

# FINAL REPORT



## Advisory Council on Condominiums

January – September 2008

# **TABLE OF CONTENTS**

INTRODUCTION .....	2
ADVISORY COUNCIL MEMBERSHIP .....	3
SCOPE OF AUTHORITY .....	4
STATUTORY MISSION STATEMENT .....	4
PUBLIC INPUT .....	5
ACHIEVEMENTS .....	6
RECOMMENDATIONS FOR IMMEDIATE ACTION BY THE LEGISLATURE .....	8
RECOMMENDATIONS TO THE COMMUNITY ASSOCIATION LIVING STUDY COUNCIL .....	9
ACKNOWLEDGEMENTS .....	10

## INTRODUCTION

The Advisory Council on Condominiums was created by the Florida Legislature in 2004. In 2008, the Legislature amended section 718.50151, Florida Statutes, and created the Community Association Living Study Council (effective October 1, 2008). At its most recent meetings on August 15 and September 18, 2008, the Advisory Council Members unanimously agreed that consistent with prior practice, a final report would be appropriate. It is intended for this document to constitute that final report.

## ADVISORY COUNCIL MEMBERSHIP

The Advisory Council consists of two members appointed by the President of the Senate, two members by the Speaker of the House of Representatives, and three members by the Governor. At least one member appointed by the Governor represents timeshare condominiums. The Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes (formerly known as the Division of Florida Land Sales, Condominiums, and Mobile Homes) serves as an ex officio nonvoting member.

Commencing in 2004, the Advisory Council on Condominiums was made up of eight members which included:

**JOSEPH ADAMS**, Attorney – Appointed by the Speaker of the House

**MICHAEL ANDREW**, Vice President and Assistant General Counsel, Marriott International, Inc. – Appointed by the Governor

**MICHAEL COCHRAN**, Director, Division of Florida Land Sales, Condominiums and Mobile Homes (ex officio)

**PETER DUNBAR**, Attorney – Appointed by the Senate President

**MARK BENSON**, Consumer Advocate – Appointed by the Senate President

**GEORGE GEISLER**, Consumer Advocate – Appointed by the Governor

**KAREN GOTTLIEB TYSENN**, Consumer Advocate – Appointed by the Governor

**THOMAS SPARKS**, Consumer Advocate – Appointed by the Speaker of the House

Subsequently, the following members replaced outgoing members:

**PAUL WEAN**, Attorney, was appointed by the Senate President in October of 2005, to replace outgoing member Mark Benson.

**ROBERT FOWNER**, CAM, was appointed by the Speaker of the House in November of 2005, to replace outgoing member Thomas Sparks.

**MELISSA VAN DINE**, Celebrity Resorts, Inc. was appointed by the Speaker of the House in April of 2007, to replace outgoing member Robert Fowner.

**GERALD KOENIG**, Attorney, was appointed by the Speaker of the House in October of 2007, to replace outgoing member Joseph Adams.

**JANE CORNETT**, Attorney, was appointed by the Senate President in October of 2007, to replace outgoing member Paul Wean.

In 2005, the council was chaired by Mr. Adams with Mr. Benson as Vice-Chair. In 2006, Mr. Dunbar was Chair with Mr. Andrew as Vice-Chair. In 2007 and 2008, Mr. Andrew served as Chair with Mr. Dunbar as Vice-Chair.

The Advisory Council on Condominiums worked in very close coordination with the Division of Florida Condominiums, Timeshares, and Mobile Homes. During 2007 and 2008, the staff coordinator has been Debbie Miller, whose assistance to the Council has been invaluable. From 2004 to 2007, the staff support person was Carol Windham. Other staff members who also provided assistance to the Council were Jon Peet, Sharon Malloy and Rudy Prinz.

### **SCOPE OF AUTHORITY**

The authority of the Council, as set out in section 718.50151, Florida Statutes, was limited to making recommendations on condominium related issues; although during the course of public testimony, presenters requested that attention be directed to homeowner and cooperative law related items. The Council contemplated addressing these areas and received testimony on them, but determined that the statutory charge to the Council did not include the ability to make recommendations on these areas of the law.

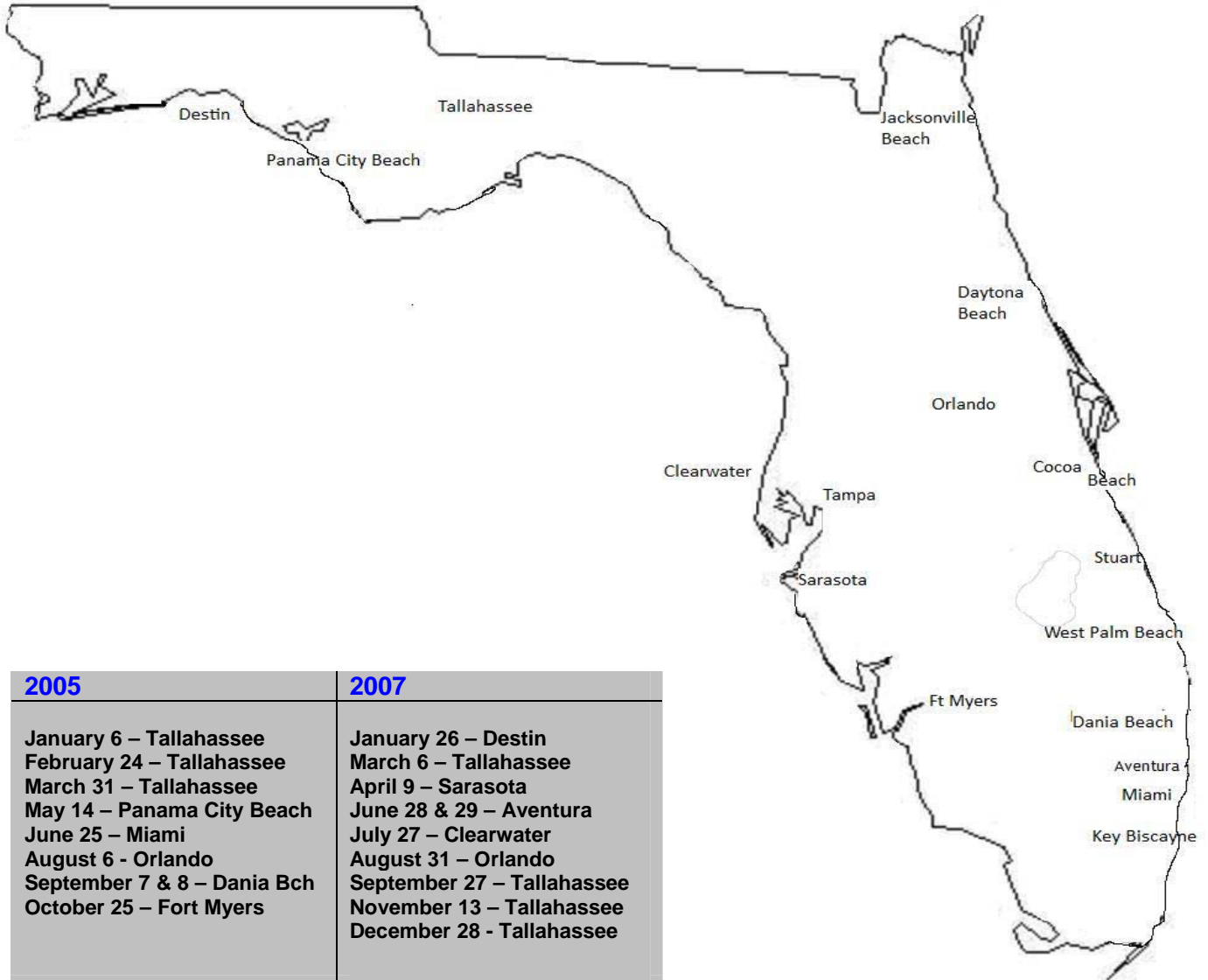
### **STATUTORY MISSION STATEMENT**

The Council was charged by the Florida Legislature with three specific functions which are as follows:

- Receive, from the public, input regarding issues of concern with respect to condominiums and recommendations for changes in condominium law. The issues that the Council may consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.
- Review, evaluate, and advise the Division concerning revisions and adoption of rules affecting condominiums.
- Recommend improvements, if needed, in the education programs offered by the Division.

## PUBLIC INPUT

During the four years of the Council's existence, numerous public hearings have been held throughout the state for the purpose of receiving citizen input. There were a total of 31 meetings held at widely varying locations throughout the state.



2005	2007
January 6 – Tallahassee February 24 – Tallahassee March 31 – Tallahassee May 14 – Panama City Beach June 25 – Miami August 6 - Orlando September 7 & 8 – Dania Bch October 25 – Fort Myers	January 26 – Destin March 6 – Tallahassee April 9 – Sarasota June 28 & 29 – Aventura July 27 – Clearwater August 31 – Orlando September 27 – Tallahassee November 13 – Tallahassee December 28 - Tallahassee
2006	2008
January 30 – Tampa April 6 – Tallahassee May 19 – Daytona Beach May 20 – Cocoa Beach July 27 – Jacksonville Bch September 15 – W Palm Bch November 3 - Orlando	March 6 & 7 – Stuart May 5 – Tallahassee August 15 – Tallahassee September 18 – Key Biscayne

## ACHIEVEMENTS

The Council has been highly successful in drafting, supporting, and passing important legislation impacting condominiums throughout the State, based in part to public input, as well as based upon the extensive experience of the members of the Council, and the assistance of legislative partners. Significant revisions to condominium law in the following areas were attained by Council initiative:

- **Condominium Insurance:** The Council provided a comprehensive reorganization of the insurance provisions of the Condominium Act to create a more user-friendly format, and clarified the various condominium insurance requirements approved by the Legislature in 2008. The changes clarify the coverage required; the criteria for calculating deductibles; and the enforcement mechanisms for the required insurance coverage of individual unit owners. The recommendations also authorize uniformity in the coverage of the master insurance policy, and clarify that negligent conduct which causes damage to the condominium property will be the responsibility of the negligent party.
- **Emergency Powers:** The Council recommended a new section to the Condominium Act in 2006 that provides emergency powers to the board of directors of the association during declared emergencies by the Governor. Under this new section that was enacted by the Legislature in 2008, an association is authorized to prepare for the emergency, and protect the people and property in the condominium. It also authorized the Board to take action to mitigate damages in the community following a catastrophic event, and take expedited actions to restore, repair, and rebuild the property following the catastrophe.
- **Condominium Conversions:** The Council recommended additional consumer protections for residential property being converted to the condominium form of ownership in 2007, and the changes were adopted by the Legislature in 2007. Under the new provisions, disclosure requirements for purchasers has been enhanced and requirements for calculating the remaining useful life of components of the property has been expanded; the changes also include new criteria for evaluating the quality of the improvements being converted, and for developer contributions to the association reserve accounts.
- **Division Jurisdiction:** In 2006, the Council recommended modifications to the jurisdiction of the Division following the transition of control of an association from the developer to the unit owners in an effort to eliminate duplication with the arbitration procedures and to permit more effective use of the resources of the Division. Under these recommendations enacted by the Legislature in 2008, the Division will focus on post-transition community election disputes, financial irregularities, and the right of unit owners to have access to association

records. Remaining disputes in post-transition communities are now handled under the arbitration program operated by the Division.

- **Fiduciary Standards for Officers and Directors:** In 2006, the Council recommended that a new provision be added to the Condominium Act that would articulate the fiduciary responsibility that directors and officers assume when accepting positions of leadership in the condominium association. The new provisions were enacted by the Legislature in 2008, and they identify the responsibility being assumed by officers and directors, and outline the standards to use in carrying out the operation and management obligations of the association.
- **Expansion of the role of the Ombudsman:** In conjunction with the recommended change in jurisdiction of the Division over disputes, the Council recommended that the role of the Ombudsman be expanded. The changes were approved by the Legislature in 2008, and the Office of the Condominium Ombudsman is now authorized to assist unit owners and associations with the resolution of disputes that are not within the revised jurisdiction of the Division.
- **Building Inspection Reports:** In 2007, the Council recommended to the Legislature that condominium associations provide periodic building inspection reports for the improvements on the property so that communities would have a foundation for accurate reserve calculations, and a periodic evaluation of the condition of the buildings and the structural components on the property. In 2008, the Legislature enacted requirements for inspection reports for all buildings that exceed three stories in height for the purposes described in the recommendations of the Council.
- **Expanded Education Programs:** The Council recommended that the Division expand educational opportunities, materials, and programs for condominium unit owners and community leaders. The recommendation included options for increased offerings from the Division, as well as the approval by the Division of offerings from private providers. The recommendations for expanded educational opportunities were approved by the Legislature in 2008.

## RECOMMENDATIONS FOR IMMEDIATE ACTION BY THE LEGISLATURE

- 1) A glitch bill for Florida Statute 718.111(11). The specific nature of the hazard insurance required by an association's policy as compared to an individual unit owner's policy needs to be clarified. While the revision of this section relative to insurance law and association responsibility post disaster is a major step in the right direction, it has now come to everyone's attention that some of these items may not interface well with the requirements and positions of the insurance industry. Issues of coverage, deductibles, loss assessment limitations, and whether the association can be a named insured should be reviewed with the relevant stake holders; appropriate adjustments may be required.
- 2) The six-month term for the Community Association Living Study Council should be reconsidered in favor of a longer term. For volunteer council members, it is difficult, if not impossible, to hold appropriate public hearings, receive input, reach consensus, and draft legislation within a six-month time, especially with the broad charge given the Community Association Living Study Council. Additionally, the term is such that the Council will complete its tasks after legislation has already been filed; proposed legislation by the Council has the potential of falling into a "black hole" until the next legislative session.

## RECOMMENDATIONS TO THE COMMUNITY ASSOCIATION LIVING STUDY COUNCIL

The members of the Council would like to suggest that the following issues should be on the table for future discussion and consideration:

- Florida Statute 718.112 should be reviewed and considered for a major re-write for the purpose of clarification, simplification, and reorganization. This section of 718 has grown over the years, and could greatly benefit from some reorganization and clarification.
- Consideration should be given to creating consistency among all common interest realty associations, which would include organizations under Chapters 718, 719, 720, and in some circumstances 723, Florida Statutes.
- Appropriate consideration should also be given to the unique differences among and between the common interest realty associations regulated by Florida law.
- Other possible topics for consideration include: dispute resolution and improvements to the election process.

Additionally, the members of the Council would like to suggest the following:

- This Council has found it beneficial to have engaged in public hearings held in varying geographic locations. We recommend that the Community Association Living Study Council consider using the same public hearing approach.
- This Council found its process to be most productive when it identified a well defined objective, and refined that issue to final legislative language before submission to the Legislature as a recommendation. We recommend that a similar process be followed by the Community Association Living Study Council.
- Each new member should review the Final Report of the Select Committee on Condominium and Homeowners Association Governance.

## ACKNOWLEDGEMENTS

The Council members wish to acknowledge the input and assistance received from so many members of the Legislature and public who were willing to expend their time and energy to provide comment, assistance and support. The Council members want to express their thanks and appreciation to the following:

- The many legislative partners who are too numerous to mention, but included

Representative Julio Robaina  
Senator Gwen Margolis  
Representative Eleanor Sobel  
Senator Steven A. Geller  
Representative Franklin Sands  
Representative Kevin C. Ambler

- The two (2) Ombudsmen who served during the tenure of this Council, Danielle R. Carroll and Virgil Rizzo
- Space Coast Condominiums Association, Inc.
- Broward Coalition
- Cyber Citizens for Justice
- Michael Gelfand, Esquire, who appeared on behalf of the Real Property Council of the Florida Bar

If we have overlooked anyone we regrettably apologize, and again offer our thanks for your input and support.