



Legislative Update, Part 1



BY MICHAEL J.
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AND... *THEY'RE OFF!* This traditional racing send-off could also accurately describe the setting in Tallahassee on March 4. Through May 2, the scheduled last day of the regular session, the legislature will be addressing more than 2,000 bills, and just as many, if not more, amendments to bills.

There are many bills that if enacted, and if they become law, would impact Florida community associations, as well as impacting those who administer, own, and live in Florida community associations.

The bills likely to be of greatest interest to Florida community associations include the following in bill number order for easy reference:

- HB 307/SB 356 "Regulation of Public Lodging Establishments" would revise the preemption of local ordinances concerning vacation rentals, allowing local governments to enact limitations.
- HB 407/SB 172 "Notaries Public" would require most notary publics to retain a journal recording documents verified or acknowledged by the notary public.
- HB 425/SB 440 "Condominiums" would exempt non-residential, or commercial, condominiums from many statutory procedures.
- HB 807/SB 798 "Residential Properties" starts by



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proposing changes to timeshare regulations. Of interest to homeowners association, it then would clarify the Marketable Record Title Act's publication requirements. The bill continues, seeking to revise the Condominium Act: grand-fathering of owners facing new leasing restrictions, clarify access to inspect units, clarify responsibilities for repairs to a unit in the absence of an insured event such as a casualty, require outgoing directors and committee members to turn over official records, expand the statutory definition of participating in meetings to include videoconferencing, clarify association liability for assessments in case of foreclosure, and extend bulk buyer/assignee rights. The



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Cooperative Act would be changed to parallel many provisions in the Condominium Act. The Homeowners Association laws would be amended regarding official records disclosure and documentation, providing for emergency powers, requiring copies of document amendments be provided to owners, and clarifying parcel owners' liability for collateral charges when assessments are delinquent.

- HB 871/SB 1462 would revise condominium and homeowners association lien rights viz-a-viz subsequent owners, including mortgage holders, and double the formula providing for first mortgage holders' payments to associations after foreclosure for delinquent assessments. Note that HB 1405/SB 1458 is similar, with a difference in the formula for payment of assessments.
- HB 1061/SB 1546 "Condominiums" seeks to limit condominium termination plans, including linking a termination to providing compensation to unit owners of 110 percent of the fair market value of a unit.
- HB 7037/SB 1466 "Residential Communities" would create forms for assessment liens in condominium, cooperative, and homeowners association contexts, and to define certain actions of community association managers to be excluded from the definition of the practice of law.
- SB 1348 "Homeowner Associations" would expand the jurisdiction of the Division of Florida Condominiums to include homeowners associations, permit investigations relating to developers at turnover, and create a Community Association Ombudsman's office.

(There was no House companion bill at the publication deadline.)

- SB 1450 "Homeowners' Association Meetings" would require homeowners association board of directors' and members' meetings to be in locations accessible to physically-handicapped persons. (There was no House companion bill at the publication deadline.)

As the session proceeds there will be many changes. Committees will provide substitute bills, bills will be postponed, and bills will be withdrawn.

Remember, citizens should not be mere observers! Contact your local legislators and advise him or her of your thoughts. Information is available through the Legislature's



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CONTRACTS: FACEBOOK POSTING VIOLATES CONFIDENTIALITY AGREEMENT

Who would think that a simple comment to your child that you have settled a lawsuit and are happy with the result would violate a settlement agreement? Enter the 21st Century and electronic, social media like Facebook.

This exact scenario occurred recently, recited in a Florida appellate court decision, which illustrates the perils of violating a settlement agreement's confidentiality provision. In *Gulliver Schools, Inc. v. School Management Systems, Inc.*, 39 Fla. L. Weekly D457 (3rd DCA, February 26, 2014), the school's headmaster sued the school for age discrimination after the school did not renew his contract. Upon settling the case for \$150,000, the parties executed a settlement agreement, which included a confidentiality provision:

13. Confidentiality...[T]he plaintiff shall not either directly or indirectly, disclose, discuss or communicate to any entity or person, except his attorneys or other professional advisors or spouse any information whatsoever regarding the existence or terms of this Agreement...A breach...will result in disgorgement of the Plaintiff's portion of the settlement payments. Of the \$150,000 settlement, apparently \$80,000 was the disgorge amount.

The headmaster told his daughter that the case was settled and that he was happy with the results. The headmaster's daughter posted on Facebook to approximately 1,200 people, many of whom were students at the school:

"Mama and Papa Snay won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer..."

As a result of this Facebook posting, the school informed the headmaster that he breached the confidentiality agreement and therefore, the school would not tender the remainder of the settlement. The headmaster then filed a motion to enforce the settlement agreement. The trial court found that neither the headmaster's comments to his daughter nor his daughter's Facebook comments constituted a breach of the confidentiality agreement.

The Florida appellate court disagreed, and reversed the decision of the trial court. The appellate court explained that a settlement agreement is interpreted just as a contract. Clear and unambiguous language is to be provided its plain meaning. The text prohibited "directly or indirectly" disclosing "any information." Thus, the headmaster's admission that he communicated to his daughter that it "it was settled, and we were happy with the results" constituted a breach of the confidentiality provision.

This decision reflects a strict construction of a settlement agreement. The court indicated that the time to change the terms of an agreement is before it is signed, not after. As a general rule, an association should not sign a confidentiality agreement. But if you do sign one, remember that contracts mean what they say! ■

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