

A publication of:

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NEW CONDO LEGISLATION

At a time when our state is in the worst financial crisis in decades, and our condominiums are in a constant downward spiral, this new legislation **does little or next to nothing** to help protect the millions of residents who live in condominiums throughout our state. At a time when we truly needed innovation to help speed foreclosures through the court process, to protect our citizens against developers who renege on their responsibilities to their buyers, this bill **does nothing** to address these real concerns and instead pretends to offer help through "feel good" but **absolutely meaningless** proposals.

Your legislators want you to think that they accomplished something because now 718.116 has been amended to increase the liability of a bank from 6 months to 12 months of unpaid assessments or 1% of the original mortgage whichever is less. **THIS IS THE MOST DISAPPOINTING AMENDMENT OF ALL. DESPITE ALL THE HOOPLA - THE BANK'S LIABILITY TO THE ASSOCIATION DID NOT DOUBLE - BECAUSE THE 1% CAP STILL REMAINS IN PLACE. IN THE OVERWHELMING MAJORITY OF CASES, THE BANK WILL STILL ONLY PAY 1% OF THE MORTGAGE.** Would these same proponents say that the bank's liability increased ten fold if the statute was amended to require banks to pay the lesser of five years of assessments or 1% of the mortgage? That's what they would like you to believe, but the truth is.....the 1% cap will kick in almost every time leaving the banks in the exact same position as they were before the amendment. For example, in the average association, let's say the average mortgage is \$220,000.00. The bank's maximum liability is still only \$2,220.00. On average that's still only about six months of assessments. **Nothing was gained here. The banks are laughing all the way to well.....themselves. A true doubling of the bank's liability to the association would have increased the cap to 2%.**

Your legislators want you to think that they accomplished something because now, a person who is delinquent in the payment of any fee, any fine, or payment of any special or regular assessment in excess of ninety (90) days is not eligible for board membership. **SO WHAT? HOW DOES THIS HELP A CASH STRAPPED ASSOCIATION? THE PEOPLE WHO DON'T PAY ARE NORMALLY NOT THE ONES RUNNING FOR THE BOARD ANYWAY. THIS DOES NOTHING TO PUT MONEY INTO THE ASSOCIATION'S COFFERS.**

Your legislators want you to think that they accomplished something because now, the statute has been amended to state that any director or officer more than 90 days delinquent in the payment of **any** monetary obligation due to the association is deemed to have abandoned the office. **AGAIN.....BIG DEAL. HOW DOES THIS PUT MONEY IN THE ASSOCIATION'S POCKETS? DO YOU THINK DEADBEATS CARE ABOUT STAYING ON THE BOARD? OR RUNNING FOR THE BOARD?**

Your legislators want you to think that they accomplished something because now the association can demand the rent from the tenant and evict the tenant for not paying their rent directly to the association. Sounds great doesn't it? The truth is, in practice, the poor tenant is the victim who gets caught in the middle of a nightmare and is often uncertain about what to do, and instead of getting involved in legal battles, picks themselves up and finds another place to live. Instead of the legislation focusing on a way to force the banks to foreclose faster, or requiring the delinquent owner to post the condominium assessments into the court registry each month as they become due, we took the easy road and we attacked the innocent tenant, potentially making them responsible for payment of attorney's fees to association's counsel. It's like picking a fight with the weakest kid in the class.

Your legislators want you to think that they accomplished something because now, if a unit owner is delinquent for more than 90 days paying a monetary obligation due to the association, the association may suspend the right of a unit owner or unit's occupant, licensee or invitee to use common elements, common facilities or any other association property until the monetary obligation is paid.

AGAIN..... THIS IS NOTHING MORE THAN A "FEEL GOOD" MEASURE. WHILE IT MIGHT BE OFFENSIVE THAT A DELINQUENT OWNER USES THE POOL, THE REALITY IS "SO WHAT?" LET'S ASSUME THE ASSOCIATION TELLS THE DELINQUENT OWNER TO STOP USING THE POOL AND THE OWNER REFUSES. HOW SHOULD THE ASSOCIATION NOW ENFORCE THIS? THE POLICE WON'T GET INVOLVED. SHOULD THE PRESIDENT RISK A FIST FIGHT OR WORSE? SHOULD THE CONDO MANAGER? INSTEAD - SOME ARBITRATION ACTION OR LAWSUIT WILL NOW NEED TO BE FILED, AND OF COURSE THE ASSOCIATION IN ALL LIKELIHOOD WON'T COLLECT A DIME ANYWAY. OF COURSE - IT'S NOT AN EMERGENCY SO THE SUIT WILL DRAG ON FOR MONTHS OR YEARS, ALL THE WHILE THE DELINQUENT OWNER IS USING THE POOL ANYWAY AND EMBARRASSING THE BOARD MEMBERS EVEN MORE. THE ATTORNEY'S FEES FOR ALL THIS WILL BE ASTRONOMICAL AND A COMPLETE WASTE OF TIME. TURNING OFF THEIR CABLE TV ACCOMPLISHES MORE.

Your legislators want you to think that they accomplished something because now an association may also suspend the voting rights of a member due to non payment of any monetary obligation due to the association which is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or owed to the association.

ANOTHER "FEEL GOOD" MEASURE. MOST PEOPLE IN FORECLOSURE DON'T CARE ONE WAY OR THE OTHER ABOUT VOTING IN THE ELECTION OR FOR ANYTHING ELSE. HOW DOES THIS PUT MONEY INTO THE ASSOCIATION'S POCKETS?

Your legislators want you to think that they accomplished something because now, cash strapped developers can easier sell their last remaining units to "bulk" buyers or assignees who won't have any of the responsibilities of the original developer. You would think that if the statute was designed to protect the association members, the developer should at least be required to post some of these funds into an escrow account so that post turnover or before the developer gets out of Dodge, there is a some money for the association to go after should there be construction defects or other obligations of the developer owed to the association. Instead, the law caters to the special interest developers, allows them to leave their damage behind them, take the money, close up shop and leave the association holding claims against the developer often times with little or no chance of recovering anything.

Again, instead of taking on developers, instead of taking on banks, the legislation focuses on beating up tenants. And for this our politicians actually want a "Thank you."

And then of course there's the retro-fitting bill that allows associations the ability to opt-out of the fire sprinkler requirements or have an extra five years to install them. What can you say about a piece of legislation, if the best part of the legislation allows you to vote to put your own life, health and safety and those of fire fighters and police in greater jeopardy? Of course it's unaffordable now, I don't dispute that. But perhaps if the new laws actually required delinquent owners to put money in the court registry each month or have a foreclosure judgment entered against them, perhaps if developers weren't allowed to escape their financial obligations to our communities, perhaps if we found a way to speed up the foreclosure process, we wouldn't have to decide between money and risking life and limb.

This was such a critical year for the passage of meaningful condominium law reform. Instead of reform, the bill creates the illusion that we became tough on delinquent owners. We obviously didn't. Keeping them out of the pool and off the Board is hardly being tough. We made it easier for developers to sell their last remaining inventory without thinking that perhaps some money should be put aside for claims by the owners. Instead of fixing a very badly broken arbitration and recall system, we allow a system to continue that leads to delays in having disputes decided while allowing attorney's fees to sky rocket.

All this talk about how important it is for Governor Crist to sign this bill. On balance, other than the cost for the fire sprinklers, it won't make a dam bit of difference if he does or doesn't. If it does pass, no doubt your elected officials will tell you how they supported the bill and how they are in your corner. They will tell you how hard they fought for you and how they saved your association from financial ruin. And they'll do it with a straight face.....