

More cost and burden for condominium associations?

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BY LISA MAGILL, ESQ.

I believe most Floridians support toughing up on abuses in condominium associations. The Division of Florida Condominiums, Timeshares and Mobile Homes and law enforcement must have the tools they need to ferret out theft, forgery, self-dealing, conflicts of interest or other wrongdoings and punish those purposely violating the law. That goes without saying.



However, Florida CS/HB 1237, approved by both the House and Senate contains provisions seemingly intended to increase transparency, but likely will increase costs and administrative burdens for condominium associations. These additional costs will be passed through to the members, leading to budget increases for those communities with more than 150 units.

Association records maintenance is very important for compliance with regulatory requirements. Each and every owner's right to inspect Official Records must be preserved. After all, the unit owners pay the bills. Are the existing laws adequate? Pursuant to the current statutes, members are entitled to request access to a whole host of records including financial records, meeting minutes, contracts and correspondence. Associations that fail to provide access are subject to penalties and exposure for opposing party attorney fees. The statutes also call for civil penalties against any individual who defaces, destroys or intends to cause harm to the members by failing to create or maintain the records listed in Section 718.111(12), Florida Statutes.

Disputes concerning maintenance and access to records cause a tremendous amount of strife in community associations. In some cases, association leadership is somewhat lax so the records are not maintained exactly as contemplated by statute. Leadership efforts to purposely withhold access to Official Records does happen from time to time. On the other hand, condominium unit owners frequently use their record inspection rights to

harass and annoy board members and management.

This bill, if signed into law, would require condominium associations to allow renters to access certain records. Condominium associations with more than 150 units will be required to post (upload) copies of the following documents on websites created for this purpose. Condominium associations without websites or use of websites, web portals or web pages will need to create them or hire third parties to do so. The website must contain:

- Recorded declaration with all amendments
- Recorded bylaws with all amendments
- Articles of incorporation with all amendments and current rules
- All management contracts, leases or other contracts where the association is a party of which unit owners have obligations
- Summaries of bids for materials, equipment or services
- Adopted annual budget and any proposed budget to be considered at the annual meeting
- Year-end financial reports required by statute;
- Each director's self-certification or evidence of participation in a Division-approved educational program
- All contracts or transactions between the association and any director, officer, corporation, firm or any other entity in which an association director is financially interested
- Conflict of interest disclosures
- Notices and agendas for both membership and board meetings

Who will perform these services? Will volunteers undertake these obligations? What if the leadership isn't computer or Internet savvy? Many associations will need to rely upon vendors to perform these services or expect management to absorb these responsibilities. Management companies may have to hire additional staff to account for the extra work load. All of this likely translates to increased costs to the unit owners. In fact, many service providers have already indicated their platforms are perfectly suited for compliance with the new law.

Additionally, associations will have to file a report with the DBPR containing the names of all the financial institutions with which it maintains accounts on an annual basis.

This bill also dramatically changes recall procedures. Admittedly, many recall efforts that should be certified by the board wind up in arbitration. That is unfortunate but at the conclusion the rightful board controls operations. Eliminating recall arbitration after a board fails to certify the recall means that

wrongfully removed board members will have to defend their positions as individuals. Board members will either have to accept their fate or file a petition for arbitration at their own expense. Critics complain the lack of DBPR arbitration for recall certification will lead to more abuse. Defective recall efforts may result in illegitimate board turnovers or litigation between those that claim to be the “lawful” board of directors.

Other portions of the bill have been criticized for “criminalizing” other activities. These initiatives were largely in response to the scathing Miami-Dade grand jury report issued earlier in the year. The report found tremendous abuse associated with elections, conflicts of interest and association records. Records were purposely withheld in some cases and modified in others. The bill emphasizes that forgery of ballot envelopes or voting certificates is a crime punishable by law. Destruction of or the refusal to allow inspection or copying of an official record of a condominium association within the time periods required by law in furtherance of any crime is punishable as tampering with physical evidence or as obstruction of justice. This will hopefully make community leaders and those who serve community associations think twice before shirking or intentionally avoiding corporate responsibilities created by statute.

Bill drafters combat conflicts of interest by prohibiting the attorney representing the association from also representing the management company serving the association. This is, for the most part, common sense, except as may be necessary for the attorney to defend management pursuant to an indemnification agreement or in connection with disciplinary complaints filed after management followed board instructions. Additional restrictions are placed against associations contracting with companies associated with board members and purchasing units at foreclosure sales, although in some instances the language is inconsistent.

Civic activists from Miami-Dade celebrated passage of the bill in Tallahassee. It was so well received that many portions of the bill relating to criminal penalties, kickbacks and conflicts of interest were incorporated in HB 653. As a practitioner, I fully support efforts to protect homeowners from “bad actors”, but have trepidation about imposing confusing regulatory requirements that may be difficult to understand on already underappreciated volunteer directors.

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Lisa Magill, Esq. is with the community association law firm Kaye Bender Rembaum. She is a member of the College of Community Association Lawyers (CCAL) and was appointed by the Southeast Florida Chapter of Community Associations Institute as a Florida Legislative Alliance (CAI-FLA) delegate.

She maintains an active leadership role in several industry associations, often serves as an expert witness and is rated “AV Preeminent”.

