the board member may submit a certificate of having satisfactorily completed the educational curriculum approved by the division within 1 year before or 90 days after the date of election or appointment.

• Requires the association to maintain certain official records and provide access to members, and if access is not provided, the member is entitled to minimum damages if the association’s failure to comply was willful.

NOTE: Many of these provisions are similar to provisions already found in Chapters 718, 719, and 720, regarding the operation of the association and board member eligibility.

SB 766 (Senator Hukill), Relating to Surveillance by a Drone
(Chapter 2015-26, Laws of Florida, Effective Date: July 1, 2015)

The law prohibits a person, state agency or political subdivision from using a drone to capture the image of a privately owned property or anyone on the property with the intent to conduct surveillance, if reasonable expectations of privacy exist. Those that wish to use drone technology in this manner must have written consent from people on the property. The law contains some limited exceptions to the prohibition. For instance, a person or entity engaged in a business or profession licensed by the state, may use a drone to perform reasonable tasks within the scope of his or her license. Additionally, tax collectors may use drones for assessing property for ad valorem taxes, and a drone may be used to capture images by or for an electric, water, or natural gas utility.
COMMUNITY ASSOCIATION LEADERSHIP LOBBY (CALL)

Recommended Action Steps
After the 2015 Legislative Session

1. Include a fax number and email address in the Annual Meeting Notices to allow owners to return their signed proxy by fax or email.

2. Create or update the association’s consent form for owners to authorize receiving notice electronically. The form should be sent to all owners and included in new owner packages.

3. Determine whether there is support for electronic voting and if so, begin the process by researching internet based electronic voting platforms that meet the requirements of Florida law and obtaining consents from owners to vote electronically.

4. Review and update the association’s fining procedure to ensure that it is consistent with the requirements of the statute.

5. Adopt a records retention policy for non-written records such as meeting and security recordings.

6. Consider amending the governing documents to allow fines of more than $100 per violation (Homeowners’ Associations only).

7. Associations should review their condominium documents regarding maintenance responsibilities to ensure that they are consistent with their intent and the law.

8. Ask your association attorney to perform an audit of your governing documents to confirm whether you have incorporated legislative changes or whether amendments to your governing documents are needed to benefit from these legislative changes.