A Look Back... and a Look Forward

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Legislation

This article highlights legislative changes and legal decisions that impacted Florida community associations in 2013 and examines what lies ahead for 2014.

The year 2013 was a significant one for community association legislation. Bills affecting community associations that passed and became law include, among others, House Bills 73, 77, 87, 903, and 7119, and Senate Bills 120, 286, and 1770. Portions of these bills are discussed below.
Several themes emerged from this year’s legislation—1) Requiring education and accountability for board members in all types of shared ownership communities by requiring certification of HOA and cooperative directors, in addition to condominium directors; 2) continuing to create parity among the shared ownership statutes (i.e., make the laws apply equally to condominium, homeowners, and cooperative associations) when it makes sense to do so; and 3) laying the groundwork for future homeowners association regulation and broader oversight.

The foregoing bills have the following effects on condominiums, homeowners associations, and cooperatives:

- Removed the January 1, 2015, deadline to upgrade association elevators with Phase II Firefighter upgrades. Such upgrades are now only required when the elevators undergo a “major modification.” This change in legislation has the benefit of delaying very costly elevator upgrades until such time as an association is already contemplating major modifications to the elevators.
- Allows owners to make copies of official records by taking a picture with a smartphone, tablet, portable scanner, or similar device at no cost to the owner to make such copies.
- Provides for disciplinary proceedings against licensed community association managers for violation of Chapters 718, 719, or 720.
- Requires board members of homeowners associations and cooperatives to be certified in the same manner as is already required for condominium association board members.
- Increases the dollar amount threshold for association financial statement compilations, audits, and reviews required by Chapters 718, 719, and 720.
- Clarifies that a homeowners association cannot be treated as the “previous owner” by a third-party purchaser looking to avoid joint and several liability for past due assessments still owing.
- Makes it more difficult for squatters to claim adverse possession when moving into abandoned units and/or homes.
- Adds new disclosure requirements from landlords to tenants, which...
is important to associations who become landlords on the property to which they take title via foreclosure.

- Creates a new tool for associations in the form of a Notice to Show Cause, which can be used to force the bank to move forward with its foreclosure complaint.
- Requires HOA managers (or the board in communities that are self-managed) to report certain geographic and other financial information to the Division.

As one can see, significant legislation was passed last year, which, for the most part, positively affects Florida’s significant shared ownership populace. This can only occur when there is cooperation among our industry’s stakeholders. In Florida, there are wide and varied interests concerned with association laws—owners, board members, managers, attorneys, real estate professionals, title insurance companies, banks, contractors, and developers, just to name a few. In addition to the Community Advocacy Network (CAN) and other lobbying groups, several of the larger management companies, as well as all of the above-mentioned stakeholders, have lobbyists who pursue their client’s or group’s interests. Legislators are bombarded each session with lobbyists, in addition to the thousands of e-mails and phone calls from constituents. In the face of all of this, generally only one or two association bills will pass each year.

In the past, disagreements among the different stakeholders often led to positive
legislation dying on the vine. The last few years have seen much more cooperation between the stakeholders during the preliminary steps, so that once a bill is filed, most of the stakeholders have reached consensus. That is one of the main reasons we saw such significant, mostly positive association bills passed this year. I think the lesson has been learned, and I hope for and expect such cooperation in bill drafting in the future to build on the successes of 2013.

2014 looks to be another year for significant association laws to be introduced. Bills already filed or scheduled to be filed include those concerning insurance, the Florida Insurance Guaranty Association, short sale debt relief, residential foreclosure proceedings, and the use of deadly force. There will also be another association bill filed; items under consideration for this bill include, among other things, turnover of official records to the association by prior board members; joint and several liability language for condominium and cooperative associations as passed last year for homeowners associations in HB 7119; changes to the distressed Condominium Relief Act and the continuing effort to achieve parity, where it makes sense to do so, across Chapters 718, 719, and 720, Florida Statutes.

LEGAL DECISIONS

It is not surprising that often our most impactful legislation springs forth as a result of a pending or completed lawsuit. This is certainly true in the case of Aventura
Management, LLC v. Spiaggia Ocean Condominium Association, Inc., 105 So.3d 63738 Fla. L. Weekly D 190, (Fla. 3rd DCA, 2013). In that case, the court held that an association, which took title to a unit via foreclosure, was considered to be the previous owner for joint and several liability purposes, thereby precluding the association from collecting past due amounts still owing from the third-party purchaser at the bank’s foreclosure sale. The Spiaggia ruling penalized associations who are proactive in their collection efforts while the banks delay their foreclosures to the associations’ detriment.

As an immediate response to this decision, CAN drafted language in the 2012 Session, which specified that for the purposes of joint and several liability, the term “previous owner” did not include a condominium, homeowners, or cooperative association, which acquires title to a delinquent property through foreclosure or deed in lieu of foreclosure. Unfortunately, that language did not pass; however, CAN’s language did pass in HB 7119 but only with regard to homeowners associations as the focus of HB 7119 was HOAs. CAN has already introduced a proposal for the 2014 Session to add this language to Chapters 718 and 719 of the Florida Statutes.

Another important 2013 case was Ocean Bank v. Caribbean Tower Condominium Association, Inc., ---- So. 3d ----, 38 Fla. L. Weekly D1726, (Fla. 3rd DCA 2013). In general, this case provides that associations may not demand
more than the safe harbor provision (12 months of past due assessments or one percent of the mortgage, whichever is less) from banks that take title to a unit via foreclosure. Many associations, management companies, collection agencies, and even some law firms will demand more than the Safe Harbor amounts from first lenders who meet the statutory threshold. These amounts usually include late fees, interest, and attorney’s fees and costs. With this appellate decision in their arsenal, banks are now fighting more aggressively than ever with regard to attempts to breach their statutory Safe Harbor. In the Ocean Bank ruling, the bank was entitled to collect its attorney’s fees as a result of successfully challenging the association’s demands for amounts beyond the one percent or 12 months. The threat of a court ordering attorney’s fees to a bank fighting this type of collection demand may put an end to such practices.

2014 promises to be another year that will yield more interesting and possibly controversial court decisions in the area of association law. If you see a pending bill or court decision that interests or concerns you, please contact your local legislator with your thoughts and opinions, or you can pose those questions directly to CAN via e-mail at info@canfl.com.

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