

# NECAM 2009 Legislative Update

## CHECKING OUT BILLS & LAWS

- Governor's website: [www.flgov.com](http://www.flgov.com)
  - Click on "Media Center" located on the right panel, then select "Legislative Actions" from the drop-down list, then click on "2009" then click on "Governor Crist's Bill Actions" which downloads pdf with status of Bills sent to Gov.
- Legislature: [www.leg.state.fl.us](http://www.leg.state.fl.us)
  - Then click on Senate or House, and search by Bill number, or text

## WHAT HAPPENED THIS YEAR TO CERTAIN COMPREHENSIVE CONDOMINIUM AND HOA BILLS

- SB 880 (Fasano) the CAI sponsored Condo & HOA Bill, died on the floor on the final day (Included provisions on rental restrictions, use of official records, reserves, elections, cable tv, assignment of rents by tenants to the Association, fines, dealing with distressed condominiums, flagpoles, etc.)
- HB 831, its House companion, did not get out of committee
- HB 27 (Ambler) died on floor
- HB 1397 (Robaina) did not get out of committee
- SB 714, the only comprehensive Condo & HOA bill to pass the Legislature, was vetoed by the Governor on June 1, 2009

## WHAT BILLS HAVE BECOME LAW:

**Typically we wouldn't discuss most of these laws. However, partly due to the overall lack of legislation directly affecting HOAs and Condos, we have been asked to address all of these bills. These bills may not apply to your Association, and will not generally apply to the majority of Associations. However, of course, we would like you to be aware of them.**

## **FLORIDA-FRIENDLY LANDSCAPING IN HOAs – SB 2080ER ONLY BILL DIRECTLY APPLYING TO HOAs.**

Former legislation was only prospective; now language is retroactive as public policy as well as prospective.

Changed terminology from “Xeriscape” to “Florida Friendly–landscaping”.

- 720.3075 Prohibited Clauses in Association Documents. –
  - (4)(a) The Legislature finds that the use of Florida friendly landscaping and other water use and pollution prevention measures to conserve or protect the state’s water resources serves a compelling public interest and that the participation of homeowners’ associations and local governments is essential to the state’s efforts in water conservation and water quality protection and restoration.
  - (4)(b) Homeowners’ Association documents, including declarations of covenants, articles of incorporation, or bylaws, may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping, as defined in s. 373.185(1), on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373 or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373
- 373.185–Local Florida-friendly Landscaping Ordinances
  - (3)(b) A deed restriction or covenant or local government ordinance may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision of part II of this chapter or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of this chapter.
  - (3)(c) A local government ordinance may not prohibit or by enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land.

From F.S. 373.185(1): "Florida-friendly landscaping" means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant.

The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.

Some of the terms encountered may include: native and exotic plants, invasive and non-invasive species. The legislature apparently wants to promote beneficial results in homeowners

associations.

Questions?—Is this coming down the line later for condos? Will condos be required to implement Florida-friendly landscapes? To what extent? Should the public policy dictate use of Florida friendly landscapes in office parks, or POAs?

More information on implementation of “Florida Friendly Landscapes” can be found through the University of Florida, Institute of Food and Agricultural Science.

<http://www.floridayards.org>

<http://fyn.ifas.ufl.edu>

### **WATER CONSERVATION / LANDSCAPING—SB 494**

To the degree your Association is responsible for common areas, common elements, or general landscaping of communities, this statute is worth keeping in mind. Some provisions are prospective and will become applicable in 2014.

- Signed June 1, 2009, amends §73.61, Fla. Stat. to provide that licensed contractors working on an automatic landscape irrigation system must test inhibiting and interrupting devices and switches, including moisture detectors, and repair or install as necessary. Model ordinances are to be drafted to require reporting of non-compliance and providing for penalties. Because of water wastage, a uniform variance process based on soil moisture sensor control systems is adopted.
- §403.9337, Fla. Stat. Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.
- Counties and municipalities are required to adopt a proposed model ordinance addressing fertilizer use as a contributor to water quality degradation, exempting the farms located on land classified as agricultural lands.
- §482.1562, Fla. Stat. Certification. A limited certification for urban landscape commercial fertilizer application shall begin January 1, 2014. Certification prerequisites include training and a fee.
- Certification does not authorize pest control use. Application to individual residential properties is exempted if the fertilizer and equipment is provided by the residential property owner or its residents.
- §482.021. Definitions. The term “commercial fertilizer application” means the application of fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator. “Urban landscape” include pervious areas on residential, commercial, industrial, institutional, highway right-of-way, or other non agricultural lands that are plated with turf or

horticultural plants.

### **HURRICANE MITIGATION/INSURANCE - HB 1495**

Under this bill, a property owner can qualify for grant \$ to make the home safer, improving discounts on insurance. Certain conditions apply, such as that the home must have been built prior to 2002, homestead property, worth less than \$300k, and have been inspected under the My Safe Florida Home program. However, funding for the program is not guaranteed.

- “Temporary” 10% increase per year in all Citizen’s insurance policy premiums
- Amends *My Safe Florida Home* program to require inspectors be trained and certified
- Expands use of grants to include reinforcing roof-to-wall connections, roof-deck attachments, upgrading roof, and adding secondary water barrier for roof
- However, funding for *My Safe Florida Home* and the *Condominium Weatherization and Loss Mitigation Loan Program* were removed from bill

### **CDDs - HB 821**

CDD’s have quasi-governmental boards which govern certain areas, and are (mostly) elected subject to state and local laws which apply to municipal elections and appointments. CDD Boards are usually subject to typical conflict of interest and sunshine laws.

- Community Development Districts - permits new urban, small-scale (max of 75 acres) compact mixed-used community development districts, and authorizes the board of the district to enforce covenants which authorized by the county or municipality. It also permits the board to enforce covenants where the authority is assigned to the CDD by a homeowners association, and it provides for a specific procedure for the election of an advisor by a proportionate number of property owners to advise the board in enforcement procedures under certain circumstances.

### **TIMESHARES—HB 61—F.S. 721**

- Extends short term occupancy taxes for “tourist development, tourist impact, and transient rentals” to include occupants (non-owner users) of timeshare resorts. Owners of timeshare interests not subject to this tax.
- A statement that the owners’ obligation to pay assessments continues for as long as he or she owns the timeshare interest and that when a person inherits a timeshare interest, that person is responsible for paying those assessments now must be included in the public offering statement.
- A timeshare resale service provider must now provide increased disclosures as to fees and

costs for advertising, listing, and sale of the timeshare interests.

### **IMPACT FEES FOR NEW DEVELOPMENT—HB 227; F.S. 163.31801**

- In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition of or the amount of the fee meets the requirements of state legal precedent or statute. The court cannot use a deferential standard.

### **NOT-FOR-PROFIT CORPORATIONS - SB 2330; F.S. 617...a number of changes; these are highlights.**

- §617.0701(3), Fla. Stat., is amended to provide that if written demand for a special meeting is made and the corporation (HOA) does not call a special meeting, then any person who signed the demand may set and call the meeting. For HOAs and Condos—need 20% of owners.
- New §617.0721(2)(b), Fla. Stat., provides that a corporation may reject a vote, consent, waiver, or proxy if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubting the validity of the signature on it or the signatory's authority to sign.
- New §617.0721(3), Fla. Stat., provides that the board of directors may adopt guidelines for allowing members of the corporation to be counted, participate, and vote at a meeting of the members by remote communication. (Examples: network, computer conference, tele-conference, Live Meeting).
- 617.0505(5):A corporation regulated by 718, 719, 720, 721, 723, or where membership is required to be recorded, may make refunds, give credits, disburse insurance proceeds, or pay settlements to its members. Nature of this is to provide an exception on limitations in distributions and regarding common surplus.
- **New §617.1703 added to clarify that in the event of any conflict between the 617 and 718, 719, 720, 721, 723, or any corporation where membership is recorded in the county property records, the association statutes control**
- §617.0605 - .608 (Mutual Benefit Corporations) do not apply to the association statutes

### **CLERK OF COURT'S FILING FEES - SB 1718 ; F.S. 28**

- State Portion of Clerk's filing fees are increased:

- Foreclosure:
  - Up to \$50,000: \$ 395
  - Over \$50,000 up to \$250,000: \$ 900
  - Over \$250,000: \$1,900

Based upon the amount due including interest and advancements. May also have additional local fees.

- Eviction filing fee are reduced to \$180
- Probate filing fees are increased

**DOCUMENTARY STAMP TAX – SB 2430 ; F.S.125.0167**

- Legislatively partially overrules Crescent Miami Center, LLC v. FDOR, 903 So. 2d 913 (Fla. 2005) to impose doc stamp tax on transfers of corporate or LLC beneficial interests in real property
- Allocates 35% of doc stamp surtax to low- and moderate income homeowners’ assistance and affordable rental housing

**PROPERTY TAX ASSESSMENTS HB 521; F.S. 194.301**

- Lowers the taxpayer’s burden of proof when contesting a property tax assessment from “clear and convincing evidence” to “preponderance of the evidence”
- it is effective for the 2009 tax year

**CONSTRUCTION DEFECTS LAW – SB 2064 - F.S. 558**

- Amended to allow parties to opt out of statute
- Unless the parties agree that statute does not apply, any construction contract after Oct. 1, 2009 must include a notice:

“ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES”

- Defines “completion” as issuance of a certificate of occupancy, clarifies definition of service of notice requirements, provides that there is no construction lien right for

destructive testing, and provides for exchange of documents and other discovery

**GROWTH MANAGEMENT ACT–SB 360–primarily F.S. 163**

- Encourages urban infill by eliminating transportation concurrence, allows for expedited comprehensive plan reviews and eliminates the development of regional impact process (DRIs) in urban areas. The bill also extends previously obtained permits and approvals by two years, creates a transition process for moving towards a mobility fee system.
- Will discuss more about growth management issues later, re “Hometown Democracy”.

**LIS PENDENS –HB 1552–F.S. 48.23**

- An action on real property operates as a lis pendens only if a notice of lis pendens is recorded in the official records of the county where property is located, and such notice has not expired or has been withdrawn or discharged.
- Expires after one year, unless extended by the court, or unless the relief sought is based on a recorded instrument.

**REMINDER OF 2008 LEGISLATION RE CAM MANAGEMENT--Chapter 468, F.S. - Effective date: October 1, 2008** (See: House Bill 2008-995)

**\*MANAGERS\***

F.S. §468.431 – Definitions

1. Newly defines community association management firm as “a corporation, limited liability company, partnership, trust, association, sole proprietorship, or other similar organization engaging in the business of community association management for the purpose of providing any of the services described in subsection (2).”
2. Redefines community association manager as a “natural person engaging in the business...”

F.S. §468.432 – Licensure of community association managers and community association management firms; exceptions

- As of January 1, 2009: a community association management firm or similar organization responsible for the management of more than 10 units (or a budget of \$100,000 or greater) is not to engage in/represent itself to public as being able to engage in community association management unless it is licensed by the DBPR as a community association management firm
  - To be licensed, must apply to the DBPR on approved form (must include application and licensure fee §468.435(1)(a) and (c) (must be actively registered and authorized to do business within state))

- Application must designate an LCAM who will be required to respond to all inquiries/investigations by DBPR or division
- Must notify DBPR within (30) days after any change to information contained in application
- Licenses will expire on September 30 of odd-numbered years and will be renewed every 2 years
- If license of at least one individual active community association manager member is not in force the license of the community association management firm (or other similar organization) is automatically canceled
- Any licensed community association management firm, etc. agrees (by virtue of license) that it will employ only licensed persons in the direct provision of community association management services (as per §468.431(3))

F.S. §468.436 – Disciplinary proceedings

- DBPR to investigate complaints/allegations of violation filed against community association managers or firms
  - Within 30 days after receipt of complaint, DBPR to acknowledge same in writing (also to notify complainant whether complaint is within its jurisdiction and whether additional information is needed)
  - DBPR to take action upon complaint within 90 days of receipt of original complaint or of timely request for additional information
    - Note: failure to abide by this timeframe does not preclude department from continuing investigation, accepting/considering evidence received after 90 days or from taking administrative action if reason to believe a violation has occurred
      - If investigation is not completed within established timeframe as per section, DBPR to notify complainant of status of investigation (on monthly basis)
    - When reporting its action to complainant, DBPR to inform same as to any right to a hearing pursuant to §120.569 and §120.57
  - Provides additional action which constitutes grounds for disciplinary action:
    - “Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.”

**WHAT COULD HAVE BEEN—LAWS THAT DID NOT MAKE IT THIS YEAR.**

**SB 714 - CONDO INSURANCE (VETOED)**

- Required minimum loss assessment coverage of \$2,000 with max \$250 deductible

- Loss Assessment coverage would be excess coverage over any other policy
- Would replace “hazard” with “property”
- Would replace “full insurable value” with “replacement cost”
- Would remove special notice requirements for Board meeting to determine deductibles
- Would require unit owners’ policies to conform to §627.714, Fla. Stat.
- Would clarify that property within the unit is the responsibility of the unit owner and is NOT covered by the Association master or blanket policy
- Would remove statutory requirement that Association obtain copy of unit owners’ policies
- Would remove statutory right of Association to “force place” unit owners’ policies
- Would remove statutory requirement that Association be named as additional insured on unit owners’ policies

#### **BOARD OF DIRECTORS - SB 714 (VETOED)**

- Terms: In the event that the number of board members whose terms have expired exceeds the number of persons who have indicated an intent to run, then those board members are eligible for re-appointment and would not need to stand for re-election
- Co-owners: Co-owners who own more than one unit would be allowed to serve on the board so long as they are not co-occupants
- Certification: Board member certification requirement would be changed from submitting form with notice of intent to run until 90 days after election
  - Board member would be allowed to submit certificate of completion of DBPR approved education course in lieu of certification form (the form for elections requiring that candidate has read and understands Assn governing documents and the statutes).
  - Association Secretary would be required to maintain certification in Association records for 5 years after election

#### **RESIDENTIAL PROPERTY INSURANCE - HB 1171 (VETOED)**

- Allows insurance companies meeting the State’s requirements to provide homeowners’ property insurance with no cap on rates and premiums, in order to encourage more insurance companies to offer homeowners’ property insurance in Florida

- Such policies must be filed with the State (“file & use”)
- Such policies must include wind coverage
- Home owner must be given statutory rate disclosure and sign an acknowledgment
- Such policies are not entitled to Cat Fund coverage

### **OTHER BILLS THAT DIED**

- All mobile home park bills (HB 551, HB 609, SB 1032 & SB 1298) died in committees
- Funding for *My Safe Florida* hurricane mitigation was removed from HB 1495, as was funding for the *Condominium Weatherization and Loss Mitigation Loan Program*

### **WHAT WE EXPECT FOR NEXT YEAR**

- SB 880 will likely be re-filed next year
- Expect it to look a lot like this year’s bill, perhaps with some or all of SB 714's provisions
- SB 714 will likely be re-filed next year also

### **OTHER LEGAL ISSUES TO KEEP IN MIND:**

#### **PROTECTING TENANTS AT FORECLOSURE ACT**

- The Federal Helping Families Save Their Homes Act of 2009 was signed by President Obama on 5/20/09, which includes Title VII, “Protecting Tenants at Foreclosure Act”. This new Act provides that upon the foreclosure of any residential property, a bona fide tenant must be given 90-days notice before the tenant can be required to vacate the property. Further, if there is a bona fide lease entered into prior to the foreclosure, the tenant has the right to remain at the property until the lease termination. However, if the property is sold to a third party who will occupy the property as a primary residence, then the lease may be terminated, subject to the 90-days notice.
- Note that “foreclosure” is not limited to mortgage foreclosures in the Act, only to Federally related mortgages, but applies to all foreclosures on all residential real property. Accordingly, it appears that any foreclosure would trigger the notice requirements, including Condo and HOA lien foreclosures. Further, the Act does not address leases that may be in default. Finally, it will be interesting to see how title companies handle the Act. We expect that title companies will now require an exception for the tenant notice requirement.

## TELECOMMUNICATIONS / CABLE

- National Cable & Telecommunications Ass'n v. F.C.C., NO. 08-1016, 2009 WL 1444094 (D.C. Cir. May 26, 2009). The D.C. Federal court affirms the FCC rule disallowing exclusive cable contracts in multi-unit developments because it has an anti-competitive effect.

## FANNIE MAE – ANNOUNCEMENT 08–034 NEW CONDO LENDING GUIDELINES

- On December 16, 2008, Fannie Mae announced new lending guidelines for Florida Condominiums
  - PERS Program: Project Eligibility Review Service
  - Pre-sale/Occupancy Requirements
  - Reduced Loan-to-Value Ratios (LTV)
  - Delinquencies
  - “Master” or “Blanket” Hazard Insurance Policies
- Pre-sale / Occupancy
  - For new and newly converted condos, ≥70% must be pre-sold or sold
  - For individual investment properties in existing condos, ≥51% must be sold
  - REO's held for sale count as owner-occupied
- **Delinquencies: no more than 15% of the total # of units can be more than 30 days past due**
- LTV for owner-occupied is still 95% - 97%
- LTV for investors is 85% with full review, not eligible without full review
- LTV for second homes is 70% - 90% depending on review level (full or limited)
- Insurance Requirements:
  - Borrower must obtain HO-6 rider (to cover inside of the unit)

- Association policy must include 100% insurable replacement coverage and betterment coverage to cover any improvements Borrower may have made to unit
- a blanket policy that covers multiple unaffiliated condominiums is prohibited
- A self-insurance arrangement whereby the Association is self-insured or has banded together with other unaffiliated associations to self-insure is prohibited

### **FANNIE MAE ANNOUNCEMENT 09-02**

- On February 6, 2009, Fannie Mae issued Announcement 09-02
  - LTVs for second homes limited to 75%
  - LTVs for investment properties limited to 70%
  - Minimum credit score for second homes and investments is 720
  - All loans must be fixed rate, no balloons

### **FLORIDA DBPR ARBITRATION ORDER**

- In Re: Petition for Arbitration: Humphrey v. Carriage Park Condominium Association, Inc., Final Order dated March 30, 2009, Case No. 2008-04-0230
  - The Arbitrator ruled that email communications among directors were not “official records” required to be kept or produced by the Association
  - Compare this ruling to a Legal Opinion of the DBPR dated March 6, 2002, in which the DBPR stated that email communications between the board of directors and the property manager are official records that must be made available for inspection

We still advise that Associations be careful with e-mail communications.

### **PROPERTY TAX CAP**

- Proposed constitutional amendment to lower the cap on annual non-school property tax assessment increases from 10% to 5% for non-homestead properties (homesteaded properties already have a 3 percent cap), and offer an additional exemption of 25% up to a maximum of \$100,000 to buyers of primary homes who haven't owned one for the previous 8 years, may be put on the 2010 ballot
- Proposed constitutional amendment for 2011 ballot that would grant additional homestead exemption to military personnel deployed overseas

## **HOMETOWN DEMOCRACY:**

- Amendment 4 to the Florida Constitution: On the ballot for November 2010.
- Proposes that “before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, such proposed plan or plan amendment shall be subject to a vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body as provided by general law, and notice thereof in a local newspaper of general circulation.”
- Potential issues:
  1. No definition of comprehensive land use plan or land use plan in growth management statutes or regulations
  2. Scope of the amendment is undefined. As a property’s land use depends on supporting infrastructure, every part of which is controlled by a separate element of a comprehensive plan, and each of these elements guide and control future land development, it appears that such Amendment may require a referendum on every plan amendment.
  3. That could include hundreds to thousands of technical land use amendments, including transportation and capital improvements amendments which schedule infrastructure improvements over 5 years.
  4. May also mean that “garden variety” zoning changes would also be voted on.
  5. Lawsuits over inconsistent interpretations of this vague language.

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