

## 2019 Florida Legislative Session - CALL Alert for March 4, 2019

March 4, 2019

By: Donna DiMaggio Berger



Florida's 2019 Legislative Session commences Tuesday, March 5th. We have already read and analyzed more than two dozen bills and reached out to various bill sponsors to discuss our support on some bills and concern on others.

Last week **SB 1442 (Torres)** was filed as the Senate companion to **HB 155 (Cortes)**. These bills, known as the Community Recall Act, amend Section 720.303, F.S. to require owners living in an HOA to physically reside in

the community in order to vote to recall a member of the board of directors. Unfortunately there is no explanation as to what it means to "physically reside" in the community. Does that language require year-round residency? Does it require that the property in the Florida HOA be the owner's homestead? Naturally, the overarching question is why it is deemed necessary to restrict recall rights only to owners who reside in the community.

**SB 1442** has not yet been assigned committees of reference but **HB 155** has been referred to the following Committees and Subcommittees: Business and Professions; Civil Justice and Commerce.

Two large association bills were filed late last week. **HB 1075 (Rodriguez)** and its Senate companion, **SB 1362 (Gruters)**, have ambitious goals with worthy pro-association and pro-management tools in mind but problematic drafting in spots. These bills deserve a close read and some retooling to improve their chances for successful passage.

The following are a few areas that require an objective analysis and some language refinement as the bills wind through the committee process:

- The term "governing documents" has been added with regard to preserving an HOA's covenants from extinguishment under the Marketable Record Title

Act (MRTA). Previously, the Legislature expanded the term “governing documents” under Chapter 720, F.S. to include rules and regulations. As such, **HB 1075** could be interpreted to allow the amendment of a Board rule alone to preserve documents which is a very low threshold when considering the real property rights involved with the preservation process.

- Amends Chapter 718 of the Florida Statutes to allow an association to charge for “actual transfer costs” in addition to administrative and service costs, as well as the \$100 application fee. CALL has been requesting that application fees keep pace with real-world background report costs for years. There is likely to be some legislator concern about what constitutes “actual transfer costs” as well as how many fees might be added to a transfer when one adds up the following: actual transfer costs, an application fee and administrative and service costs. CALL’s suggestion would be to increase the application fee to the greater of \$100 or the actual costs of processing the application.
- Subjects certain items to the document inspection process if those items are “located on a computer maintained by the association.” Given the heightened liability associated with the document inspection process, the foregoing terms are not clear and should be clarified so a document inspection request does not fail due to differing opinions on whether or not a computer is “maintained” by the association. CALL’s suggestion would be to use the same language found in Section 718.111(12), F.S. which defines ownership or control of the association’s website.

The following are some areas that might draw consternation from legislators as the bills wind through the committee process:

- Allows condominium fines to be secured by liens.
- Amends Chapter 627 of the Florida Statutes to provide that owners’ individual HO-6 policies would not provide subrogation against the association. This is a lofty goal and very pro-association but not likely to pass and, in some cases, the damage paid for by the owner’s insurer may have been caused by negligence on the part of the association or its contractor in a particular situation.
- The consent required for online voting could be evidenced by an owner registering to vote with the online voting service provider. While it is important to expand the reach of online voting for those communities who wish to offer electronic voting as a voting option, allowing the consent to be evidenced so easily does not take into account the potential for one owner to fraudulently register online on another owner’s behalf. A more secure form of consent could help reduce concerns about fraud.

---

**SB 1430 (Hutson)** is similar to **HB 435 (Duggan)**. Both bills aim to provide consumer protections to purchasers of timeshares by requiring certain disclosures in general and purchaser-specific commercial communications. The bills also provide that a purchaser or owners’ association may bring an action for damages against a resale service provider or timeshare exit assistance or

relief services provider and require that timeshare estates in a specific multisite timeshare plan be offered for sale in a specific manner.

---

Lastly, **SB 1732 (Farmer)** is similar to **HB 647 (Grieco/Rommel)** with regard to ELSS installations. These bills amend Chapters 718 and 719 of the Florida Statutes to provide that:

1. The local authority may not require complete retrofitting with a sprinkler system or an Engineered Life Safety System (ELSS) before January 1, 2023. For those communities who have not voted to forego such retrofitting they must apply for a building permit with the local authority demonstrating that they will become compliant by December 31, 2022.
2. An association is NOT obligated to retrofit a building greater than 75 feet in height if the owners have voted to forego such retrofitting by the affirmative vote of 2/3 of all voting interests in the affected condominium. A building's height under the bills is determined by measuring the distance from the lowest level of the fire department vehicle access to the floor of the highest occupiable story.
3. Failure to report a membership vote or the recoding of a certificate reflecting that vote does not invalidate an otherwise valid opt-out vote.
4. A condominium or cooperative building that is three (3) or more stories high which has NOT installed a fire sprinkler system in the common areas must mark the building with 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 sprinkler system in the common areas.

If passed, the foregoing bills would provide relief to older high-rises that are facing costly retrofits. The bills give more time for associations who have not previously opted out to do so. The proposed legislation also provides a clearer definition of how to measure a high-rise which makes for a more uniform application of the standard.

One area where the bills could be improved is to acknowledge and accept prior opt-out votes which might have been attained with the then legal majority vote threshold rather than requiring these buildings to take new votes to opt out.

As always, do let me know if you have any questions about the bills we are monitoring on your behalf and please be sure to use our Bill Tracker to see where these bills are headed as well as to pull up the bill text for your own review.

Bill Tracker: <https://www.callbp.com/bill-tracker/>

Respectfully yours,

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

---

