



COMMUNITY ASSOCIATION
LEADERSHIP LOBBY

CALL 2014 Legislative Guide for HOAs

The Florida Legislature's 2014 Amendments to Laws Affecting HOAs



House Bill 807, Relating to Residential Properties
House Bill 7037, Relating to Residential Communities
And Miscellaneous Bills of Interest

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CALL

COMMUNITY ASSOCIATION
LEADERSHIP LOBBY



Over the past ten years, the Community Association Leadership Lobby (CALL) has provided education, outreach and advocacy on issues impacting all types of community associations. As the Tallahassee-based Executive Director, and lawyer/lobbyist for CALL, I am able to create an ongoing presence for CALL and keep the important needs of community associations in legislators' minds. My role includes, among other things, tracking all of the bills impacting community associations, attending and speaking at legislative committee meetings, and meeting individually with legislators. I am proud to serve in this role on behalf of the thousands of communities Becker & Poliakoff represents.

Of course, helping to shape positive community association legislation is a team effort. CALL's team includes Becker & Poliakoff shareholders Ken Direktor, Donna Berger, and Joe Adams, and there is no other organization or advocacy group that covers the entire State of Florida or that has as much experience advocating on behalf of owners and their associations as CALL. CALL's Advisory Board also plays an important role by providing valuable input on CALL's legislative agenda while providing a local connection between CALL and members of the Florida Legislature. And we couldn't do what we do without all of the CALL members who support our efforts.

There were approximately 1,800 bills filed during the 2014 Legislative Session, and of those, only 263 passed both the House and Senate and were signed into law by Governor Rick Scott. This Legislative Guide summarizes the laws that passed that directly impact community associations, including bills dealing with insurance and other miscellaneous bills of interest.

Some of the significant community association bills that did not pass include bills dealing with increases to the "safe harbor" amount that banks pay to associations when the bank forecloses on a unit; emotional support animals and service animals; towing of vehicles; homeowners' association regulation by the Department of Business and Professional Regulation; and condominium termination. However, it is very likely that we will see many of these bills again in 2015, so it is important that community association members remain engaged in the legislative process. You can do that by staying informed about the bills that are being filed in Tallahassee and reaching out to your local legislators to explain the needs of your community. The CALL website, www.callbp.com provides useful tools and information to allow you to be a strong advocate for your community and for positive community association legislation.

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

Kind Regards,

A handwritten signature in black ink that reads "Yeline Goin". The signature is fluid and cursive.

Yeline Goin, Esq.
Executive Director, CALL

HB 807: RELATING TO RESIDENTIAL PROPERTIES

Chapter 2014-132, Laws of Florida

Effective Date: July 1, 2014



Representative George Moraitis,

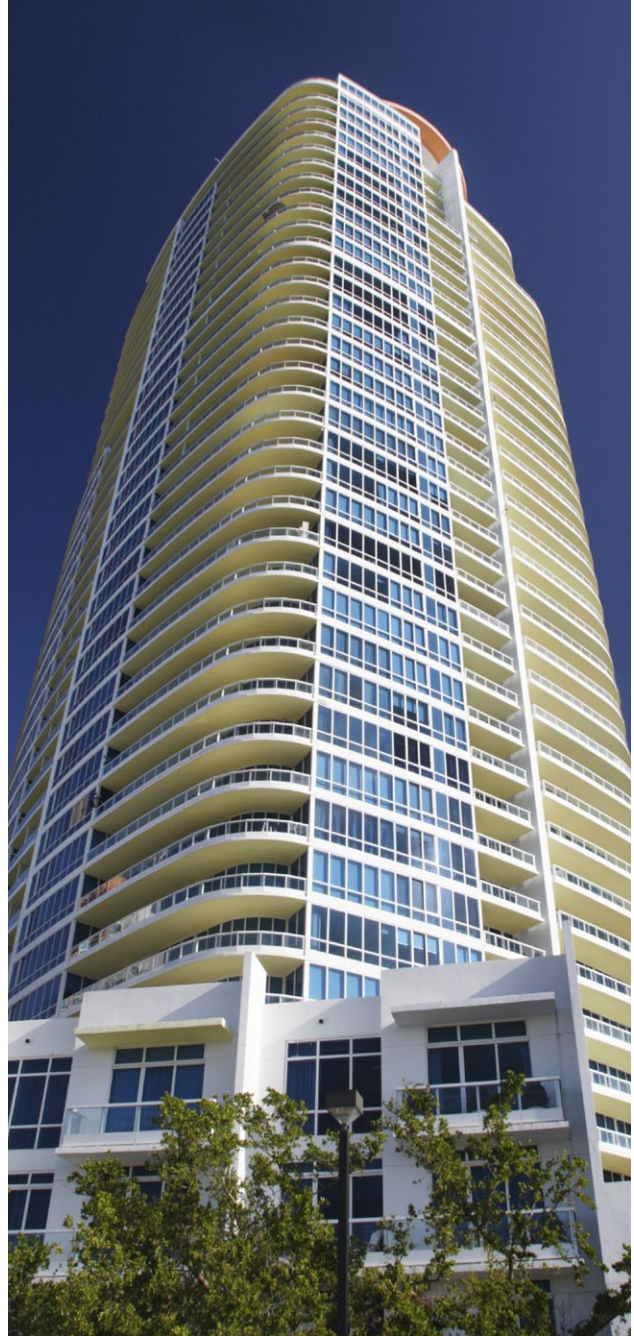
Sponsor of **HB 807**: “We had another great session this year in Tallahassee and it was once again a privilege to work with CALL and the attorneys at Becker Poliakoff.

CALL is a very important voice in our state capitol as an advocate for our community association residents on a variety of issues. This year, CALL was very instrumental in helping me pass HB 807 which gives Associations greater rights and remedies to collect unpaid maintenance fees. This is particularly a problem when units have been abandoned by the owner and the bank has not yet completed its foreclosure to the detriment of the paying association residents. I look forward to continuing to work closely with CALL as we prepare next year’s legislative agenda and further our efforts to assist the citizens of our state living in community associations.”



Senator Jeremy Ring, Sponsor of SB 798 (Companion Bill to **HB 807**): “The passage of HB 807 and its protections for association residents is a victory for the State of Florida. One of the most important

protections that associations now have is the ability to take title while retaining the ability to collect the unpaid assessments due to the association. The timeless advocacy and work of CALL and the attorneys at Becker and Poliakoff was instrumental in the successful adoption of HB 807. I look forward to working with CALL next year to continue our good work on behalf of condo residents and associations.”



HB 807: RELATING TO RESIDENTIAL PROPERTIES

Chapter 2014-132, Laws of Florida

Effective Date: July 1, 2014

OFFICIAL RECORDS/OWNER DIRECTORIES

§720.303(5), F.S.

- An association may print and distribute to parcel owners a directory containing the name, parcel address and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association.
- An owner may consent to the disclosure of other contact information.



NOTE: *The statutes previously provided that the association could publish a directory containing the name, parcel address and “telephone number” (singular).*

It was unclear whether the telephone number meant the telephone number for the telephone physically located in the unit, or other telephone numbers. This change clarifies that all telephone numbers in the association’s records may be included in the directory, however, an owner may still request in writing that his telephone numbers be excluded from the directory.



PRACTICAL POINTER: *The statute now specifically authorizes an owner to consent to the disclosure of other contact information. Therefore, if the association wishes to include e-mail addresses in the directory, it should obtain written consent from the owners to publish their e-mail addresses.*

COMMUNITY ASSOCIATION LIVING STUDY COUNCIL

§718.50151, F.S.

- Repeals Section 718.50151, Florida Statutes, which created the Community Association Living Study Council.

HB 807: RELATING TO RESIDENTIAL PROPERTIES

Chapter 2014-132, Laws of Florida

Effective Date: July 1, 2014

EMERGENCY POWERS

§720.316, F.S. (NEW)

- Provides for association emergency powers to the extent allowed by law, unless specifically prohibited by the homeowners' association governing documents, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the homeowners' association.
- The association may conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.
- The association may cancel and reschedule association meetings.
- The association may designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.
- The association may relocate the association's principal office or designate an alternative principal office.
- The association may enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.



HB 807: RELATING TO RESIDENTIAL PROPERTIES

Chapter 2014-132, Laws of Florida

Effective Date: July 1, 2014

- The association may implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.
- The association may, based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.
- The association may, based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.
- The association may mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.
- Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the governing documents, the association may levy special assessments without a vote of the owners.
- Without the owners' approval, the association may borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the governing documents.
- The emergency powers granted is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.



PRACTICAL POINTER: *Homeowners' associations should adopt an emergency plan for natural disasters.*

HB 807: RELATING TO RESIDENTIAL PROPERTIES

Chapter 2014-132, Laws of Florida

Effective Date: July 1, 2014

ASSOCIATION MEETINGS/HANDICAPPED PERSONS

§§720.303(2)(a) and 720.306(1)(a), F.S.

- Homeowners' association board meetings and owner meetings must be held at locations which are accessible to physically handicapped persons, but only if a request is made by a physically handicapped person who is entitled to attend the meeting.



PRACTICAL POINTER: *HOAs should determine whether their current meeting locations are accessible to physically handicapped persons and if not, find potential locations in the event the association receives a request.*

AMENDMENTS TO GOVERNING DOCUMENTS

§720.306(1)(b), F.S.

- Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members.
- However, if a copy of the proposed amendment was provided to the members before the they voted on the amendment and the proposed amendment was not changed before the vote, the association may, in lieu of providing a copy of the proposed amendment, provide notice that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association.
- The copies and notice may be provided electronically to those owners who previously consented to receive notice electronically.



PRACTICAL POINTER: *If an HOA adopts an amendment to the governing documents and it has provided a copy of the amendment to the members prior to the vote, and the amendment did not change, it does not have to send a copy of the recorded amendment to all of the members. It must, however, provide notice to the owners within 30 days after recording the amendment that the amendment was adopted and the notice must include the official records book and page number, or instrument number, of the recorded amendment. The notice must also state that a copy of the recorded amendment is available at no charge upon request. The notice may be sent electronically to those owners that have consented to receive notice by electronic mail. If the association makes non-substantive changes to the amendment after a copy has been provided to the members but prior to the owner vote, the association should discuss with its association attorney whether the revised, recorded amendment must be provided to all of the owners.*

HB 807: RELATING TO RESIDENTIAL PROPERTIES

Chapter 2014-132, Laws of Florida

Effective Date: July 1, 2014

MARKETABLE RECORD TITLE ACT (MRTA)

§712.05, F.S.

- Clarifies the notice requirements when a homeowners' association is preserving covenants and restrictions, specifically providing that the homeowners' association or clerk is not required to provide additional notice pursuant to Section 712.06(3). This clarifies that newspaper published notice is not required regarding the MRTA preservation when a homeowners' association covenants and restrictions are being preserved.
- The amendment states that it is intended to clarify existing law.



PRACTICAL POINTER: *MRTA is a complex statute and your association should not attempt to preserve covenants and restrictions without the assistance of an attorney.*



HB 7037: RELATING TO RESIDENTIAL COMMUNITIES

(Community Association Managers--CAMs)

Chapter 2014-146, Laws of Florida

Effective Date: July 1, 2014



Representative Spano, Sponsor of HB 7037: “We filed HB 7037 to address public concerns about on-going efforts by the Florida Bar to classify routine, non-legal services provided by Community Association Managers (CAM’s) as the ‘Unlicensed Practice of Law’ (UPL). Without a legislative remedy, the potential result would have been that Florida’s 33,000 Homeowner Associations (HOA’s) and more than four million homeowners who live in HOA’s would be forced to hire lawyers to provide these services for considerably higher costs. We recognized this would inevitably result in higher

HOA dues and assessments, which would be devastating to families just now recovering from the great recession. This legislation insures that CAM’s can continue to provide these non-legal services to HOA’s, protecting homeowners all across the State of Florida from rising costs.”

§468.431, F.S.

- Adds the following activities to the definition of “community association management”:
 - o determining the number of days required for statutory notices,
 - o determining amounts due the association,
 - o collecting amounts due the association prior to the filing of a civil action,
 - o calculating the votes required for a quorum or to approve a proposition or amendment,
 - o completing forms related to the management of a community association that have been created by statute or by a state agency,
 - o drafting meeting notices and agendas,
 - o calculating and preparing certificates of assessments and estoppel certificates,
 - o responding to requests for certificates of assessment and estoppel certificates,
 - o negotiating monetary or performance terms of a contract subject to approval by an association,
 - o drafting pre-arbitration demands,
 - o coordinating or performing maintenance for real or personal property and other routine services involved in the operation of a community association, and
 - o complying with the association’s governing documents and the requirements of law as necessary to perform such practices.

HB 7037: RELATING TO RESIDENTIAL COMMUNITIES

(Community Association Managers--CAMs)

Chapter 2014-146, Laws of Florida

Effective Date: July 1, 2014

§468.4334, F.S. (NEW)

- Provides for new professional practice standards for community association managers (CAMs) and community association management firms.
 - o A CAM or a community association management firm are deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under Chapter 468.
 - o A CAM and a community association management firm shall discharge duties performed on behalf of the association as authorized by Chapter 468 loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.
- Provides for guidelines on indemnification provisions for contracts between a CAM (or a community association management firm) and a community association.
 - o The management contract may provide that the community association indemnifies and holds harmless the CAM (or the community association management firm) for ordinary negligence resulting from the manager or management firm's act or omission that is the result of an instruction or direction of the community association. However, such does not preclude any other negotiated indemnity or hold harmless provision.
 - o The indemnification may provision not cover any act or omission that violates a criminal law; or any case where the CAM or management firm: derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, acts in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.



HB 7037: RELATING TO RESIDENTIAL COMMUNITIES

(Community Association Managers--CAMs)

Chapter 2014-146, Laws of Florida

Effective Date: July 1, 2014

§§718.116, 718.121, F.S.

- The bill creates new statutory forms for the following:
 - o Release of lien,
 - o 30-day notice of intent to file a lien,
 - o 30-day notice of intent to foreclose a lien.

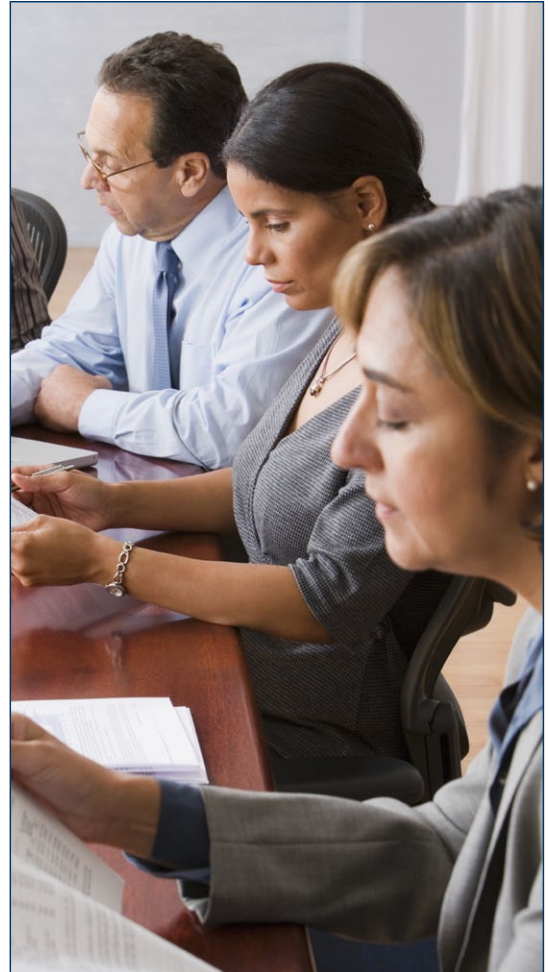


NOTE: *A previous version of the bill would have specifically allowed the association to recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment. This language was removed through an amendment that was debated by the full House of Representatives. A majority of the House members voted to remove the language from the bill on the basis that the charges were a “new fee” that should not be collected from the delinquent owner.*

Also note that Article V of the Florida Constitution gives the Florida Supreme Court the exclusive jurisdiction over the practice of law and many of the issues addressed by HB 7037 are pending before the Florida Supreme Court in a request for an Advisory Opinion brought by the Florida Bar, Case Number SC-889. Specifically, the issue of whether certain activities of community association managers are considered the unlicensed practice of law will remain unresolved until the Florida Supreme Court issues its opinion.



PRACTICAL POINTER: *Ask your association attorney to review contracts (management contracts, service contracts, construction contracts, etc.) to ensure that the association is adequately protected with regard to indemnification, insurance, and other similar provisions.*



MISCELLANEOUS BILLS OF INTEREST



SB 440 (Senator Thad Altman), Relating to Condominiums, (Chapter 2014-74, Laws of Florida, Effective Date: July 1, 2014). SB 440 amends various sections in Chapter 718, Florida Statutes, to make them not applicable to non-residential condominiums. For example, the following provisions do not apply to non-residential condominiums: requirement to respond to certified written inquiries; the prohibition against voting by general proxy and voting by proxy in an election; board member terms; the prohibition of co-owners of a unit serving on the board; legal and financial eligibility requirements for board members; the requirement that the board elections take place via written ballot or voting machine; the requirement that new board directors certify within 90 days that they have read the governing documents and bylaws, swear to uphold their responsibilities, etc. or attend a board certification class; and the mandatory nonbinding arbitration pursuant to Section 718.1255, Florida Statutes, among others.



SB 356 (Senator John Thrasher), Relating to Regulation of Public Lodging Establishments (Vacation Rentals), (Chapter 2014-71, Laws of Florida, Effective Date: July 1, 2014). SB 356 amends Section 509.032(7), Florida Statutes, to provide that a local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. The prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

The original version of the bill would have repealed Section 509.032(7)(b), Florida Statutes, which was adopted during the 2011 Legislative Session, and which completely exempted vacation rentals from city and local governmental control. The original bill would have given local governments the ability to deal with problematic issues related to these seasonal residences. However, the final version of the bill did not completely repeal the language in Section 509.032(7)(b). The final version provides that local governments may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. Presumably, however, a local government would now be permitted to regulate parking and noise, and implement safety and fire requirements.



HB 489 (Representative Ross Spano), Relating to Residential Property Sales/ Subsurface Rights (Chapter 2014-34, Laws of Florida, Effective Date: July 1, 2014). HB 489 requires sellers of new dwellings to provide written notification to prospective buyers of the seller's intent to retain subsurface (e.g. oil and gas) rights prior to entering into any sales contract. The bills provide a form notice to be used by sellers.

MISCELLANEOUS BILLS OF INTEREST



SB 542 (Senator Jeff Brandes), Relating to Flood Insurance (Chapter 2014-80, Laws of Florida, Effective Date: June 13, 2014). The bill provides that an authorized insurer may offer personal lines residential flood insurance policies. The bill is intended to offer an alternative to the National Flood Insurance Program (NFIP). Note that the bill does not apply to commercial or commercial residential policies, and therefore, a condominium association would have to continue to obtain flood insurance through the NFIP.

While the Florida Legislature was considering SB 542, President Obama signed the Homeowner Flood Insurance Affordability Act of 2014 into law. This legislation repeals and delays certain aspects of the Biggert-Waters Flood Insurance Reform Act of 2012, which was put in place to eliminate the federal subsidizing of rates for homeowners and businesses in coastal regions categorized as flood areas. Before passage of the 2014 federal law, Florida policyholders were facing substantial hikes in their coverage rates. The federal law had bipartisan support from members of Congress, Governor Scott, and state legislators.



HB 1089 (Representative Holly Merrill Raschein), Relating to Citizens Property Insurance Corporation (Chapter 2014-140, Laws of Florida, Effective Date: July 1, 2014). The bill provides that with respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

SB 1672 (Banking and Insurance), Relating to Property Insurance (Chapter 2014-104, Laws of Florida, Effective Date: July 1, 2014). Among other things, the bill:

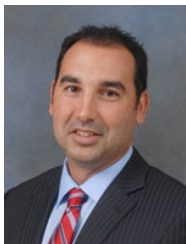
- Directs Citizens to stop writing new commercial residential multi-peril policies for areas eligible for coverage in the “coastal account” effective July 1, 2014. Instead, Citizens may offer separate wind-only policies, and commercial residential policies excluding wind. Citizens may, however, continue to renew commercial residential multi-peril policies on a building that is insured by Citizens on June 30, 2014.
- Prohibits an insurance agent, managing general agent, adjuster, customer or service representative from accepting referral fees or compensation from an inspection or inspection company related to an inspection used to obtain insurance coverage or establish the insurance premium.
- Prohibits a public adjuster, apprentice or associate from accepting a power of attorney that vests to the right to select the person that will perform repairs on an adjusted property.

MISCELLANEOUS BILLS OF INTEREST



SB 708 (Senator Aaron Bean), Relating to Insurance Claims (Chapter 2014-86, Laws of Florida, Effective Date: July 1, 2014).

- Prohibits insurers from denying a claim on a residential policy on the basis that the policy application included a misrepresentation, omission, concealment of fact, or incorrect statement, of credit information in the public records, if the policy has been in effect for more than 90 days.
- Prohibits an insurer from canceling a policy (whether personal lines or commercial residential) that has been in effect for more than 90 days based on credit information in the public records.
- Creates a “homeowners claims bill of rights” for personal lines residential policies that requires insurers to specify what an owner can expect when they file a claim. The “bill of rights” must be provided to any owner that files a claim.



HB 7051 (Business & Professional Regulation Subcommittee and Representative Mike LaRosa), Relating to Department of Agriculture and Consumer Services (Chapter 2014-147, Laws of Florida, Effective Date: July 1, 2014). HB 7051 includes a technical change to 718.104(4)(e) regarding the survey that must be included in the declaration of condominium. Essentially, it changes the reference to the “minimum technical standards set forth by the Board of Professional Surveyors and Mappers” to “the standards of practice established by the Board of Professional Surveyors and Mappers.”



SB 934 (Senator John Thrasher), Relating to Florida Statutes (Chapter 2014-17, Laws of Florida, Effective Date: July 2, 2014). This bill includes a very technical change to Section 718.301(1), which deals with adding phases to a condominium. There was an error in the statute because the language at the end of 718.301(1)(g) should have been “flush left” so that it was part of subsection (1), but instead it was placed at the end of paragraph (1)(g). The bill corrects that error and moves the language “flush left” so that it is part of subsection (1), and not part of paragraph (1)(g).

COMMUNITY ASSOCIATION LEADERSHIP LOBBY (CALL)

Recommended Action Steps For Homeowners' Associations

After the 2014 Legislative Session



1. Amend Bylaws to authorize your association to provide notice by electronic mail.
2. Get written authorization from owners to communicate via email.
3. Get written authorization from owners to include other contact information (i.e., email addresses) in the owner directory.
4. Adopt an emergency/disaster plan.
5. Determine whether meeting location is accessible to physically handicapped persons and, if not, find potential locations in the event association receives a request.
6. Ask your association attorney to perform an audit of your governing documents to confirm whether or not you have incorporated previous legislative changes in years past.
7. Ask your association attorney to review contracts (management contracts, service contracts, construction contracts, etc.) to ensure that the association is adequately protected with regard to indemnification, insurance, and other similar provisions.

Community Association Law Resources



Becker & Poliakoff Website

Becker & Poliakoff's website includes videos, webinars, informative articles and checklists that can assist you and your association. Visit www.bplegal.com



The Florida Condo & HOA Law Blog

The Florida Condo & HOA provides readers with up to date analysis and news that affects condominiums and HOAs in Florida. Ongoing posts by community association attorneys will keep you informed! Log on and subscribe to receive updates as they happen.

Visit www.floridacondohoalawblog.com



The Community Association Law Blog

This blog covers all topics related to condominiums, cooperatives, HOAs, timeshares and mobile home communities from the unique perspective of attorney Donna DiMaggio Berger, a shareholder in Becker & Poliakoff's Community Association Law Group.

Visit: www.communityassociationlawblog.com



Educational Seminars and Webinars

Every hurricane season, Becker & Poliakoff hosts courses for CAMs and boards. We also have on demand and live webinars that focus on hurricane preparation and disaster recovery.

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App For Smartphones and Tablets

Want to keep up with the statutory changes from year to year? Looking for ways to create meeting minutes, answer commonly asked questions, and help make your association run smoother? Well now there's an App for that! Visit: www.bplegal.com/app



Florida Construction Law Authority

Reconstruction after a disaster is fraught with its own unique challenges. Resources may be scarce and licensed contractors may be even more scarce. This blog is a great reference to help you to avoid the pitfalls of post-disaster repairs. Visit www.floridacreationlawauthority.com



CALL Online

The Community Association Leadership Lobby ("CALL") was created to provide clients with the tools and training they need to stay informed on key issues and influence new legislation in Florida's Capitol.

Visit www.callbp.com



Client CARE Center

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