

## 2019 Florida Legislative Session - CALL Alert for February 26, 2019

February 27, 2019

By: Donna DiMaggio Berger



Dear CALL Members,

March 5th and the start of the 60-day, 2019 Regular Legislative Session in Florida is right around the corner. We are tracking several bills on behalf of communities throughout Florida and there is a lot of work to do to ensure that the most helpful bills pass.

In order to make this information easy for our members to digest, I've provided a brief summary of the bills (if I summarized a bill in an earlier alert I will not re-summarize to conserve space). I will also report on whether the bill has a companion in the other legislative chamber, a list of committees and subcommittees to which the bill has been referred and provide a brief impact summary on each bill.

**SB 610 - (Pizzo)** - As promised, I reached out to Senator Pizzo and outlined our many concerns with this bill. The Senator expressed his willingness to work with CALL and our members. We believe that handling most, if not all, community association document inspection requests via a website would facilitate member access to records, and reduce demands on association staff and board members. This new approach would reduce many of the conflicts that arise in connection with records requests and reduce the potential for errors in the process. Moreover, many of the Senator's concerns about abuses concerning the election process could be eliminated if a certain percentage of owners were permitted to petition the board to implement online voting as an option in order to facilitate member participation. We look forward to working with Senator Pizzo to make document inspections and elections fair and reasonable for all.

This bill currently does not have a companion bill in the House.

**This bill has been referred to the following committees and subcommittees:** Criminal Justice; Innovation, Industry, and Technology; Appropriations Subcommittee on Criminal and Civil Justice; Appropriations.

This bill is a work in progress. In its current version with criminal penalties potentially imposed for failed document inspections without providing any solution to the underlying operational issue, it cannot be supported.

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**SB 824 - (Diaz)** provides that Florida property owners who choose to use their properties as a vacation rental have a constitutionally protected right to do so. This bill preempts all regulation regarding short term rentals like those marketed on Airbnb platforms to the state so local ordinances could not restrict vacation rentals. Local governments would not be able to require inspections or impose occupancy limits on vacation rentals and, frankly, the troubling use of the word “regulation” might extend to a community’s private covenants. Only statewide regulations could be imposed.

This bill is the result of a push by Airbnb and similar companies who are aggressively protecting their business model in the face of growing discontent amongst many cities and private residential communities who are passing local ordinances and regulations to protect the residential nature of their housing by restricting short term rentals.

The House companion to this bill is **HB 987 (Grant)**.

**This bill has been referred to the following committees:** Innovation, Industry, and Technology; Community Affairs; Appropriations.

These bills undermine the ability of local government and private residential communities to decide for themselves whether or not vacation rentals should be permitted or regulated within their boundaries without regard to the regulatory impact that results from allowing short term rentals.

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**SB 812** concerns transient lodging (ie: short term rentals like Airbnb) and conflicts with **SB 824** and **HB 987** discussed above, inasmuch as it confirms that local governments MAY regulate vacation rentals. This bill also requires that a valid certificate of registration be displayed in rental listings and advertisements (failure to do so results in a civil penalty ranging from \$50-\$100/day until compliant).

**This bill has been referred to the following committees:** Innovation, Industry, and Technology; Community Affairs; Appropriations.

A similar bill, **SB 1196 (Mayfield)**, has been filed which provides that state regulation of rentals (with regard to the issuance, revocation or renewal of licenses) are subject to the association’s restrictions regarding same. This bill

would also allow the Division of Hotels and Restaurants to notify a hosting platform such as Airbnb that an advertisement for a short-term rental listing which fails to display a valid license number issued by the Division and the hosting platform must remove all advertisements and listings for that property within three (3) business days unless the listing is brought into compliance. A hosting platform which fails to take such corrective action would be subject to fines up to \$1,000 per offense (with each day or portion of a day on which a hosting platform is violating the Division's directive considered a separate offense) and to suspensions, revocation or refusal of a registration.

**SB 1196 has not yet been referred to any committees.**

These bills could prove to be especially helpful for those communities that wish to prohibit or regulate short term rentals but are having trouble proving violations. It may also help deter those property owners who are using platforms like Airbnb to rent their properties but have failed to properly register with the state.

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**SB 1110 - (Taddeo)** prohibits companies in which a manager, management company or board member in a TIMESHARE condominium has an interest from purchasing a unit at the association's foreclosure sale.

This bill currently has no House companion.

**This bill has been referred to the following committees:** Innovation, Industry, and Technology; Community Affairs; Rules.

This bill removes the possibility of a conflict of interest by removing the right to purchase units when decision makers in the foreclosure process are pursuing the purchase.

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**SB 1128 - (Diaz) Emotional Support** - This bill defines an emotional support animal (ESA) as an animal that does not require training to do specific work or perform special tasks for an individual with a disability but which provides support to alleviate one or more identified symptoms or effects of an individual's disability.

More importantly, the bill provides clarification as to the type of documentation which must be submitted to substantiate a request for an ESA by providing that the written documentation must be prepared in a format prescribed by the Florida Department of Health and may NOT be prepared by a health care practitioner whose exclusive service to the individual with a disability is preparing the documentation needed to obtain an ESA for a fee. This requirement is designed to eliminate the type of online services set up for the sole purpose of printing out a prescription and a certificate to substantiate the need for an ESA.

Most importantly, **SB 1128** and **HB 721** provide that a person who falsifies written documentation to substantiate the need for an ESA or who otherwise knowingly and willfully misrepresents himself or herself through conduct or verbal or written notice as using an ESA and being qualified to use an ESA commits a misdemeanor of the second degree punishable as provided in Section 775.082 or Section 775.083 of the Florida Statutes and must perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity or organization at the discretion of the court.

The House companion to **SB 1128** is **HB 721 (Killebrew)**.

**HB 721 has been referred to the following committees and subcommittees:** Civil Justice Subcommittee; Children, Families and Seniors Subcommittee; Judiciary Committee.

These bills represent the type of measured relief that many communities have been seeking over the last few years to address the growing number of fraudulent emotional support animal requests which result in an unreasonable expenditure of limited common resources to evaluate same.

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**SB 1152 - (Pizzo) Community Association Safety Systems** - This bill is the Senate companion to Representative Grieco's **HB 647** which would grant ELSS and Sprinkler Opt Out rights to residential high-rises over 75 feet high.

**SB 1152 has not yet been referred to any committees or subcommittees.**

This bill provides much-needed relief for older high-rises who already have abundant life safety measures in their buildings and previously exercised their rights to opt out of sprinkler systems.

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**SB 1248 - (Torres) Tenant Protection Act** - This bill requires a landlord to provide tenants with a physical copy of any restrictive covenants that govern the premises and notice (via certified mail) of any amendments to those covenants within 10 days.

The House companion to this bill is **HB 153**.

**HB 153 has been referred to the following committees and subcommittees:** Civil Justice Subcommittee; Business and Professions Subcommittee; Judiciary Committee.

The requirement to inform tenants about the provisions in the governing documents is worthwhile and could eliminate potential violations of those restrictions by unknowing tenants. The bill needs to clarify when the 10-day time period commences. Is it from recording of the amendments?

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**SB 1246 - (Wright) Construction Defect** - This bill imposes changes to Chapter 558, F.S. which require parties in actions involving construction defects to take part in mandatory non-binding arbitration. The bill also permits the parties to agree to be bound by the arbitration award and requires a jury verdict (in the event either party does not agree to be bound by the arbitration and proceeds to trial) and a final judgment to contain a detailed description of the nature of each defect and of the monetary amount awarded against each separate party.

The House companion is **HB 911 (Santiago)**.

**This bill has not yet been referred to any committees or subcommittees.**

Bills which are meant to impede a consumer's rights to pursue rightful recourse cannot be supported.

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**HB 647 - (Grieco/Rommel) Community Association Fire and Life Safety Systems** - This bill would exempt high-rise buildings who have voted by a 2/3 membership vote to opt-out of a sprinkler system and/or an engineered life safety system (ELSS) from having to install such items. This bill also extends the compliance date for installation of a sprinkler system or engineered life safety system (ELSS) to 12/31/22 for those buildings who have not opted out.

**HB 647** requires the board of a condominium or cooperative association that operates a building of three (3) stories or higher and that has not installed a fire sprinkler system in the common areas to erect a sign or symbol approved by the State Fire Marshal to warn persons conducting fire control and other emergency operations of the lack of a fire sprinkler system in the common areas.

**This bill has been referred to the following committees and subcommittees:** Business and Professions Subcommittee; Government Operations and Technology Appropriations Subcommittee; Commerce Committee.

*All bills are works in progress until the last day (Sine Die) of Session. Friendly and even some unfriendly amendments can be offered as bills wind through the committee process. For the bills which currently concern us we will be working with the various bill sponsors to make the improvements our communities need. For bills like SB 1128 which criminalizes fraudulent ESA requests and SB 812/SB 1196 which help communities and local governments regulate short term rental activity, CALL wholeheartedly supports those bills in their current iterations and would urge our members to thank those bill sponsors for these bills and encourage their passage at every committee stop.*

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As always, please be sure to check our Bill Tracker each week ([www.callbp.com/bill-tracker](http://www.callbp.com/bill-tracker)) and to use our Legislator Connect feature on the CALL website to more easily contact members of the committees hearing these bills ([www.callbp.com/#legislator](http://www.callbp.com/#legislator)).

Respectfully yours,

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Community Association Leadership Lobby