

**Condominium and Homeowners Bills Enacted
by the 2013 Florida Legislature**
By Martin A. Schwartz

HB 73- Omnibus Legislation

This bill containing 74 pages is a "stripped down" version of a bill which passed the House last year but failed to obtain Senate approval. It contains a potpourri of changes to the Condominium Act, the Cooperative Act and the Homeowners' Associations Act (HOA Act). Some of the changes to the Condominium Act and HOA Act are summarized below.

Condominium Act:

- (a) Prohibits directors from serving more than a one-year term unless a two-year term was permitted by the Association's articles or by-laws.
- (b) Forbids an owner from running for the Board of Directors if delinquent in payments to the Association (previously an owner could run but not serve).
- (c) Prohibits the Association from suspending use rights in limited common elements, access, utility services, parking or elevator use for noncompliant owners.
- (d) Permits owners to extend the period for adding additional phases in a phased condominium from seven years to ten years from the date the declaration was recorded.
- (e) Contains an additional Section fleshing out the creation of a condominium from a condominium unit (very important in mixed-use projects).

HOA Act:

- (a) Permits challenge for failure to call a recall election to be made with the Division.
- (b) Prohibits an Association from suspending vehicular or pedestrian access to a parcel or the parcel's parking rights for a noncompliant owner.
- (c) Eliminates mortgagee consent to any amendments to governing documents of the Association unless they affect lien rights, foreclosure or otherwise materially affect mortgagee's right for mortgages recorded after July 1, 2013. For mortgages recorded prior to July 1, 2013 for which consent is required, provides for deemed consent if lender does not object within 60 days after being notified of proposed amendment.

HB 7119-HOA Bill

Preliminary engagement of Division of Condominiums, Timeshares and Mobile Homes into the area of homeowners associations and further incorporation of some of the provisions from the Condominium Act into the HOA Act.

- (a) Requires HOAs to report to the Division by 11/22/13 the following information: name, federal ID number, mailing and location addresses, total number of parcels, and total revenue and expenses in annual budget.
- (b) Requires Division to establish by 10/1/13 a portal on the internet for such reporting by Associations.
- (c) Requires Division to report to the Legislature by 12/1/13 the results of such reporting.
- (d) Imposes sunset date for reporting on 7/1/16.
- (e) Requires disclosure by directors of Association of contracts with affiliates of any director and requires approval of two thirds of directors for such contracts. In addition, gives members right to disaffirm such contracts by majority vote at a members' meeting.
- (f) Prohibits directors or officers from personally receiving goods or services from providers to the Association.
- (g) Contains additional triggers requiring developer turnover of control of Association:
 - i) Developer bankruptcy or appointment of receiver for developer
 - ii) Abandonment of project by developer for which failure to pay assessments for two years is a rebuttable presumption
 - iii) Loss of the project by developer through foreclosure or a deed in lieu of foreclosure unless acquirer of developer's interest also acquires an assignment of developer's rights.
- (h) Requires election of one non-developer member to the Board of Directors of the Association after sale of 50% of the parcels.
- (i) Prohibits developer unilateral amendments to the Declaration for the Association which are arbitrary, capricious or in bad faith, destroy general plan of development, prejudice rights of members to use common property or materially shift economic burdens from developer to members.
- (j) Eliminates Association's liability for assessments on any parcel during the period Association holds title to such parcel.

SB 120-ILSA Fix

As a result of a few cases and the current position of the Consumer Financial Protection Bureau on compliance with the federal Interstate Land Sales Disclosure Act governing projects to be built with 100 or more units, the current practice in Florida, to record the Declaration of Condominium prior to the first sale of a condominium unit, unfavorably impacted the previous trigger for the running of specific periods under the Condominium Act. This trigger was the recording of the Declaration of Condominium which affected the period: after which errors in the Declaration were incontestable, phases could be added to a phase condominium, a developer could unilaterally waive reserves, by which a developer needed to turn over control of the Association and certain other matters. This bill changes the trigger event to the recording of a final as-built survey for the condominium or the sale of the first unit to a non-developer party.

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