

COMMUNITY ASSOCIATION LIVING STUDY COUNCIL

March 30, 2009
8:30 a.m. – 12 p.m.

Department of Business and Professional Regulation
Suite 16 Conference Room/Northwood Center
and Via Teleconference 1.888.808.6959 (Conference Code 9227625)
1940 North Monroe Street
Tallahassee, Florida 32399

Call To Order

Meeting called to order at 8:35 a.m. by Mark Benson, Chair.

Members Present

Mark Benson, Chair
Rosa de la Camara, Vice-Chair
Michael Andrew
Lawrence Wigdor
Kevin Stanfield, ex officio

Division Staff Present

Debbie Miller

Quorum established and verification of timely publication of meeting notice in Florida Administrative Weekly.

I. PUBLIC INPUT

Jay Carlson addressed the Council regarding homeowners' association issues. He recommended amending the amendment provisions of Chapter 720, Florida Statutes (FS), as well as section 720.3085(3)(a), FS. He suggested that the language should state, "unless prohibited by the declaration or bylaws", instead of stating, "if the declaration or bylaws so provide". He also suggested the establishment of a "recovery fund". These funds would be used to pay for services provided by an attorney representing homeowners in disputes with their homeowners' association.

II. FINAL REPORT PREPARATION

A. The Council discussed the section of the Report entitled "Recommendations for Immediate Action by the Legislature". Much discussion followed regarding the wording of the preamble to this section. The members agreed to the following language for each subject under this section:

1. Foreclosures - For condominiums, cooperatives, and homeowners' associations, consider legislative mechanisms designed to resolve the conflict between association members failing to pay assessments and mortgage holders failing to prosecute foreclosure actions, leaving the owners' associations in limbo with nobody paying assessments.

2. Jurisdiction for non-residential condominiums - In future sessions, consideration should be given to moving the regulatory framework for commercial condominiums, such as timeshares and condominium-hotels, out of Chapter 718, Florida Statutes, since that statute is primarily designed for residential condominiums.
3. Education - Support the Division's creation of a booklet of laws and regulations relevant to administration of the association after turnover of control from the developer to be available from the Division's website for educational purposes.
4. Jurisdiction of Division - Council recommends review and consideration whether Division staffing is sufficient to adequately process complaints. Also, we received public testimony requesting more expedited and efficient processing and enforcement of complaints to the Division.
5. Alternative Dispute Resolution - Further study of the possibility of bringing some community association disputes to small claims court by expanding jurisdiction to include injunctive relief; review section 34.01, Florida Statutes, for possible jurisdiction expansion.
6. Standardization of Policies and Procedures for Community Association/Omnibus Statute for Residential Housing - The Council heard owner input, pro and con, regarding the establishment of one standardized statute for residential housing to encompass all types of residential communities (condominium, cooperative, and homeowners' associations). The Council supports the proposal for the Office of Program Policy Analysis and Government Accountability to conduct a survey to determine the number of HOA's and owners existing in Florida, in order to determine whether the state could and should regulate these under a single, statutory scheme. There was significant support for HOA regulation at the west coast meeting.
7. Roll of Ombudsman - The Council supports maintaining the Ombudsman's role, and encourages the appointment of a permanent Ombudsman.
8. Board Authority - The Council does not support a proposed requirement that the actual amount of a special assessment must be provided on the meeting notice (providing an estimated amount will suffice). The Council supports establishing certain limitations regarding a board's authority to borrow funds or obtain a line of credit. If a loan or line of credit exceeds 25% of the annual budget, then approval of a majority of the owners present and voting at an owner meeting should be necessary.
9. Elections - The Council supports the requirement of having the candidate's certification form submitted *before* the election. The Council does not support legislating mandatory qualifications for board members, such as unit ownership or limitations if owned by a trust.
10. Modernization of Statutes - The Council supports the authority to redact e-mail addresses from unit owner rosters, if owners so request. The Council also

supports the use of electronic and digital communications to association members in order to facilitate official association business.

B. The members agreed to add the following topics to this section:

1. The six-month term for the 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 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. The Council further recommends that no member of the Council may be an individual registered lobbyist.
2. In House Bill 1397 the Council is opposed to the proposed section 468.436(6), Florida Statutes, authorizing mandatory revocation upon the fifth finding that a community association manager or firm is guilty of any of the grounds set forth in subsection (2). The word "firm" should be deleted. The Council supports authorizing mandatory revocation upon the fifth finding that a community association manager is guilty of any of the following: being convicted of a felony, obtaining a license by means of fraud, or committing acts of gross misconduct or gross negligence.
3. The Council supports the establishment of a 3-year pilot program consisting of law enforcement officers employed by the Division with jurisdiction over economic crimes in community associations.

MOTION 1: Member Andrew moved to extend the length of the meeting.

SECOND: Vice-Chair de la Camara.

VOTE: Passed unanimously

4. The Chair was granted approval to draft language recommending legislation that would expand the role of the Regulatory Council of Community Association Managers by making it a "board" rather than a "council" with the members reserving the right to respond to the proposed language prior to it being included in the Report.

MOTION 2: Member Andrew recommended that the Chair be allowed to have license to work with Debbie to finish wrapping up the Report so that we can get it distributed.

SECOND: Vice-Chair de la Camara

VOTE: Passed unanimously

The meeting was adjourned at 12:07 p.m.