

FLORIDA COMMUNITY ASSOCIATION
LEGISLATIVE
GUIDE

2017



CALL

COMMUNITY ASSOCIATION
LEADERSHIP LOBBY

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Introducing our redesigned website

Your Community Association Leadership Lobby's website has a completely new look. In addition to the valuable resources you've come to rely on, the new site provides you with the latest legislative information such as News, Call Alerts, Bill Tracking, Legislator Connect and links to important resources to keep you up to date on issues affecting your community.



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THE CAPITOL VIEW

A LETTER FROM THE EXECUTIVE DIRECTOR OF CALL

Unlike the 2016 legislative session, which ended without any significant community association legislation passing, the 2017 legislative session ended with the passage of important bills impacting community associations: HB 1237, Relating to Condominiums; SB 398, Relating to Estoppel Certificates, and HB 6027, Relating to Financial Reporting. In addition to these three bills, there were over 25 other bills filed which sought to amend the Condominium Act, the Cooperative Act, and/or the Homeowners' Association Act. Most of the bills did not pass, but the many bills that were filed show that legislators are interested in community association legislation and how it impacts their constituents.

The purpose of this Legislative Guide is to educate our community association clients on the requirements of the new laws, including practical pointers for implementing the new laws and specific action steps for your association to take. It is also now more important than ever for community leaders to become engaged in the legislative process. The narrative that is coming from certain segments of the State is that community association boards are "out of control" and "cannot be trusted" to manage their associations. While we know that there are some troubled associations, we also know that the vast majority of board members are doing their best to uphold the laws and their governing documents for the best interest of their communities. CALL is already looking towards the 2018 legislative session as an opportunity to revisit some of this year's legislation to better serve the interests of the association, the boards of directors, and the owners.

As more and more legislation that impacts community associations continues to emerge out of Tallahassee, we need to be ready to respond and advocate on behalf of CALL. In addition to our grassroots efforts, it is sometimes necessary to retain a full time lobbyist for those important and sometimes controversial issues that require an extraordinary effort.

The lobbying effort to allow high rise condominiums and cooperatives to opt out of an engineered life safety system (ELSS) legislation is a great example of how targeted lobbying by an influential and experienced lobbyist can shape important legislation. Although the bill passed the Legislature with only one dissenting vote, it was ultimately vetoed by Governor Scott. We intend to renew our efforts in the next session after further discussion with the Governor's Office, and we will also be looking to insert some clarity into the "Emotional Support Animal" arena. We hope that your association will consider joining future lobbying efforts, and if you are interested in these issues or are interested in finding out how you can join our future advocacy campaigns, please email us at bplobby@bplegal.com.

On behalf of our CALL Team, I thank you for your support and trust that you will find our new Legislative Guide useful and informative.

Sincerely,



Yeline Goin, Esq.
Executive Director of CALL





THE CONSTRUCTION LAW EXPERTS

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.



STEVEN B. LESSER

Steven B. Lesser serves as the Chair of Becker & Poliakoff's Construction Law Group and is also the Immediate Past Chair of the national American Bar Association's Forum on Construction Law.

Mr. Lesser is a nationally recognized expert on construction law issues and leads a team of board-certified construction lawyers assisting communities throughout Florida, New York and New Jersey.

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SPECIAL REPORT

FIRE SPRINKLER AND ELSS LEGISLATION

Given my background and personal experience serving in the Florida Senate, and my recent conversations with residents in older Florida high-rises, who were concerned about costly sprinkler retrofits, I was excited when I was approached to serve as Becker & Poliakoff's lead lobbyist on our ELSS Opt-out Legislation.

The initial passage of HB 653 with just one dissenting vote in the Florida Legislature was a proud moment for our team. We all owe a large debt of gratitude to Representative Moraitis and Senator Passidomo for listening to our concerns, and battling the special interests who stood to benefit from a wide-scale sprinkler installation in order to pass this legislation.

Unfortunately, we didn't fully make it over the finish line.

I was shocked to receive a call from Representative Moraitis to let me know that the Governor had vetoed the ELSS Opt-Out bill without giving us the proper opportunity to state our case. The timing of the London fire clearly played a role in this decision. I truly believed it was smooth sailing until the headlines just wouldn't stop. The loss of life in London was a tragedy that I believe gave all of us pause. We believed we had the Governor's

support, as we even increased the opt-out to a 2/3 vote at his request. I am sure our opposition seized the moment and in an abundance of political caution, Governor Scott vetoed the bill. All in all, we lost the battle but we have not lost the war.

Now it is time to regroup and get back on our horse. Our next steps are to provide the Governor's office with documentation on the London Fire, and file the bill again. The 2018 Session is just around the corner and it is up to us to rally the troops. Now is the time to join the effort and have your voices heard. Let's show the Governor's office the negative impact his veto will have on many residents in this state! If you are interested in becoming a part of this movement, please email bplobby@bplegal.com.

Committee meetings begin in September 2017; this is our deadline. We will also be organizing an advocacy initiative for the 2018 Legislative Session, which will tackle another important concern many Florida shared ownership communities have: rampant abuse in the area of emotional support animal requests (ESAs).

This year's Legislative Session was a great lesson to us all: there is great strength and power in uniting for a common purpose.



Ellyn Setnor Bogdanoff, Esq.
Shareholder at Becker & Poliakoff



LEGISLATIVE RESULTS

COMMUNITY ASSOCIATION BILLS THAT *PASSED*



Part 1 - Condominiums

HB 1237 by Representative Jose Felix “Pepi” Diaz, Chapter 2017-188, Laws of Florida

Effective Date: July 1, 2017 | Senate Sponsors: Senator Rene Garcia and Senator Jose Javier Rodriguez

CRIMINAL PENALTIES

§718.111(1), Florida Statutes

An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family. If applicable, a violation of this provision may result in criminal penalties as provided in Section 718.111(1)(d)

- Forgery of a ballot envelope or voting certificate used in an election is punishable as provided in s. 831.01;
- The theft or embezzlement of funds of a

condominium association is punishable as a crime as provided in s. 812.014;

- The destruction of or the refusal to allow inspection or copying of an official record in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13 or as obstruction of justice as provided in chapter 843;
- An officer or director charged by information or indictment with a crime referenced above must be removed from office and the vacancy shall be filled as provided in Section 718.112(2)(d)2. until the end of the officer’s or director’s period of suspension or the end of his or her term of office, whichever occurs first.

- If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to court order.
- If the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

NOTE: The term “kickback” is not defined by the statute, so it is unclear what is being prohibited. It is also unclear when a “kickback” would be considered a crime. Curiously, the forging of a ballot envelope or voting certificate is considered a crime, but the forging of a recall written agreement is not.

PRACTICAL POINTER: It is now more important than ever for associations to have well-defined election procedures, official records retention and inspection rules, and secure and transparent financial procedures.

PRACTICAL POINTER: Online voting can safeguard Board members and Managers from a variety of tough judgment calls associated with the paper voting process which can include having to invalidate votes for markings on the inner envelope, lack of proper identifying information on the outer envelope and/or voting for too many candidates on the ballot. BPBALLOT, proprietary online voting software developed by Becker & Poliakoff, has been specifically designed to comply with Florida law and allows members to cast their votes online from any type of device.

PRACTICAL POINTER: Be on the lookout for Becker & Poliakoff’s Board Member Toolkit which is designed to provide our clients with a number of helpful tools to comply with the statute and avoid costly mistakes.

PRACTICAL POINTER: It is now more important than ever to review the “indemnification” provisions of your governing documents with your association attorney. While we hopefully will not see a trend in overly aggressive criminal prosecutions for simple mistakes, D&O insurance usually does not cover claims of criminal conduct.

CONFLICT OF INTEREST

§718.111(3), Florida Statutes

- An association may not hire an attorney who represents the management company of the association.

NOTE: Becker & Poliakoff made a business decision when the Firm commenced operations more than 40 years ago that we would not represent community association managers or management companies, so this is not an issue of concern to our clients. Occasionally, where both an association and the management company are sued for the same act, and there is an indemnity provision in the management agreement, we serve as counsel to the management company in that action. However, it is our interpretation of the statute that such representation in this limited circumstance would not create a problem.

§718.111(9), Florida Statutes

- Except for a timeshare condominium, a board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association’s foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

NOTE: There is a glaring loophole in the statute because it does not prohibit a board member, manager, or management company from setting up a separate company (such as a limited liability company) to purchase a unit at a foreclosure sale.

§718.112(2)(p), Florida Statutes

- An association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This does not apply if the board member or officer (or relative as described) owns less than 1 percent of the equity shares.

NOTE: The term “service provider” is not defined. It is unclear whether the law was intended to apply to, for example, a handyman, receptionist, or other similar type of employee that is employed by the association. The law also appears to directly conflict with Section 718.3027, Florida Statutes, discussed further below, which appears to allow these types of contracts if approved by the Board as set forth in Section 718.3027, Florida Statutes.

§718.3025(5), Florida Statutes

- A party contracting to provide maintenance or management services to an association after transfer of control of the association, which is not a timeshare condominium association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association’s foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.
- If 50 percent or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, which is not a timeshare condominium association, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be cancelled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party.

§718.3027, Florida Statutes

- Directors and officers of an association that is not a timeshare condominium association, and the relatives of such directors and officers must disclose to the board any activity that may reasonably be construed to be a conflict of interest.
- A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:
 - A director or officer, or a relative, enters into a contract for goods and services with the association.

- A director or an officer, or a relative, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.
- If a director or officer, or a relative, proposes to engage in an activity that is a conflict of interest, the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this provision, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.
- A contract entered into between a director or an officer, or a relative, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required, is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.
- For purposes of the conflict of interest provisions, the term “relative” means a relative within the third degree of consanguinity by blood or marriage.

NOTE: Section 718.3027, Florida Statutes, suggests that an association may enter into a contract for goods and services with a director if the conflict is disclosed and if the Board votes in favor of it. However, Section 718.112(2)(p), Florida Statutes, appears to completely prohibit that type of contract. It is unclear which section of the statute controls with respect to service contracts entered into with a Board member or a Board member’s family.

OFFICIAL RECORDS

§718.111(12), Florida Statutes

- Bids for materials, equipment, or services, are “official records”.
- Clarifies that the right to make or obtain copies of records extends to the owner’s authorized representative.
- A renter of a unit has a right to inspect and copy the association’s bylaws and rules.

NOTE: Some associations do not have a right to approve or disapprove renters and may not know that a person making a records request is a renter.

PRACTICAL POINTER: Associations should adopt reasonable rules and regulations regarding official records requests. Associations that currently have records access rules should update them to comply with the new law.

WEBSITES FOR OFFICIAL RECORDS

§718.111(12)(g), Florida Statutes

- By July 1, 2018, an association with 150 or more units which does not manage timeshare units shall post digital copies of the following official records on its website:
 - The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
 - The recorded bylaws of the association and each amendment to the bylaws.
 - The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.
 - The rules of the association.
 - Any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility. Summaries of bids for

materials, equipment, or services must be maintained on the website for 1 year.

- The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.
- The financial report required by subsection (13) and any proposed financial report to be considered at a meeting.
- The certification of each director required by s.718.112(2)(d)4.b.
- All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.
- Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2) and 718.3026(3).
- The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled “Notices” which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.
- Notice of any board meeting, the agenda, and any other document required for the meeting as required by s.718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).
- The association shall ensure that the information and records described above, which are not permitted to be accessible to unit owners, are not posted on the

association's website.

- If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure the information is redacted before posting the documents online.
- The website must be:
 - An independent website or web portal wholly owned and operated by the association;
 - A website or web portal operated by a third-party provider with whom the association owns, leases, rents or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association's activities and on which required notices, records, and documents may be posted by the association;
- The association's website must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.
- Upon the unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.
- To implement the website requirement, the Department of Business and Professional Regulation is directed to include within the next condominium annual fee statement, a notice informing condominium associations of 150 or more units of the requirement to create a website for association documents that is operational on or before July 1, 2018.

NOTE: The website requirement is not effective until July 1, 2018 and applies to associations with more than 150 units.

PRACTICAL POINTER: Associations should begin implementing a strategy for compliance so that the website is ready on July 1, 2018. Website templates will be available as part of Becker & Poliakoff's new Board Member Toolkit.

PRACTICAL POINTER: If your association relies on a management company to provide the association with a website, the management agreement must specify that the website belongs to the association and cannot be shut down by the management company. Otherwise, the association risks being in violation of the statute in the event the management agreement is terminated or there is a dispute with the management company.

FINANCIAL REPORTING

§718.111(13), Florida Statutes

- Requires that a copy of the "most recent" financial report or notice that a copy of the "most recent" financial report be mailed or hand delivered to a unit owner, without charge, "within 5 business days" after receipt of a written request from a unit owner.
- Removes the provision that allows an association that operates fewer than 50 units, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of the financial statement required by Section 718.111(13)(a).
- A unit owner may provide written notice to the division of the association's failure to mail or hand deliver a copy of the most recent financial report within 5 business days after submission of a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in the statute. A financial report received by the

division shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

NOTE: A condominium association, regardless of size, must have prepared the appropriate financial report, based on the association's revenues, unless waived in advance by the members. In some cases, this will require that the financial report be prepared by a CPA, which will increase costs, and the association should ensure that it has money budgeted for that additional expense.

§718.71, Florida Statutes

- An association shall provide an annual report to the Department of Business and Professional Regulation containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the department upon written request of any association member.

NOTE: All records sent to the Department of Business and Professional Regulation (DBPR) are subject to the very broad "sunshine" law of the State of Florida. Therefore, associations should use care when sending information to DBPR to ensure that sensitive and confidential information of the association is not made public.

DEBIT CARDS

§718.111(15), Florida Statutes (NEW)

- An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.
- The use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud pursuant to s. 817.61.

NOTE: Credit cards are permissible, but debit cards are not.

TERM LIMITS

§718.112(2)(d), Florida Statutes

- A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

NOTE: One of the unanswered questions raised by this new law is whether it applies to boards with one-year terms. Another unanswered question is whether the law is intended to be applied retroactively or prospectively beginning with terms starting after July 1, 2017. In other words, if prospective, the earliest that a board member would be prohibited from running because of term limits is 2025. If retroactive, many directors may be "termed out" now.

RECALLS

§718.112(2)(j), Florida Statutes

- After an effective recall, the recalled board members shall turn over to the board within 10 full business days after the recall vote any and all records and property of the association in their possession.
- The statute still requires the Board to hold a meeting within 5 full business days after receipt of a written recall agreement (or within 5 full business days after adjournment of a recall meeting).
- The statute no longer requires the Board to "certify" or "not certify" the recall, but still makes reference to a Board filed petition for recall arbitration.

NOTE: This is one of the most confusing provisions of the new law. The intent appears to be to make recalls effective immediately upon receipt by the board of directors of a recall petition. The intent also appears to be to require the individual board members who are recalled to file a petition for arbitration if they believe the recall to not be effective. However, there are many ambiguities in the law, including whether the board has to accept a recall petition that on its face is invalid, or that clearly is not signed by a majority of the owners. This new law is sure to lead to many disputes.

ARBITRATION OF DISPUTES

§718.1255(4), Florida Statutes

- The Division may but is not required to employ arbitrators.
- The Division may also certify attorneys who are not employed by the division to act as arbitrators and conduct the arbitration hearings provided in this chapter.
- A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar.
- Arbitrator certification is valid for 1 year.
- An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed.
- The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute.
- Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of the arbitration statutes, and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition upon all respondents.
- The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.
- The arbitration decision must be rendered within 30 days of the hearing.
- The arbitrator's failure to render a written decision within 30 days after the hearing may

result in the cancellation of his or her arbitration certification.

NOTE: Whether the Division of Condominiums, Timeshares and Mobile Homes will continue to employ in-house arbitrators remains to be seen. If the Division transitions to using all outside arbitrators, the process may be more expensive, but may result in quicker decisions being rendered in arbitration cases.

SUSPENSION OF VOTING RIGHTS

§718.303(5), Florida Statutes

- Voting rights may only be suspended if the delinquent amount is more than \$1,000 and more than 90 days delinquent.
- Proof of such monetary obligation must be provided to the unit owner or member 30 days before such suspension can take effect.

PRACTICAL POINTER: The association should amend its collections and suspension policies to take the new law into account (or adopt collections and suspension policies if it does not have them.)

RECEIVERS

§718.303(8), Florida Statutes

- A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association.

OMBUDSMAN

§718.5012(5), Florida Statutes

- The Ombudsman may review secret ballots cast at a vote of the association.

LEGISLATIVE RESULTS

COMMUNITY ASSOCIATION BILLS THAT *PASSED*



Part 2 - Financial Reporting

HB 6027 by Representative Jayer Williamson, Chapter 2017-161, Laws of Florida
Effective Date: July 1, 2017 | Senate Sponsor: Senator Randolph Bracy

§718.111(13), §719.104(4), and § 720.303(7), Florida Statutes

- Removes the provision that allows an association that operates fewer than 50 units, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of the required financial statement.
- Removes the provision which stated that condominium associations and cooperative associations may not waive the financial reporting requirements for more than 3 consecutive years. (This 3-year rule has never been in the Homeowners' Association Act).

NOTE: All associations, regardless of size, must have prepared the appropriate financial report, based on the association's revenues, unless waived in advance by the members.

LEGISLATIVE RESULTS

COMMUNITY ASSOCIATION BILLS THAT *PASSED*



Part 3 - Estoppel Certificates

SB 398 by Senator Kathleen Passidomo, Chapter 2017-093, Laws of Florida
Effective Date: July 1, 2017 | House of Representatives Sponsor: Representative Byron Donalds

§§718.116, 719.108, and 720.30851, Florida Statutes

- Revises the period in which an association must respond to a request for an estoppel certificate from 15 days to 10 business days.
- Requires an association to designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate.
- The estoppel certificate must be provided by hand delivery, regular mail, or email to the requestor on the date of issuance of the estoppel certificate.
- An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association.
- The estoppel certificate must contain all of the following information:
 - Date of issuance
 - Name(s) of the unit owner(s) as reflected in the books and records of the association
 - Unit designation and address
 - Parking or garage space number, as

- reflected in the books and records of the association
- Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.
- Fee for the preparation and delivery of the estoppel certificate
- Name of the requestor
- The estoppel certificate must also contain the following "Assessment Information":
 - The regular periodic assessment levied against the unit is \$____ per ____ (insert frequency of payment)
 - The regular periodic assessment is paid through _____ (insert date paid through)
 - The next installment of the regular periodic assessment is due ____ (insert due date) in the amount of \$____
 - An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the unit owner for a specific unit is provided
 - An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.
- The estoppel certificate must also contain the following "Other Information":
 - Is there a capital contribution fee, resale fee, transfer fee, or other fee due?
 Yes___ No___
If yes, specify the type and the amount of the fee.
 - Is there any open violation of rule or regulation noticed to the unit owner in the association official records?

- Yes___ No___
- Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit?
 Yes___ No___
 If yes, has the board approved the transfer of the unit?
 Yes___ No___
- Is there a right of first refusal provided to the members or the association?
 Yes___ No___
 If yes, have the members or the association exercised that right of first refusal? Yes___ No___
- Provide a list of, and contact information for, all other associations of which the unit is a member.
- Provide contact information for all insurance maintained by the association.
- Provide the signature of an officer or authorized agent of the association.
- The association, at its option, may include additional information in the estoppel certificate.
- An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period.
- If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.
- An association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and his or her successors and assigns, who in good faith relies upon the certificate.
- Prohibits an association from charging a fee

for preparing and delivering an estoppel certificate that is requested, if it is not delivered within 10 business days.

- Authorizes the use of a summary proceeding pursuant to s. 51.011, F.S., to compel compliance with the estoppel certificate requirements. (Added to Cooperative Act—already the law for Condominiums and HOAs)
- Authorizes an association to charge a fee for preparing and delivering an estoppel certificate but the authorization must be established by a written resolution adopted by either the board or a written management, bookkeeping, or maintenance contract. (Added to Cooperative Act—already the law for Condominiums and HOAs)
- The maximum amount of the estoppel certificate fee is as follows:
 - \$250 if there are no delinquent amounts owed to the association.
 - An additional \$100 fee for an expedited estoppel certificate delivered within 3 business days after a request for an expedited certificate.
 - An additional maximum fee of \$150, if there is a delinquent amount owed to the association.
- The maximum fee an association may charge when it receives simultaneous requests for estoppel certificates for multiple units or parcels owned by the same person and there are no past due monetary obligations owed to the association is as follows:
 - For 25 or fewer units, \$750.
 - For 26 to 50 units, \$1,000.
 - For 51 to 100 units, \$1,500.
 - For more than 100 units, \$2,500.
- A person who pays for the preparation of an estoppel certificate may request a refund if the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur. The request for the refund must be in writing and must occur no later than 30 days after the closing date. The refund must be provided within 30 days after receipt of a written request.

- The right to a refund if the closing does not occur may not be waived or modified by any contract or agreement.
- The prevailing party in a suit to enforce a right of reimbursement shall be awarded damages, attorney fees, and costs.
- The fees specified shall be adjusted every 5 years based on increases in the Consumer Price Index. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the adjusted amounts on its website.

PRACTICAL POINTER: Associations should be sure to pass a Board Resolution regarding the fees to be charged for preparation of estoppel certificates including for delinquent owners and expedited requests in accordance with the statutory limits for such fees.

The initial estoppel certificate template should be prepared by your attorney since much of the new information required under “Other Information” requires an analysis of your governing documents to answer correctly.

Lastly, if your community is professionally managed, please confirm what your management company is charging in connection with the preparation of this document to ensure that such fee complies with the statutory caps.



LEGISLATIVE RESULTS

COMMUNITY ASSOCIATION BILLS THAT *PASSED*



Part 4 - Termination of Condominiums

SB 1520 by Senator Jack Latvala, Chapter 2017-122, Laws of Florida
Effective Date: July 1, 2017 | House Sponsor: Civil Justice & Claims Subcommittee

§718.117, Florida Statutes

- Revises the legislative findings and public policy statements related to Section 718.117, Florida Statutes.
- Expressly states the amendments are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.
- Regarding optional terminations, 80 percent of a condominium's voting interests may approve a plan of optional termination, regardless of what a condominium's governing documents may provide. However, if 5 percent or more of the voting interests reject the plan of termination, the plan may not proceed. (The previous law required 10 percent or more of the voting interests to reject the plan). In addition, the plan of termination must be approved by the Division of Condominiums, Timeshares and Mobile Homes.
- If 5 percent or more of the voting interests of a condominium reject a plan of termination, a subsequent plan may not be considered for 24 months. (The previous law required 18 months between termination votes).
- The optional termination of a condominium pursuant to Section 718.117(3) is not permitted until 10 years after the recording of the declaration of condominium, unless there is no objection to the plan. (The previous law prohibited optional termination for 5 years after the recording of the declaration).
- In the event of an optional termination,

LEGISLATIVE RESULTS COMMUNITY ASSOCIATION BILLS THAT PASSED CONTINUED...

all persons whose condominium unit is their homestead and who are current in the payment of both assessments and other monetary obligations to the association must be paid at least the original purchase price paid for their units. (The previous law provided that in order to receive the purchase price, the owner must have been an original purchaser from the developer, must have rejected the plan of termination, and must have been current in the payment of any mortgage encumbering the unit).

- The plan of termination must disclose the following:

- The identity of any person or entity that owns or controls at least 25 percent of the condominium units. (The previous law required disclosure of the person or entity owning or controlling 50 percent of the units).
- If 25 percent units are owned by an artificial entity, the identity of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person who, directly or indirectly own or control 10 percent or more of the artificial entity or entities that constitute the bulk owner (instead of 20 percent as under the previous law).
- The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

- The Division of Condominiums, Timeshares and Mobile Homes (“Division”) shall examine the plan of termination to determine its procedural sufficiency and, within 45 days after receipt of the initial filing, the Division shall notify the association by mail of any procedural deficiencies or that the filing is accepted.

- If the notice is not given within 45 days after the receipt of the filing, the plan of termination is presumed to be accepted. If the Division determines that the conditions required by this section have been met and that the plan complies with the procedural requirements of this section, the Division shall authorize the termination, and the

termination may proceed pursuant to this section.

- For Fiscal Year 2017-2018, the law appropriates \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the Division Trust Fund to the Department of Business and Professional Regulation.

- The bill also authorizes one full-time equivalent position with an associated salary rate of \$56,791 per year to implement the new law.



LEGISLATIVE RESULTS

MISCELLANEOUS BILLS THAT *PASSED*

HB 377, Relating to Limitations on Actions other than for the Recovery of Real Property, by Representative Leek, Senate Sponsor: Senator Passidomo

Specifies that “completion of the contract” means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made. This law relates to the four year statute of limitations for an action founded on the design, planning, or construction of an improvement of real property.

HJR 21, Relating to Limitations on Property Tax Assessments, by Representative Burton, Senate Sponsor: Senator Lee

Proposed constitutional amendment to Section 27 of Article XII of the State Constitution that will make permanent the ten percent (10%) cap of Article VII, Section 4 on assessment increases for non-homestead real estate for purposes of calculating property taxes. This amendment limits the amount of annual increases in assessments, except for school district levies, of specified non-homestead real property. This proposal will appear on the 2018 General Election Ballot.

SB 90, Relating to Renewable Energy Source Devices, by Senator Brandes, House Sponsor: Representative Rodrigues

Extends the tax exemption for renewable energy improvements to commercial property by exempting eight percent (80%) of the just valuation of the improvements; expands the equipment entitled to the exemption and provides implementing language for the solar energy constitutional amendment. Removes the limitation to residential property and expands to all renewable energy source devices; expands the definition of those devices to include wiring, structural supports, components used as integral parts of such systems or any equipment or structure that would be required in the absence of the renewable energy

source device; devices that store or use solar energy, or energy derived from geothermal deposits. The term does not include equipment that is on the distribution or transmission side of the point at which a renewable energy source device is interconnected to an electric utilities distribution grid or transmission line. For non-residential purposes, eighty percent (80%) of the just value of the property attributable to a renewable energy source device may not be considered. Adds a specific exemption for certain renewable energy source devices. Amends Section 520.20 of the Florida Statutes to regulate distributed energy generation system sales.

HB 727, Relating to Accessibility of Places of Public Accommodation, Senate Sponsor: Senator Stewart

Authorizes qualified experts to advise and provide inspections for places of public accommodation relating to Title III of the American’s with Disabilities Act and authorizes owners of places of public accommodation to file a certificate of conformity or remediation plan with the Department of Business and Professional Regulation (“DBPR”). Requires a court to consider any remediation plan or certificate of conformity filed with the DBPR before the filing of Plaintiff’s complaint when considering whether suit was filed in good faith and whether Plaintiff is entitled to attorney’s fees, and requires the DBPR to develop and maintain a website.

HB 813, Relating to Flood Insurance, by Rep Lee, Senate Sponsor: Senator Brandes

Revises the intervals at which specified standards and guidelines for projecting rate filings must be revised by the Florida Commission on Hurricane Loss Projection Methodology to no less than 4 years; extends the last date of filing with the Office of Insurance Regulation of certain flood insurance rates that may be established and used by an insurer; revises notice requirement for agents before they place flood insurance coverage with admitted or surplus lines insurer for properties

receiving flood insurance under the National Flood Insurance Program.

SB 818, Relating to Timeshares, by Senator Hudson, House Sponsor: Representative LaRosa

Revising the definition of the term “interest holder” to clarify that the term does not include certain parties to a certain multisite timeshare plan and revising requirements for the termination of a timeshare plan, specifying the percentage of votes required to extend the term of a timeshare plan and unless a lower number specified in the timeshare plan at least sixty-six percent (66%) of all eligible owners present in person or by proxy must approve extension of the plan.

HB 1027, Relating to Unmanned Aircraft Devices (i.e. Drones), by Representative Yarborough, Senate Sponsor: Senator Young

Authorizes the operation of personal delivery devices within a county of municipality under certain circumstances and exempts personal delivery devices from certain registration and insurance requirements. “A personal delivery device” is defined as electronically powered with a maximum speed 10 miles an hour and may or may not have active control or monitoring. A device, if permitted by federal law, may operate on county or municipal roadways, sidewalks, and crosswalks, and must follow traffic and pedestrian laws and devices. Liability coverage of at least \$100,000.00 is required. Regulates unmanned aircraft systems. Unmanned aircraft may not be weaponized.

HB 1021, Relating to Construction, by Representative Avila, Senate Sponsor: Senator Perry

Authorizing solar energy system manufactured or sold in the state to be certified by professional engineers; revising an exemption from construction contracting regulation for certain public utilities and prohibiting a political subdivision from adopting or enforcing certain building permits or other development order requirements, including prohibiting permits for painting a single family home. Requiring the Florida Building Code Administrators and Inspectors Board to establish rules and prohibiting local enforcement agencies, independent districts, and special districts from charging certain fees and revising requirements for

updating the Florida Building Code.

SB 80, Relating to Public Records, by Senator Steube, House Sponsor: Representative Burgess

Requires that a court determine whether a person seeking attorney’s fees from a public body for the failure to provide public records had requested to inspect or copy a public record or participated in civil action for an improper purpose. “Improper purpose” means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of that chapter or for a frivolous purpose. If found to be an “improper purpose” the court may assess and award costs of enforcement to the agency.

HB 7043, Relating to Vessels (and Multifamily Residential Docks), by House Natural Resources and Public Lands Subcommittee, Senate Sponsor: Senator Book

A comprehensive bill dealing with vessels and floating structures. Grandfathers certain private condominium and multifamily docking facilities from submerged land lease payments; Provides additional clarity on what is considered commercial versus recreational use of a vessel. Administrative rules prohibiting multi vessel dockages within a private multifamily development are effectively grandfathered given use by January 1, 1998; includes provision for boating restricted areas. Derelict vessels and prohibited anchoring or mooring areas are defined.

HJR 7105, Relating to Increased Homestead Property Tax Exemption, by House Ways and Means Committee, Senate Sponsor: Senator Lee

This joint resolution proposes an amendment to the Florida Constitution to increase by up to \$25,000 the current homestead exemption from non-school property taxes by exempting the assessed value of a homestead parcel between \$100,000 and up to \$125,000. This will appear on the ballot in 2018. HB 7107 is the implementing legislation that will take effect upon the passage of HJR 7105 and provides for increased legislative appropriations for “physically constrained counties” adversely impacted by the exemption increase.



Secure and simple online voting for your community association

- ✓ Increase owner voting participation
- ✓ Secure & accurate elections
- ✓ 100% tested voting system
- ✓ Cost efficient process

Give your association members peace of mind, and the convenience of securely voting online from any device, anywhere in the world.

Did you know?

BPBALLOT is already a success with many community associations throughout Florida.

For more information,
visit our website

WWW.BPBALLOT.COM



LEGISLATIVE RESULTS

BILLS THAT *DID NOT PASS*



HB 653/SB 744, Relating to Community Associations, by Representative Moraitis and Senator Passidomo

Among other things, provided for an opt out vote for an engineered life safety system (ELSS) by a vote of 2/3rds of the owners by December 31, 2018; made the Distressed Condominium Act permanent; and required material alteration votes to be taken before the alteration.

HB 135/SB 1652, Relating to Homeowners' Associations, by Representative Cortes and Senator Torres

Provided for an election procedure for homeowners' associations with 7,500 parcels or more, including two notices, and an opportunity for owners to nominate themselves and submit candidate information sheets. Also prohibited general proxies in the election of directors, and required that the election be either by secret ballot or by limited proxy.

HB 137/SB 1650, Relating to Homeowners' Association, by Representative Cortes and Senator Torres

Required certain disputes in a homeowners association to be submitted to mandatory, non-binding arbitration with the Division of Florida Condominiums, Timeshares, and Mobile Homes, and required the Department

of Business and Professional Regulation (DBPR) to establish a fee structure to be imposed upon the association following the conclusion of the arbitration to adequately cover any costs incurred by DBPR for such proceeding.

SB 188/HB 425, Relating to Vacation Rentals, by Senator Steube and Representative LaRosa

Prohibited local governments from adopting ordinances or regulations regarding vacation rentals.

HB 295, Relating to Homeowners' Associations, by Representative Stone

Increased the damages to be paid to an owner for the willful denial of access to official records from \$50.00 per day to \$500.00 per day, for up to 30 days; revised the turnover provisions; allowed election and recall disputes to be mediated; provided for binding arbitration by the DBPR for disputes involving, among other things, covenants, restrictions, rules enforcement, assessments and official records; required DBPR to provide training and educational programs for homeowners' association (HOA) board members; provided that DBPR may enforce the HOA Act and may investigate complaints against an HOA; and provided for a cause of action against developers by the HOA or non-developer members of the HOA.

HB 471/SB 660, Relating to Bankruptcy Matters in

Foreclosure Proceedings, by Representative Fant and Senator Passidomo

Allowed a lienholder in a foreclosure action to submit any document the defendant filed under penalty of perjury in a bankruptcy case as an admission by the defendant; created a rebuttal presumption in favor of the lienholder that the defendant had waived any defenses to the foreclosure; allowed the lienholder to request that the court in the foreclosure action take judicial notice of any final order entered in a bankruptcy case; and did not preclude the defendant from raising a defense based on actions taken by the lienholder after the filing of the document filed in the bankruptcy case that evidenced the defendant's intention to surrender the property to the lienholder.

HB 713/SB 950, Relating to Homeowners' Associations, by Representative Slosberg and Senator Stewart

Prohibited a fine or special assessment to be imposed by the board of a homeowners' association against any parcel for six months after the death of the parcel owner; prohibited interest and late charges incurred by the association incident to the collection process to be imposed by the Board against any parcel for one year after the death of the parcel owner; and provided penalties against an association that violated the provisions of the statute including prevailing party attorney's fees.

HB 735/SB 1046, Relating to Real Property/Relating to Covenants and Restrictions, by Representative Edwards and Senator Passidomo

Revised the procedures for preserving covenants and restrictions under the Marketable Record Title Act ("MRTA"); allowed non-residential covenants and restrictions to be preserved under MRTA; and included a procedure for non-mandatory HOA communities to revitalize expired covenants and restrictions.

HB 1001/SB 1258, Relating to Condominiums, by Representative Geller and Senator Farmer

Increased the penalties that can be levied against a director or officer who knowingly violated any association bylaw or provision of Chapter 718. Provided that the officer or director is liable to the association for monetary amounts from \$250 for a first violation,

to \$500 for a second violation, to \$1,000 for a third or subsequent violation and for the director or officer to be recalled by order of the Division.

SB 1038/HB 1421, Relating to Assignment of Property Insurance Benefits, by Senator Hukill and Representative Grant (J)

Provided requirements and limitations on assignment of benefits agreement.

SB 1164/HB 1271, Relating to Construction Defect Claims, by Senator Passidomo and Representative Trumbull

Provided that a right of action founded on the design, planning, or construction of an improvement to real property does not pass to subsequent purchasers of the real property when purchased "as-is"; required a claimant and not the claimant's attorney or agent to sign the Notice of Claim; and specified mediation requirements under certain circumstances before a claimant could reject a settlement offer.

SB 1186, Relating to Homeowners' Associations, by Senator Bracy

Required that proposed amendments to the declaration to be presented either in the "underline and strikethrough" method or the "substantial re-wording" method; provided that an amendment to any recorded governing document is effective when properly recorded in the public records; and provided that an amendment prohibiting parcel owners from renting their homes, altering the duration of the rental term, or specifying or limiting the number of times parcel owners are entitled to rent their homes during a specified period applies only to parcel owners who consent individually or through their representatives to the amendment and parcel owners who acquire title to their homes after July 1, 2017.

HB 6003/SB 1516, Relating to Vacation Rentals, by Representative Richardson and Senator Rader

Removed the preemption provision which prohibits local governments for regulating the duration and frequency of rental or vacation rentals. In other words, permitted local governments to fully regulate vacation rentals.

Big. Win.

Multi-Million Dollar Jury Verdict for Condo Development In Landmark Construction Case

Becker & Poliakoff secured a landmark \$9M+ jury verdict in June against a subsidiary of Hovnanian Enterprises, Inc. The award includes punitive (treble) damages for violation of the New Jersey Consumer Fraud Act and also entitles the plaintiff to recover attorneys' fees, costs and prejudgment interest. The jury found that Hovnanian Enterprises used the subsidiary as an instrument to commit a fraud or injustice on purchasers of condominium units. The ultimate recovery against all parties, including the project architect and geotechnical engineer, could exceed \$20 million.

After a six-week trial in New Jersey Superior Court, the jury agreed that Hovnanian chose to ignore its architects' warnings during construction of Grandview I, a development on the New Jersey side of the Hudson River, and decided not to remedy defects in order to save money and avoid construction delays. The six-story building at 22 Avenue in Port Imperial, West New York, NJ, is comprised of 132 residential and four commercial units.

The problems range from significant building code

violations to an inadequate foundation system that cannot bear the building's weight. The properties were marketed and sold without disclosure of the code violations and construction defects to potential buyers.

"A key point making this landmark case particularly unique is that the parent company, Hovnanian Enterprises, was held responsible despite the massive network of subsidiaries that it used to try to shield itself from liability," said Becker & Poliakoff shareholder John Cottle, who was first chair/lead trial counsel in the case representing the homeowners. "This is a rare instance in which the 'corporate veil' was pierced."

Added shareholder Matthew Meyers, who initiated the suit: "Hovnanian knew it was violating the building code and defrauding buyers, and instead of fixing their mistakes, they chose to cover them up. They continued to arrogantly defend their conduct at trial, but the jury would have none of it. Hopefully, after this verdict, Hovnanian will get the message that these egregious offenses will be punished and must not continue."

A key point making this landmark case particularly unique is that the parent company, Hovnanian Enterprises, was found to have used its shell subsidiary to perpetrate an injustice on the condominium unit buyers. This is a rare instance in which the 'corporate veil' was pierced."

— John Cottle,
Lead Trial Counsel

Attorneys from the firm's New Jersey and Florida offices worked together on the case. In addition to Cottle, the Florida trial team included: Perry M. Adair, Miami managing shareholder and a board-certified construction law attorney; and Sanjay Kurian, a shareholder and board-certified construction law attorney based at the firm's Fort Meyers, Fla., office. In addition to Meyers, the Morristown-based team included Vincenzo Mogavero, a shareholder and litigation chair, and Martin Cabalar, an associate attorney.

For more information about Becker & Poliakoff's legal services, please visit www.bplegal.com or call our toll free number 1 (8 4 4) 2 2 7-3 2 7 1.





DID YOU KNOW?

Becker & Poliakoff will soon be announcing a new Board Member Toolkit, specifically designed to help associations address the new risks and demands of the 2017 legislation.

The tools at your disposal will include BPVAULT, a records retention and retrieval system, online voting through BPBALLOT, a website template, comprehensive policies and procedures for elections, disclosure of conflicts of interest, handling document inspections and much more.

Ensure compliance with new legislation

RECOMMENDED ACTIONS

FLORIDA COMMUNITY ASSOCIATION CHECKLIST

- Adopt clear election procedures, official records retention and inspection rules, and secure and transparent financial procedures, to avoid costly mistakes and, in some cases, potential criminal liability.
- Associations that currently have records access rules should update them to comply with the new law.
- Review the “indemnification” provisions of your governing documents with your association attorney to provide for broad indemnification of officers and directors.
- Try online voting, which can safeguard Board members and Managers from a variety of tough judgment calls associated with the paper voting process. BPBALLOT, developed by Becker & Poliakoff, has been specifically designed to comply with Florida law and allows members to cast their votes online from any device.
- Condominium associations that operate 150 units or more should start the process of implementing a strategy for compliance with the new website requirement, so that the website is ready on July 1, 2018. Becker & Poliakoff clients will have access to our new Board Member Tool Kit which contains a number of helpful tools we have developed to ensure that our clients comply with the new requirements for websites disclosure of conflicts, fraud-free elections and trouble-free handling of document inspection requests.
- If your association relies on a management company to provide the association with a website, the management agreement must specify that the website belongs to the association and cannot be shut down by the management company.
- If your condominium association has two-year terms, consider an amendment to the condominium documents to require one-year terms for board members so that the term limit provision does not apply.
- Condominium associations should amend their collections and suspension policies to take into account the new law regarding suspension of voting rights and use rights for nonpayment of monetary obligations to the association (or adopt collections and inspection policies if it does not have one.)
- If your condominium, cooperative, or homeowners’ association operates fewer than 50 units, it will be required to have prepared the end of year financial report based on the association’s total annual revenues. In some cases, this will require that the financial report be prepared by a CPA, which will increase costs, and the association should ensure that it has money budgeted for that additional expense.
- Associations should pass a Board Resolution confirming the fees to be charged for preparation of estoppel certificates including for delinquent owners and expedited requests in accordance with the statutory limits for such fees. The initial estoppel certificate template should be prepared by the association’s attorney since much of the new information required under “Other Information” requires an analysis of your governing documents to answer correctly. If your community is professionally managed, confirm what your management company is charging in connection with the preparation of this document to ensure that such fee complies with the statutory caps.

Hand in Hand

SERVICES THAT COMPLIMENT OUR COMMUNITY ASSOCIATION CORE PRACTICE

REAL ESTATE


Real Estate law has been a core practice for Becker & Poliakoff since its founding in 1973. The firm has helped shape the local landscape through representation of developers of multi-family and single-family residential communities; business and property owners; and financial institutions. We have represented clients in the successful acquisition, financing, development and sale of all types of unimproved land and improved properties for residential and commercial use.

TITLE SERVICES

The firm operates Associated Title Services (ATS) to assist clients with residential real estate closings, title and escrow services. ATS has offices throughout Florida and is run by a team of attorneys who have handled thousands of successful real estate closings. For more information please visit www.association-title.com.

CONSTRUCTION LAW & LITIGATION

The firm has handled numerous and varied construction-related cases, many of which have involved extremely complex issues with a multitude of defendants and scores of construction defects. Our attorneys represent clients in both transactions and disputes ranging from single- and multi-family dwellings to large commercial buildings, planned unit developments, multi-use retail, industrial and governmental projects.



We wrote the law relating to common ownership housing, and these services stem directly from our robust community association practice.

BUSINESS LITIGATION

The firm's Litigation Practice is dedicated to providing strategic, innovative, and aggressive representation for our clients in all litigation matters. Becker & Poliakoff's reputation as a pioneer and leader in community association law is well-known throughout the legal community. There is almost no issue our attorneys have not dealt with before – everything from civil and criminal cases to foreclosure and complex contractual matters.

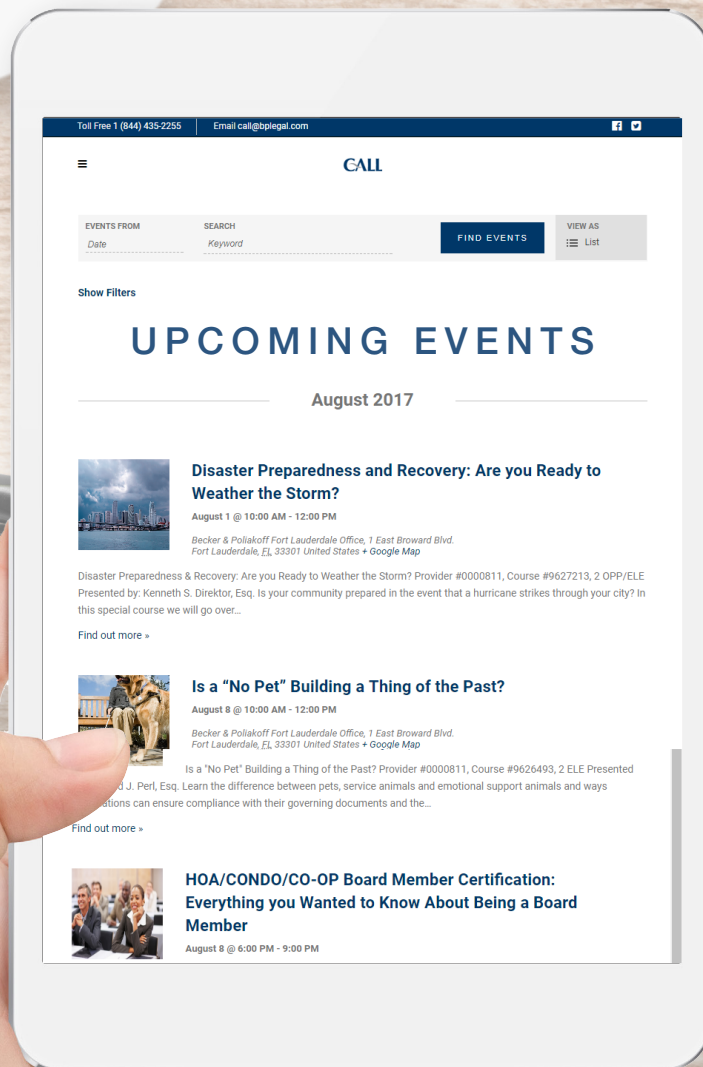
GOVERNMENT LAW & LOBBYING

Our dedicated Community Association Leadership Lobby (CALL) is a statewide advocacy group that represents the interests of our over 4,000 community association clients. We help draft legislation and work closely with legislators and members of the executive branch to improve the laws that impact community associations in Florida. Additionally we represent condo clients in negotiations with various developers, municipalities and utilities on zoning issues, easements and settlements.

CALL

COMMUNITY ASSOCIATION
LEADERSHIP LOBBY

Don't forget to check out our website for events, board certification courses, legal update seminars, and a variety of other classes on topics critical to your success!



VISIT WWW.CALLBP.COM/EVENTS

A CALL TO ACTION

A MESSAGE FROM THE FOUNDER OF CALL

In 2002, I received my first call from a high-rise condominium director who was concerned about a recent conversation with his local fire marshal. That conversation revealed the need for his building, which had been constructed in 1982, to be fully retrofitted with sprinklers inside the units and in the common areas. The board member not only wondered how his community would pay for such a retrofit but the impact the installation would have on his mostly elderly residents. I told him I would research the matter and give him some options. It quickly became apparent that older high-rise communities throughout Florida could fight back against what many thought was an arbitrary failure by the state to grandfather in these buildings at the time the National Life Safety Code updates were adopted. That was the genesis for the creation of CALL and I was honored to serve as its Founding Executive Director from 2003 to 2007.

In 2003, we passed a bill that allowed associations to opt out of sprinklers inside condominium and cooperative units and also allowed associations to opt out of an Engineered Life Safety System (ELSS). In 2010, we went back to the Legislature to seek opt-out rights for the association's common areas as well. The 2010 bill added common areas into the opt-out mix but removed ELSSs. Thus, associations that had not yet taken a vote during 2003-2010 no longer had the ability to opt out of an ELSS but they had acquired the right to fully opt out of sprinkler systems.

This last year, we approached the ELSS conundrum with the brilliant strategy mapped out by our Lead Lobbyist, Former State Senator and Becker & Poliakoff Shareholder, Elyn Bogdanoff. We successfully passed HB 653 only to receive a crushing blow when Governor Scott vetoed our bill. Our story doesn't end there though. The main lesson we've learned since CALL's creation is that private residential communities have much more power than they know in terms of shaping positive legislation and fending off harmful bills. The 2017 Legislative Session saw the passage of a beneficial bill which unfortunately fell victim to a gubernatorial veto and the governor's stamp of approval on a "reform" bill which raised more questions and concerns about daily association operations. Toward that end, Becker & Poliakoff has created a Board Member Tool Kit which was designed to help volunteer boards and managers address the significant risks and demands found in many of the new legislative changes.

It is important for every association leader and resident to become involved in the legislative processes which shape your communities. In 2018, we will be looking to address the rampant abuse connected with emotional support animal (ESA) requests. Those individuals who seek to avoid reasonable pet restrictions in communities do a grave disservice to handicapped individuals who truly need ESAs for their daily comfort. We will be seeking to inject some much-needed clarity and common sense into the criteria used to evaluate an ESA request. From this point forward, we should all be looking each legislative session to identify issues which can be addressed in our communities to improve the quality of life for the large percentage of Floridians who reside in shared ownership communities like yours.

Very truly yours,



Donna DiMaggio Berger, Esq.
Founder of CALL & Shareholder at Becker & Poliakoff



WE'VE GOT FLO

CONVENIENT LOCATIONS IN YOUR NEIGHBORHOOD

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Tel: 954.987.7550

Ft. Myers

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Suite 200
Ft. Myers, Florida 33966
Tel: 239.433.7707

Ft. Walton Beach

348 Miracle Strip Pkwy S.W.
Suite 7
Ft. Walton Beach, Florida 32548
Tel: 850.664.2229

Miami

121 Alhambra Plaza
10th Floor
Coral Gables, Florida 33134
Tel: 305.262.4433

Miramar

2901 S.W. 149th Avenue
Suite 140
Miramar, Florida 33027
Tel: 954.985.4102

Naples

4001 Tamiami Trail North
Suite 410
Naples, Florida 34103
Tel: 239.552.3200

Orlando

111 N. Orange Avenue
Suite 1400
Orlando, Florida 32801
Tel: 407.875.0955

St. Augustine

100 Whetstone Place
Suite 302
St. Augustine, FL 32086
USA
Tel: 904.423.5372

Sarasota

6230 University Parkway
Suite 204
Sarasota, Florida 34240
Tel: 941.366.8826

Stuart

401 S.E. Osceola Street
Suite 101
Stuart, Florida 34994
Tel: 561-655-5444

Tampa Bay

1511 N. Westshore Boulevard
Suite 1000
Tampa, Florida 33607
Tel: 813.527.3900

Tallahassee

204 South Monroe Street
Suite 203
Tallahassee, Florida 32301-1800
Tel: 850.412.1115

West Palm Beach

625 N Flagler Drive
7th Floor
West Palm Beach, Florida 33401
Tel: 561.655.5444

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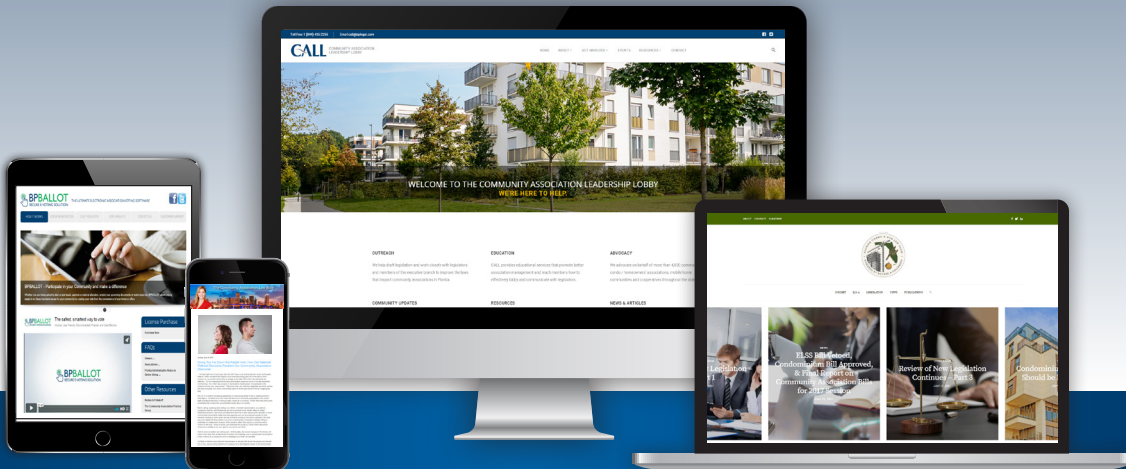
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