

2019 Florida Legislative Session - CALL Alert for February 7, 2019

February 7, 2019

By: Donna DiMaggio Berger

Let's start with the bad. We have our first truly ill-advised piece of legislation in the form of **SB 610** filed on January 30th by Senator Jason Pizzo (D, Miami-Dade). There is a lot of territory to cover with this bill and it currently has no committee assignments. We will delve into further aspects of this bill if it starts to move but for today's alert we will cover only the bill's criminalization of the document inspection process, as well as the criminalization of receiving services or items of value. As a general matter, board members should be held to a higher standard and those who use their office for personal gain should be held accountable. However, this bill represents another in a long line of bills that is filed at the behest of constituents who probably never served on their community's board, who overlook the fact that it is a voluntary and often thankless task, and that bills like this have a chilling effect on the willingness of good people to serve their communities.

SB 610 amends 718.111 to provide that any association officer who knowingly, willfully and repeatedly (defined as two or more violations within one year) violates the official records request/inspection provisions commits a second degree misdemeanor.

The bill assumes that document inspection requests go unheeded through no fault of the owner making the request. The bill further assumes that owners do not make over-broad document inspection requests, never make those requests for the sole purpose of harassing the board or the manager, and overlooks the real possibility that some requests are made not for the purpose of actually inspecting the records but instead are designed to play a game of "gotcha" with the association. This bill makes that game even more lopsided in favor of the owner. The bill ignores the fact that most associations make good faith efforts to respond to poorly worded records requests, and that the requesting owner then complains that one or more of the records were not included. All records requests must be addressed in the manner required by the Statute, but criminalizing non-compliance, which may be inadvertent while others see or want to see the non-compliance as willful, is simply not good policy.

It is the rare association that has never faced a request, sometimes repeated requests, from an owner for every official record/document from the community's inception to present. Without a comprehensive document inspection rule in place, a community may have to place everything else of importance on hold in order to avoid criminal penalties should the ten-day deadline not be met on an unbridled document inspection request. Moreover, the bill does not take into account any exigencies which might take precedence over an owner's document inspection request. For example, a client of mine was inundated in the aftermath of Hurricane Irma with document inspection requests from an owner who knew the serious emergency repair work that needed to be immediately undertaken to prevent further damage in the community. In that instance, the manager and board made a decision to use their limited resources to address the repair work rather than the owner's fifth document inspection request in as many weeks. If SB 610 passes, would that decision have subjected the board members to criminal penalties?

In addition, many boards rightfully rely upon their professional managers to oversee the document inspection process. Hopefully the word "knowingly" in this bill does not impute knowledge to the board when a manager is dealing with pending document inspection requests on the board's behalf.

Lastly, SB 610 takes aim at officers, directors, or managers who receive a kickback from a current or proposed vendor of the association by making such activity a third degree felony. Certainly, any officer, director, or manager engaging in such activity should receive a stiff penalty for the same. However, the bill also criminalizes the activity of officers, directors, or managers taking "anything or service of value." While there is an exemption for receiving services or items received in connection with trade fairs or education programs (think of those tchotchkes at the trade shows!), there is a lack of clarity as to what items or services might present some danger. As association attorneys, we have debated for years just how low that value threshold goes. Does a roofer bringing coffee to the community or picking up a lunch or drink tab when meeting with the board constitute something "of value"?

As a general matter, even if the Association carries Director & Officer Liability insurance ("D&O Insurance"), such policy would NOT protect Board members exposed to the criminal liability proposed in SB 610. Overall, SB 610 represents a dangerous disconnect as to where the real trouble spots lie in most communities. If you agree, please contact the bill sponsor, Senator Jason Pizzo, and give him your thoughts about how his proposal may be improved to better suit the realities of operating and administering a private residential community.

You may contact Senator Pizzo at: pizzo.jason@flsenate.gov.

As for the good news, [HB 647 - Community Association Fire and Life Safety](#)

Systems- was filed on February 5th by Representative Michael Grieco (D-Miami Beach). This is the bill that CALL was hoping would bring some relief for our older high-rises in Florida -and and it delivers!

HB 647 would allow high-rises (75 feet or higher) to opt out of an Engineered Life Safety System (ELSS) upon the approval of 2/3 of all voting interests in the community. HB 647 also explicitly provides that electronic voting may be used for the opt out vote. The bill confirms that buildings fewer than 75 feet high are exempt from having to retrofit with either sprinkler systems or an ELSS.

Lastly, the bill requires condominiums and cooperatives which lack fire sprinkler systems in their common areas to post a sign or symbol approved by the Fire Marshal alerting people to that fact.

SB 647 has not yet been assigned to any committees. If passed, this bill will carry an effective date of July 1, 2019. Please understand that this bill has not been passed yet. If your community has been advised that you must retrofit with an ELSS by the end of 2019 you must take all reasonable steps to ensure that you will be able to meet that deadline as there is no guarantee that SB 647 will become law.

Please help us thank Senator Grieco for sponsoring this important piece of legislation by sending an email of support to him at Michael.Grieco@myfloridahouse.gov.

After my last alert, many of you wrote to give your thoughts on a variety of issues confronting your associations and some of you have even offered to provide testimony to the committees hearing community association bills this year. This kind of participation and input is always welcomed as we seek to make this year's crop of community association bills work for your communities and not against them.