

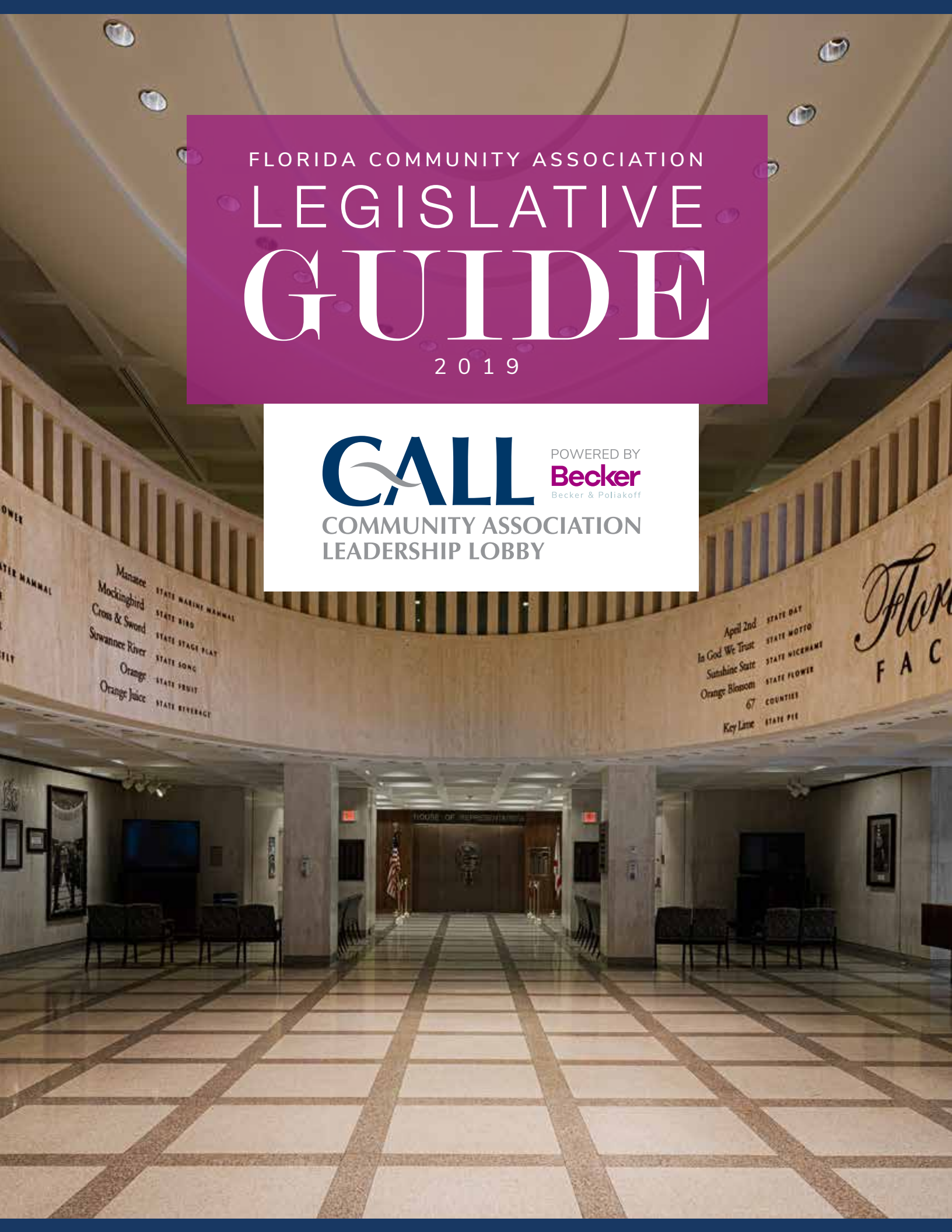
# FLORIDA COMMUNITY ASSOCIATION LEGISLATIVE GUIDE

2019

**CALL**

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# THE CAPITOL VIEW

## A LETTER FROM THE EXECUTIVE DIRECTOR OF CALL

If you are reading our 2019 Legislative Guidebook, you serve on an association board of directors, manage one or more communities, live in a shared ownership community, or you simply enjoy a good read!

While I like to say that we are virtually guaranteed to have community association legislation each year in the Sunshine State, the reality is that the 2019 Session brought very little change to our shared ownership statutes. Our Guidebook covers not only the few pieces of legislation which will directly impact your community, but also the legislation that passed which can indirectly impact you. We also take a look at the bills that didn't pass, but which might return next Session.

For those of you living in older (pre-1992) high-rises, you will now have until January 1, 2024 to install either sprinklers or an Engineered Life Safety System (ELSS). Equally important is the fact that if your older high-rise did not previously take an opt out vote on sprinklers, you will now have the ability to do so. Please take this additional time to consider what works best for your community, whether that is marshaling the financial resources needed to start installing an ELSS or marshaling those same resources to continue fighting for a complete opt out.

For those of you whose communities are entirely or partially smoke-free or who are looking to head in that direction, SB 182 now permits smoking cannabis for certain medical conditions. This will necessitate a review of your protocol, as well as a discussion with counsel to determine whether you may be required to grant a reasonable accommodation for such activity.

As for bills that didn't pass, we saw a bill related to short-term rentals that could have severely hindered the ability of private residential communities in Florida to regulate short-term rental activity and another bill related to fraudulent emotional support animal (ESA) requests that would have greatly aided boards who continue to grapple with a growing number of these requests each year. These two topics are of such importance to so many of our members that CALL released surveys in our Summer Survey Series related to ESAs and Airbnb.

The popularity, convenience and price points associated with vacation rental hosting platforms such as Airbnb, VRBO, etc. have led to more owners seeking to monetize their homes on a short-term rental basis even in the face of association restrictions setting forth minimum lease terms. Naturally, Airbnb and similar companies have a vested interest in protecting their business model and part of that strategy puts association regulations in their crosshairs. This year, the legislature considered a number of bills which, if passed, would have prohibited any local restrictions pertaining to short-term rental activity and there is no restriction more local than a community association's covenants. In fact, SB 824 went so far as to claim that the right to rent out one's home in Florida as a vacation rental property was a "constitutional right"!

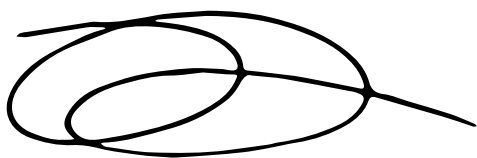
Although none of the proposed bills relating to vacation rentals passed, this topic will certainly be just as hotly debated next year by lawmakers. Over the next year, associations should review their governing documents in order to understand their current restrictions, if any, related to short term rentals. If there are no restrictions or rules, an association should consider amending its documents, if possible, to address this issue before legislation is passed which would prohibit an association from doing so in the future.

As for emotional support animals, we had been hopeful that the Legislature would fill the current gap in Florida law by incorporating the federal FHA requirements which define an ESA and the requirements for a housing provider to provide requested accommodations. As it relates to an association's ability to consider the request for an ESA, HB 721/SB 1128 would have authorized an association to request additional information from an owner including written documentation from a licensed healthcare provider. This documentation would verify the disability-related need and confirming that the ESA alleviates one or more of the symptoms of the disability. More importantly, the bill would have imposed criminal penalties (second degree misdemeanor) upon any person who falsifies written documentation related to ESAs or who knowingly and willfully misrepresents his or her need for an ESA to a housing provider. This bill would have provided much needed clarity and relief for many associations that have been bombarded with these types of requests, often times in an attempt by the owner to circumvent otherwise enforceable pet restrictions in the governing documents. CALL will continue to push for similar legislation in the 2020 Session!

I urge each of you reading this guidebook to spend as much time reviewing the bills that failed to pass as you do the few that did. Legislators often attempt to file the same bill or a similar version in future sessions so knowing your thoughts on the failed bills will help us, and you, prepare for next Session.

As always, it is our mission to keep you informed throughout the year on impactful issues and policies. Please continue to visit our CALL website at [callbp.com](http://callbp.com) to learn of upcoming advocacy campaigns and other newsworthy announcements.

Sincerely,



Donna DiMaggio Berger, Founder & Executive Director  
Community Association Leadership Lobby









# LEGISLATIVE RESULTS

## COMMUNITY ASSOCIATION BILL THAT **PASSED**

### HB 7103

**Sponsor(s):** Jason Fischer (R., Dist. 16 – Duval) / State Affairs Committee and Judiciary Committee and Commerce Committee; Rick Roth (R – Dist. 85; Palm Beach); Chris Sprowls (R – Dist. 65; Pinellas)

**Law of Florida Cite:** 2019-165, Laws of Florida

**Effective Date:** Upon becoming law; June 28, 2019

**Sections Amended:** 718.112(2)(l); 718.1085; (multiple sections amended)

- The main impact of this bill is that it extends the deadline for older condominium high-rise buildings, as defined by the Florida Fire Prevention Code, to retrofit with either a fire sprinkler system or engineered life safety system to January 1, 2024 (previously the deadline was 1/1/20).
- The deadline to retrofit common areas with handrails and guardrails is extended to the end of 2024 (unless the association obtains a successful membership opt out vote before the new deadline).
- Removes the requirement for a “certificate of compliance” from a licensed electrical contractor or electrician that a unit has been retrofitted in accordance with the Fire Code.
- Clarifies that this section does not apply to timeshare condominiums which are governed by section 721.24, Fla. Stat.
- Amends s. 718.1085 to specifically exclude individual unit balconies from the definition of “common area” required to be retrofitted.
- Definition still includes stairwells and exposed, outdoor walkways and corridors.
- Requires the State Fire Marshall to conduct a “data pull” by July 1, 2019 to collect information regarding high-rise condominiums (greater than 75 ft) which have not been retrofitted, with the report to be sent to

the governor and the Legislature by September 1, 2020. The purpose of this “data pull” is to provide further data on the scope of the impact of ELSS retrofitting in the event further legislative relief is sought as the 2024 deadline gets closer.

#### Extra Notation:

- Older high-rises that did not previously conduct an opt-out vote for sprinklers and/or handrails will now have a second opportunity to do so.
- The installation deadline has been extended until January 1, 2024.
- Information revealed in the data pull will provide additional insight to the governor and lawmakers regarding the willingness and feasibility of retrofitting for condominium associations to date.

# LEGISLATIVE RESULTS

## MISCELLANEOUS BILLS THAT **PASSED**

**SB 182 (Rules; Innovation, Industry, and Technology; Health Policy; Brandes; (CO-INTRODUCERS) Stewart) - Medical Use of Marijuana**

**Title:** Medical Use of Marijuana

**Sponsor(s):** Rules ; Innovation, Industry, and Technology; Health Policy; Jeff Brandes (R – Dist. 24, Pinellas)

**Law of Florida Cite:** 2019-1, Laws of Florida

**Effective Date:** March 18, 2019

**Section Amended:** 381.986

- Permits the smoking of marijuana (cannabis) by including smoking cannabis within the definition of “medical use”. Previously, this form of cannabis was not permitted for medical use in Florida.
- Prohibits smoking in enclosed indoor workplaces and specifies that low-THC cannabis cannot be smoked in public.
- Patients under 18 years old cannot be certified by a physician to smoke marijuana unless diagnosed with a terminal illness.
- Physician may not certify more than six 35 day supplies of marijuana in smoking form.
- Specifically provides that the law does not impair a private party or entity from restricting or limiting smoking on his or her property.

### Extra Notation:

- Patients with medical marijuana cards are now allowed the smoking form of marijuana but are still subject to restrictions against smoking in public and certain places.
- Private entities, including community associations, can pass rules prohibiting smoking while on the common area or association-owned property.
- Smoke-free communities will need to balance reasonable accommodation requests to ingest

medical marijuana by smoking it in one's unit versus the potential nuisance that use might create for neighboring owners.

**SB 82 (Rules; Bradley) / HB 145 (Local, Federal & Veterans Affairs Subcommittee and Fetterhoff (CO-SPONSORS) Sabatini) – Vegetable Gardens**

**Title:** An act relating to vegetable gardens

**Sponsor(s):** Rob Bradley (R., Dist. 5 – Levy/Suwanee/Clay/etc.) / Rules

**Effective Date:** July 1, 2019

**Law of Florida Cite:** 2019-120, Laws of Florida

**Section Amended:** 604.71

- Prohibits a county, municipality, or other political subdivision from passing any regulations or ordinances regarding vegetable gardens on residential properties.
- Still allows for the passage of local regulation of a general nature regulating things like water use during drought conditions, fertilizer use, or control of invasive species.
- Defines “vegetable garden” as “a plot of ground where herbs, fruits, flowers, or vegetables are cultivated for human ingestion.”

### Extra Notation:

- This law should not specifically prevent a community association from enforcing and/or passing restrictions or rules and regulations regarding landscaping, exterior appearance, and alterations.
- Most association governing documents already prevent owners from “altering” or “improving” common areas (without membership approval) but may not address specific landscaping criteria for individual lots.



**HB 91 (Judiciary Committee and Civil Justice Subcommittee and Altman (CO-SPONSORS) Bush) / SB 462 (Rules; Community Affairs; Judiciary; Powell) - Lis Pendens**

**Title:** An act relating to judicial process

**Sponsor(s):** Judiciary Committee ; Civil Justice Subcommittee; House Sponsor: Thad Altman (R – Dist. 52 –Brevard) / Dr. James Bush (D – Dist. 109 – Miami-Dade)

**Law of Florida Cite:** 2019-67, Laws of Florida

**Effective Date:** June 7, 2019

**Section Amended:** 48.23

- Provides an “end date” for a notice of lis pendens, which remains in effect through the transfer of title to the property or unless it is withdrawn or discharged.

**Extra Notation:**

- This amendment is intended to clarify existing law and specifically the question considered by the Fourth DCA in Ober v. Town of Lauderdale by the Sea (whether a validly recorded lis pendens bars enforcement of liens recorded between the final judgment of foreclosure but before the judicial sale and transfer of title).
- The previous version of the law did not specify the effective end date of a lis pendens and so, for example, if an association filed a lien against a property against which there was a final judgment entered but before the foreclosure sale and transfer of title had occurred, the association’s lien against the property would not be valid and enforceable.

**HB 1159 (State Affairs Committee and Mike La Rosa (CO-SPONSORS) Rep. Anthony Sabatini)**

**Title:** Private Property Rights (“Bert Harris Jr. Private Property Rights Protection Act”)

**Sponsor(s):** State Affairs Committee and Mike La Rosa

**Law of Florida Cite:** 2019-155, Laws of Florida

**Effective Date:** July 1, 2019

**Section Amended:** 163.045; 163.3209; 70.002

- Bill prohibits local governments from requiring a permit, application, notice, fee, approval or mitigation for the pruning, trimming or removal of a “dangerous tree” provided there is supporting documentation from a certified arborist or licensed landscape architect.
- Local governments cannot require a property owner to replant a tree that is properly maintained subject to certain conditions.
- Property appraiser’s website must post a “Property Owner Bill of Rights” on the website.
- Allows a property owner whose property is located next to an electric utility right-of-way to request the utility to perform vegetation maintenance of the area without seeking approval from the local city or county.

**Extra Notation:**

- The new law specifically provides that it does not apply to a local authority exercising authority under the Florida Mangrove Protection Laws in Chapter 403, F.S.
- This bill essentially eliminates the role of local governments in the process of designating and removing “dangerous trees” from private property.
- If a “dangerous” tree is located on association property, the association can now more quickly (and inexpensively) remove the tree without the need to seek and obtain local government approval prior to the removal. On the other hand, individual owners may be allowed to more easily remove otherwise healthy trees just by obtaining one supporting opinion from an arborist.

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# LEGISLATIVE RESULTS

## COMMUNITY ASSOCIATION BILLS THAT **DID NOT PASS**

**HB 721 (Judiciary; Sam Killebrew (R- Dist. 41 – Polk); Anthony Sabatani (R- Dist. 32; Lake) / SB 1128 (Rules) – Emotional Support Animals**

**Title:** Emotional Support Animals

**Sponsor(s):** Sam Killebrew (R- Dist. 41 – Polk); Anthony Sabatani (R- Dist. 32; Lake)

**Effective Date:** July 1, 2019

**Status:** Died on Second Reading

**Section Amended:** 413.08

This bill would have criminalized fraudulent Emotional Support Animal (ESA) requests. The bill would have authorized the Association to request additional information from an owner including written documentation from a licensed healthcare provider verifying the disability-related need and that the ESA alleviates one or more of the symptoms of the disability. Importantly, the bill would have imposed criminal penalties (second degree misdemeanor) for any person who falsifies written documentation related to an alleged ESA or who knowingly and willfully misrepresents his or her need for an ESA to a housing provider.

**HB 647 (Grieco) / SB 908 (Hooper) – Community Association Fire and Life Safety System**

**Title:** Community Association Fire and Life Safety Systems

**Sponsor(s):** Michael Grieco (D – Dist. 113, Miami-Dade)/Bob Rommel (R – Dist. 106, Collier)

**Effective Date:** July 1, 2019

**Status:** Died in Returning Messages

**Sections Amended:** 633.2225; 718.112; 719.1055

The language from this bill was placed in HB 7103 and passed in that legislative vehicle. The final (heavily amended) version of the bill would have

allowed an association the option to fully opt-out of the requirement to retrofit a fire sprinkler and/or ELSS by a two-thirds vote of the association membership. Additionally, associations would have had until January 1, 2024 to install an ELSS and the bill would have authorized electronic voting for purposes of the membership opt-out vote. The final version would have also required the State to conduct a data pull to compile a report on impacted buildings and the components and costs of compliance of retrofitting an ELSS. Lastly, the bill would have addressed existing uncertainty around the retrofit requirements for certain buildings by specifically providing an exemption from retrofitting for buildings less than 75 ft.

**HB 723 (Gov't Ops & Tech Appropriations) – Fire Protection Systems**

**Title:** Fire Protection Systems

**Sponsor(s):** Byron Donalds (R – Dist. 80 – Hendry/Collier) / Joe Casello (D – Dist. 90 – Palm Beach)

**Effective Date:** July 1, 2019

**Status:** Died in Commerce Committee

**Sections Amended:** 163.08; 633.312; 718.112; 718.120

This bill would have completely repealed an association's ability to opt-out of fire sprinkler retrofitting and would have required an association to obtain a permit to retrofit the building by December 31, 2019. Although associations would not have had to complete the retrofitting until January 1, 2022; the bill would have also allowed local governments to impose a penalty of up to \$500/day on condominium associations for noncompliance (this penalty provision was ultimately amended and removed by the Government Operations & Technology Appropriations Subcommittee).

**SB 1152 (Pizzo) - Community Association Safety Systems****Title:** Community Association Safety Systems**Sponsor(s):** Jason Pizzo (D – Dist. 38 – Miami-Dade)**Effective Date:** July 1, 2019**Status:** Died in Community Affairs**Sections Amended:** 718.112; 719.1055

This bill would have specifically exempted from the retrofitting requirements (of either a sprinkler system or ELSS) buildings less than 75 ft in height. The bill would not have provided a full “opt-out” option and maintained the requirement that high-rise buildings must either retrofit or obtain the affirmative vote of a majority of the association to forego the retrofitting requirement. Notwithstanding, the bill would have extended the current deadline for retrofitting for high rise buildings from January 1, 2020 to January 1, 2022. Notably, this bill would have included “vacation rentals” (as defined by s. 509.242(1)(c), F.S.<sup>1</sup>), within the requirements applicable to a residential condominium or cooperative association.

**SB 1732 (Farmer) - Community Association Safety Systems****Title:** Community Association Safety Systems**Sponsor(s):** Gary Farmer, Jr. (D. – Dist. 34, Broward)**Effective Date:** July 1, 2019**Status:** Died in Innovation, Industry, and Technology**Sections Amended:** 633.2225; 718.112; 719.1055

This bill would have required a condominium or cooperative building that has not installed a fire sprinkler system in the common areas to display a sign or symbol on the property (as approved by the State Fire Marshall) indicating as much. This bill would have confirmed that a building less than 75 ft in height is

exempt from the retrofitting requirements and would have allowed a high-rise building to fully opt-opt (from either sprinkler or ELSS retrofit) by obtaining the 2/3 affirmative vote of the membership. Under this bill, the requirement to comply with the retrofitting requirements would have been extended to January 1, 2023.

**HB 987 (Commerce Committee) – Public Lodging Establishments****Title:** Public Lodging Establishments**Sponsor(s):** Commerce Committee; Business and Professions Subcommittee; James Grant (R. – Dist. 64, Hillsborough/Pinellas) (CO-INTRODUCERS) Anthony Sabatini (R. – Dist. 32 – Lake)**Effective Date:** July 1, 2019**Status:** Died on Second Reading Calendar**Sections Amended:** 509.032; 509.111; 509.241; 509.245

This bill would have prohibited any local government from passing regulation of vacation rentals, including, laws related to inspection, licensing, and occupancy limits. Owner-operators of vacation rentals would be required to apply for a vacation rental license with the Division of Hotels and Restaurants (under the Department of Business and Professional Regulation) and would be required to maintain certain liability insurance coverage. Fortunately, the bill would have specifically included language clarifying that the bill would not supersede the authority of homeowner’s associations per Chapter 720 (Homeowners Association Act) and condominium associations per Chapter 718 (Condominium Association Act).

<sup>1</sup>(C) VACATION RENTAL.—A VACATION RENTAL IS ANY UNIT OR GROUP OF UNITS IN A CONDOMINIUM OR COOPERATIVE OR ANY INDIVIDUALLY OR COLLECTIVELY OWNED SINGLE-FAMILY, TWO-FAMILY, THREE-FAMILY, OR FOUR-FAMILY HOUSE OR DWELLING UNIT THAT IS ALSO A TRANSIENT PUBLIC LODGING ESTABLISHMENT BUT THAT IS NOT A TIMESHARE PROJECT”

**HB 1129 (LaMarca) – Public Lodging Establishments****Title:** Public Lodging Establishments**Sponsor(s):** Chip LaMarca (R. – Dist. 93 – Broward) (CO-SPONSORS) Nick DiCeglie (R. – Dist. 66 – Pinellas) ; Diane Hart (D. – Dist. 61 – Hillsborough); Stan McClain (R – Dist. 23 – Marion); Anika Omphroy (D. – Dist. 95 – Broward); Cyndi Stevenson (R - Dist. 17 – St. Johns); Jennifer Webb (D – Dist. 69 – Pinellas)**Effective Date:** July 1, 2020**Status:** Died in Business & Professions Subcommittee**Sections Amended:** 509.013; 509.241; 509.242; 509.243; 509.261; 159.27; 212.08; 316.1955; 404.056; 477.0135; 509.032; 509.221; 553.5041; 717.1355; 877.24

This bill would have defined such terms as “booking transaction” and “hosting platform” for the purposes of regulation of vacation rentals. The bill also specifically includes within the definition of “public lodging establishment” a unit that is advertised or held out to the public for rent on a hosting platform like Airbnb. The bill would have required the operator of a vacation unit or rental to display its state license number in all advertisements and the failure of the platform to enforce this requirement would subject the platform to a fine imposed by the State of up to \$1,000 for each offense. The bill would have also provided procedures and requirements for vacation rental license approval, revocation, suspension, and renewals.

**SB 812 (Simmons) - Vacation Rentals****Title:** Vacation Rentals**Sponsor(s):** David Simmons (R- Dist. 9, Volusia)**Effective Date:** Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2019.**Status:** Died in Innovation, Industry, and Technology**Sections Amended:** Multiple Statutes; including Chapters 212 & 509; 717.1355

This bill would have required that every advertisement

or listing of a “transient public lodging establishment” (ie: Airbnb) include a valid certificate of registration number. Failure to display the registration information would result in a civil penalty of \$50/day (or \$100/day if previously found non-compliant) until compliant. The bill also provided definitions for “commercial vacation rentals” (five or more units owned and/or operated under common ownerships/license) and “hosting platforms” and would have authorized the State to conduct inspections for quality assurance for any public lodging establishment licensed by the State (including commercial vacation rentals). Unlike HB 987 and 824, this bill would have allowed for local regulation of certain activities for vacation rentals.

**SB 824 (Diaz) - Private Property Rights of Homeowners****Title:** Private Property Rights of Homeowners**Sponsor(s):** Manny Diaz, Jr. (R. – Dist. 36 – Miami-Dade)**Effective Date:** July 1, 2020**Status:** Died in Innovation, Industry, and Technology**Sections Amended:** 509.032; 509.241

This bill would have preempted to the State the regulation of all vacation rentals, including the inspection and licensing of vacation rentals. At present, Florida law prohibits local governments from an outright ban of vacation rentals or from regulating the duration or frequency of rental of vacation rentals. This bill would have expanded the current prohibition against local governments by also prohibiting regulation of occupancy limits. The bill did not specifically address any prohibitions against community association regulation of vacation rentals.

**SB 1196 (Mayfield) - Vacation Rentals****Title:** Vacation Rentals**Sponsor(s):** Debbie Mayfield (R. – Dist. 17 – Brevard); George Gainer (R. – Dist. 2 – Bay/Holmes/Jackson/et.al)**Effective Date:** January 1, 2020**Status:** Died in Community Affairs



**Sections Amended:** Multiple Statutes; incl. Chapters 212 & 509; 717.1355

This bill was similar in substance to HB 1129 in that it would have provided a formal definition for “hosting platform” and would have amended the definition of “transient public lodging establishment” to include units advertised for rent for a period of less than 30 days or 1 calendar month. It also required the display of state license registration numbers in all advertising for rentals. This bill went slightly further than the other vacation rental bills proposed this session in that it imposed additional reporting requirements on hosting platforms, including the requirement to designate an agent for service of process in Florida as well as a report listing each unit or rental it advertises. The bill would have also imposed civil penalties on the hosting platform for noncompliance. Importantly, this bill specifically included language which stated that the legislature does NOT intend to supersede any current or future restrictive covenants as defined by and pursuant to Chapter 718, 719 and 720, Florida Statutes.

## GENERAL COMMUNITY ASSOCIATION BILL (OMNIBUS)

**HB 1075 (Commerce) / SB 1362 (Innovation, Industry, and Technology – Community Association)**

**Title:** Community Associations

**Sponsor(s):** Commerce Committee and Judiciary Committee and Business & Professions Subcommittee

**Effective Date:** July 1, 2019

**Status:** Died on Second Reading Calendar

**Sections Amended:** 514.0115; 627.714; multiple sections of Chapters 718, 719 and 720

These were the main bills this session which would have had a significant impact on community associations had they passed. Important changes included:

- The addition of the term “governing documents” with regard to preserving an HOAs covenants

and restrictions from extinguishment under the Marketable Record Title Act (“MRTA”).

- Authorizing condominium associations to charge “actual transfer costs” and the actual cost of a background check.
- Subjects to official records request and inspection certain items “located on a computer maintained by the association.”
- Authorizing condominium fines to be secured by liens.
- Preventing individual owner insurance policies (HO-6) from subrogation against the association
- Allowing for the electronic registration of unit owners for online voting.
- Exemption of pools within an HOA of 32 parcels or less from regulation by the State.
- Amending the condominium website requirement to allow for documents to alternatively be made available on a mobile application.
- Provides that an interest in a cooperative unit is an interest in “real property,” as opposed to “personal property.”

## SWIMMING POOL SAFETY

There were a couple of bills this session which had the potential to place additional safety requirements on certain community associations that own, operate or manage a swimming pool.

**HB 1079 (Caruso) / SB 1440 (Farmer) – Public Swimming Pools**

**Title:** Public Swimming Pools

**Sponsor(s):** Michael Caruso (R – Dist. 89, Palm Beach)

**Effective Date:** upon becoming a law

**Status:** Died in Health Quality Subcommittee

**Section Amended:** 514.0315

This bill would have required each “public swimming pool” to have installed an emergency telephone by December 31, 2019. A “public swimming pool” is defined by 514.011 to include “pools operated by or

## LEGISLATIVE RESULTS

### COMMUNITY ASSOCIATION BILLS THAT **DID NOT PASS** CONTINUED

serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.”

#### **SB 724 (Community Affairs) - Residential Swimming Pool Safety**

**Title:** Residential Swimming Pool Safety (a.k.a “Kacen’s Cause Act”)

**Sponsor(s):** Community Affairs; Ed Hooper (R – Dist. 16; Pasco); Dennis Baxley (R – Dist. 12; Marion)

**Effective Date:** October 1, 2019

**Status:** Died in Rules

**Sections Amended:** 468.8323; 515.27; 515.31

Also known as the “Kacen’s Cause Act,” this would have required the installation of at least two of the enumerated pool safety features (one of which is an emergency phone) prior to the transfer or conveyance of a property that includes a pool.









# LEGISLATIVE RESULTS

## MISCELLANEOUS BILLS THAT **DID NOT PASS**

### **HB 153 (Cortes) / SB 1248 (Torres) – Landlords and Tenants**

**Title:** Landlords and Tenants

**Sponsor(s):** John Cortes (D. Dist. 43, Osceola) / Victor Torres, Jr. (D. – Dist. 15, Orange/Osceola)

**Effective Date:** July 1, 2019

**Status:** Died in Civil Justice Subcommittee

**Section Amended:** 83.51

This bill would have required a landlord to provide the tenant with a physical copy of any restrictive covenants governing the rental property at the time of execution of the lease. Additionally, the landlord would be required to provide to the tenant, via certified mail, a notice of any changes to the governing documents within ten business days.

### **HB 155 (Cortes)/ SB 1442 (Torres) – Homeowner Association Recalls**

**Title:** Homeowner Association Recalls ("Community Recall Act")

**Sponsor(s):** John Cortes (D. Dist. 43, Osceola)/Joseph Geller (D. Dist. 100 – Broward/Miami-Dade)/Sam Killebrew (R. – Dist. 41, Polk)

**Effective Date:** July 1, 2019

**Status:** Died in Business & Professions Subcommittee

**Section Amended:** 720.303

This bill would have permitted only full time HOA members who physically reside in the community to vote on the recall of a board member.

### **HB 389 (Goff-Marcil) / SB 1332 (Cruz) - Notice of Tobacco Smoking Policy on Rental Premises**

**Title:** Notice of Tobacco Smoking Policy on Rental Premises

**Sponsor(s):** Joy Goff-Marcil (D. – Dist. 30; Orange/

Seminole)

**Effective Date:** July 1, 2019

**Status:** Died in Civil Justice Subcommittee

**Sections Amended:** 83.491

This bill would have required a landlord to provide written notice to the tenant as to any smoking restrictions applicable to the property prior to the execution of the rental agreement.

### **HB 435 (Duggan) - Vacation and Timeshare Plans**

**Title:** Vacation and Timeshare Plans

**Sponsor(s):** Wyman Duggan (R. – Dist. 15 – Polk)

**Effective Date:** July 1, 2019

**Status:** Died in Business & Professions Subcommittee

**Sections Amended:** 721.05; 721.2055; 721.21; 721.52

This bill would have required sellers of timeshare interests who also offer exit/relief assistance to disclose to potential purchasers the timeshare exit assistance or relief services available to them at the time of the purchase. It also restricts certain activities of timeshare relief providers while in the course of selling their services (ie: misrepresentation of settlement results and negotiations). Certain statutory disclosures regarding the exit assistance program would be required on all agreements for purchase.

### **HB 551 (Civil Justice Subcommittee and McClain and Payne (CO-SPONSORS) Cortes, J.; Stone / SB 668 (Criminal Justice ; Perry) – Public Nuisances**

**Title:** Public Nuisances

**Sponsor(s):** Stan McClain (R – Dist. 23; Marion); Bobby Payne (R – Dist. 19; Bradford/Putnam/Union); John Cortes (D. Dist. 43, Osceola); Charlie Stone (R – Dist. 22; Levy/Marion)

**Effective Date:** July 1, 2019

**Status:** Died in Criminal Justice

**Sections Amended:** 60.05; 823.05

The current version of the law limits public nuisances to certain places and groups engaged in certain criminal gang-related activity. This bill would have expanded the type of offenses and activities that can be considered by a local government in classifying a property a "public nuisance," to include dealing in stolen property, assault and battery, burglary, theft, and robbery by sudden snatching. The bill makes a site a public nuisance when it is used for certain enumerated offenses on more than two occasions within a six-month period. The bill would have also limited liability for rental property owners who commence rehabilitation of the property within 30 days after the property is declared a nuisance. This bill may have provided additional enforcement options (by local authorities) against problem properties where an association has had difficulty enforcing the nuisance provisions contained in their governing documents.

**HB 565 (Williams ; Davis ; (CO-INTRODUCERS) Daniels ; Joseph ; Mercado) / SB 958 Rouson ; (CO-INTRODUCERS) Rodriguez) – Housing Discrimination**

**Title:** Housing Discrimination

**Sponsor(s):** Patricia Williams (D – Dist. 92; Broward); Tracie Davis (D – Dist. 13; Duval)

**Effective Date:** upon becoming a law

**Status:** Died in Judiciary Committee

**Sections Amended:** 760.07; 760.34; 760.35

Over the last two decades, Florida courts have interpreted Florida's version of the Fair Housing Act to require that a person alleging housing discrimination must first exhaust all of the administrative remedies available to them under state law prior to filing a complaint in state court (*Belletete v. Halford*, 886 So.2d 308, 310 (Fla. 4th DCA 2004); *Housing Opportunities Project v. SPV*, 212 So. 3d 419 (Fla. 3rd DCA 2016). This bill would have removed that requirement. This change would have made Florida law consistent with the Federal Fair Housing Act which does not require any pre-suit administrative efforts (ie: complaint with

HUD) be made prior to filing civil action for housing discrimination under the federal law. Until this change is made in the Florida Fair Housing Act, the Florida Commission on Human Relations, the agency charged with enforcing the state's civil rights laws, may not be eligible for federal funding through the federal Fair Housing Assistance Program.

**HB 911 (Santiago) – Construction Defects**

**Title:** Construction Defects

**Sponsor(s):** David Santiago (R – Dist. 27, Volusia)

**Effective Date:** July 1, 2019

**Status:** Died in Civil Justice Subcommittee

**Sections Amended:** 558.001; 558.002; 558.003; 558.004; 558.0045; 558.005

This bill would have submitted to mandatory nonbinding arbitration all actions involving construction defects pursuant to Chapter 558, Florida Statutes, no later than 180 days after all parties have been joined in the civil lawsuit.

**HB 1153 (Civil Justice Subcommittee and DuBose) / SB 1270 (Farmer) – Biometric Information Privacy**

**Title:** Biometric Information Privacy

**Sponsor(s):** Civil Justice Subcommittee and Bobby DuBose (D. – Dist. 94; Broward)

**Effective Date:** October 1, 2019

**Status:** Died in Commerce Committee

**Sections Amended:** 501.172

This bill would have provided a definition for "biometric data" (any measurable biological or behavioral characteristic used for automatic recognition) and would have established requirements for private entities that collect, capture or receive such information. Private entities, which may include community associations that use certain types of cameras or other biometric identification devices for residents, must have a written retention schedule and guidelines for storing, transmitting, protecting and destroying the data. Additionally, entities are only allowed to collect and

use such data after receiving a written release from the person whose data is collected and are prohibited from using a person's biometric data for profit. This bill may have significantly restricted community associations who currently or wish to use technology that track and store the finger prints or retina scans of residents for purposes of accessing the community, for example.

**HB 1259 (Fernandez) – Division of Florida Condominiums, Timeshares, and Mobile Homes**

**Title:** Division of Florida Condominiums, Timeshares, and Mobile Homes

**Sponsor(s):** Javier Fernandez (D – Dist. 114, Miami); Ana Maria Rodriguez (R- Dist. 105; Broward, Collier, Miami-Dade)

**Effective Date:** October 1, 2019

**Status:** Died in Civil Justice Subcommittee

**Sections Amended:** 215.32; 718.111; 718.129

This bill would have further clarified the current criminal penalties contained in the Condominium Act which prohibit an officer, director or manager from knowingly soliciting or offering to accept or accepting anything or service of value or a kickback from a current or proposed vendor of the Association. According to the bill, a violation of this provision is a third degree felony and punishable pursuant to sections 775.082, 775.083, and 775.084, Florida Statutes. Additionally, the bill further clarified that any director or member of the board or the association who knowingly, willfully and repeatedly (two or more violations within a 12 month period) refuses to release or otherwise produce association records commits a second degree misdemeanor. Any person who does so with the specific intent to avoid or escape detection, arrest, trial or punishment for the commission of a crime or to assist another person in such avoidance or escape commits a third degree felony. The bill also defined the inappropriate personal use of an association debit card for anything other than a properly board approved expense as "theft" pursuant to section 812.014, Fla. Stat. Lastly, the bill added an additional section dedicated to outlining "fraudulent voting activities"

related to association elections, including willfully and falsely swearing an oath or affirmation arising out of the election, preventing a member from voting or changing a ballot or ballot envelope. The commission of a fraudulent voting activity as defined by the section is a third degree felony.

As a general matter, much of the intent of this bill is already expressed in the current version of the statute. By imposing disproportionately severe criminal penalties on unsuspecting and unknowing board members who may be subject to an owner's incessant, disingenuous and/or overly burdensome document inspection requests, it may discourage potential leaders in the community from seeking board service in the first place for fear of criminal exposure beyond their control. Future legislation should go further in providing clarity around what types of common sense activities are not considered "kick back" violations by officers, for example, accepting snacks or certain marketing merchandise from a vendor at a board meeting. In defining "fraudulent voting activities" legislation should further clarify the meaning of "fraud" so that it is not easily misused or exaggerated by owners who seek simply to disrupt or undo legitimate election results.

**SB 610 (Innovation, Industry, and Technology) - Condominium Associations**

**Title:** Condominium Associations

**Sponsor(s):** Jason Pizzo (D – Dist. 38 – Miami-Dade)

**Effective Date:** 10/01/2019

**Status:** Died in Appropriations Subcommittee on Criminal and Civil Justice

**Sections Amended:** 718.111; 718.129

This bill is similar to HB 1259 in that it would have clarified the criminal penalties for officers, directors or managers who violate the official records inspection obligations of the Association pursuant to Chapter 718 and who receive a "kickback" from a current or proposed vendor. Like HB 1259, this bill is made assuming unit owner requests are not duplicative or



overly broad in scope and detail. Unfortunately, the bill does not provide any relief for boards faced with these types of requests from members with the sole intent of harassing or burdening the association (or manager). Even an Association's best efforts to comply with official records request may fall short if the request itself is poorly worded or lacking in certain detail (ie: time frames/dates). Community Associations should take the opportunity now to establish an official document inspection policy (subject to the current requirements of the Condo Act) which will help boards and managers streamline and respond to these type of requests. Some of the changes proposed in the bill were recommendations made by a 2017 report by a Miami-Dade County grand jury in response to a number of complaints from residents regarding condominium association records and elections<sup>2</sup>.

#### **SB 1110 – (Taddeo) - Purchase of Condominium Units**

**Title:** Purchase of Condominium Units

**Sponsor(s):** Annette Taddeo (D. – Dist. 40, Miami-Dade)

**Effective Date:** 7/1/2019

**Status:** Died in Innovation, Industry, and Technology

**Sections Amended:** 718.111

This bill would have clarified that any business entity that is owned by a board member, manager, or management company or in which that person has an ownership interest is prohibited from purchasing units subject to the association lien foreclosure sale for unpaid delinquent assessments. The current law only precludes the board member, manager or management company from purchasing the unit directly in their name.

#### **SB 1246 (Wright) - Construction Defects**

**Title:** Construction Defects

**Sponsor(s):** Tom Wright (R – Dist. 14; Volusia)

**Effective Date:** 7/1/2019

**Status:** Died in Judiciary

**Sections Amended:** 558.001, 558.002, 558.003, 558.004, 558.0045, 558.005

This bill is related to HB 911 in that it would have required mandatory non-binding arbitration in all construction defect cases within 180 days after the lawsuit is filed. The bill would have repealed the pre-suit notice and opportunity to repair requirements currently provided in sections 558.003, 558.004 and 558.005, F. S. The parties must elect in writing within 30 days after the arbitration whether they will be bound by the results of the arbitration and can choose to proceed with litigation if not. The bill also provided specific requirements for the arbitration award and the arbitrator's written findings. By removing the requirement of a pre-suit notice and opportunity to cure prior to bringing a lawsuit, an association can proceed more quickly in pursuit of its construction defect claim. On the other hand, the association is also required to incur additional attorney fees and costs associated with an arbitration result which may be non-binding on the parties. As with other alternative dispute resolution methods, there is always the chance for early settlement and resolution of a claim if the parties are forced to the table early on in the litigation process.

<sup>2</sup> "FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY (ADDRESSING CONDO OWNER'S PLEAS FOR HELP: RECOMMENDATIONS FOR LEGISLATIVE ACTION) (FILED FEB. 6, 2017), ELEVENTH JUDICIAL CIRCUIT, AVAILABLE AT [HTTP://WWW.MIAMISAO.COM/WP-CONTENT/UPLOADS/2017/02/GRAND-JURY-REPORT-FINAL.PDF](http://WWW.MIAMISAO.COM/WP-CONTENT/UPLOADS/2017/02/GRAND-JURY-REPORT-FINAL.PDF) (LAST VISITED ON MARCH 18, 2019). THIS DOCUMENT IS FURTHER CITED IN THIS ANALYSIS AS "FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY."

## LEGISLATIVE RESULTS

### MISCELLANEOUS BILLS THAT

#### **DID NOT PASS** CONTINUED

##### **SB 1382 (Gibson) - Quorum Requirements for Homeowners' Associations**

**Title:** Quorum Requirements for Homeowners Associations

**Sponsor(s):** Audrey Gibson (D. – Dist. 6, Duval)

**Effective Date:** 7/1/2019

**Status:** Died in Community Affairs

**Sections Amended:** 720.306

This bill would have required that for the purposes of determining quorum at a meeting of the membership in a homeowners association, the association can only consider owners who actually reside in the community, whose property is their homestead and who are current on assessments. This bill did not address its impact on unit or lots owned by a developer. The purpose of this bill is to help associations that have difficulty obtaining a quorum at a membership or annual meeting because of “passive” voting interests of members who don’t bother to participate (in person or proxy) perhaps because they don’t reside in the community. It would also preclude considering voting interests of owners with delinquent assessments; although, section 720.305(4), Fla. Stat., already allows an association to suspend the voting rights of a member who is more than 90 days delinquent in any fee, fine or other monetary obligation. For the purposes of determining quorum only, the bill would automatically allow the association to preclude the votes of delinquent owners regardless of how long they have been delinquent and without the requirement of a board meeting to suspend the member’s voting interest.

##### **SB 1720 (Lee) - Property Rights**

**Title:** Property Rights

**Sponsor(s):** Tom Lee (R – Dist. 20, Pasco, Hillsborough, Polk)

**Effective Date:** 7/1/2019

**Status:** Died in Judiciary

**Sections Amended:** 70.001; 70.45

This bill would have amended Chapter 70, Florida Statutes, also known as “The Bert J. Harris Act” which permits a property owner to seek relief and financial damages when their property is burdened by certain government regulations. The bill requires governments to treat similarly situated properties equally with regard to settlement offers for modifications or variances and would allow a property owner to request a judge, instead of a jury, for the purposes of determining damages.







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# IS IT TIME TO AMEND YOUR DOCUMENTS?

## GENERAL AMENDMENT CHECKLIST

### General Provisions and Definitions

- ☐ Does your Declaration define important words and phrases such as “short-term rental,” “guest,” and “single-family residence”?
- ☐ Should your amendment process/procedure be amended to make it easier to pass proposed changes?

### Association Maintenance Responsibility and Owner Maintenance Responsibility

- ☐ Does the current Declaration clearly define the maintenance responsibilities of the association and owners for such things as landscaping, shared walls, or other shared amenities?
- ☐ Does your Declaration contain an “incidental damages” clause?
- ☐ Does your Declaration allow for self-help procedures for abandoned or vacant properties?

### Collections and Assessments

- ☐ Does your Declaration contain language which automatically incorporates statutory changes to Chapter 720 (HOA) or Chapter 718 (Condo) (“Kaufman Language”)?
- ☐ Does your Declaration allow you to charge the highest allowable interest rate and/or late fees when an owner becomes delinquent?
- ☐ Does your Declaration entitle you to pre-suit attorney fees and costs for collections enforcement?

### General Use Restrictions

- ☐ Do your Governing Documents limit the type and amount of animals allowed to occupy a unit or household?
- ☐ Do your Governing Documents prohibit smoking while on association property?
- ☐ Do your Governing Documents regulate where and what type of landscaping is allowed on lots?
- ☐ Are your Governing Document references to clotheslines, occupancy, car charging stations, and antennae consistent with current law?

### Bylaws and Other Governing Document Amendments

- ☐ Should the date and time of the annual meeting be amended to reflect updated preferences and practices regarding the same?
- ☐ Should the number of director positions be amended?
- ☐ Should the quorum threshold be lowered to make it attainable based on current owner participation?

### Board and Member Meetings & Official Records Requests

- ☐ Has your board adopted rules governing the frequency, duration, and other manner of member statements during board and member meetings?
- ☐ Has your board adopted rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections for official records requests?

# We did the math.

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# HAND IN HAND

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## **The Community Association Law Blog**

[communityassociationlawblog.com](http://communityassociationlawblog.com)

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## **Community Update Newsletter (CUP)**

[floridacondohoalawblog.com/community-update](http://floridacondohoalawblog.com/community-update)

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