

2020 Florida Session: Legislative Update

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With the legislative session closed and the deadline expired for Governor DeSantis to veto Florida House or Senate bills, we now know the laws that will affect community associations. Below is a summary of some of these new laws impacting Florida community associations. Our forthcoming Legislative Guidebook will contain a more in-depth analysis along with some operational tips for your community to employ.

- **Senate Bill 476 - Law Enforcement Vehicles.** Applies to condominiums, cooperatives and homeowners' associations by amending Sections 718.129, 719.131, and 720.318, Florida Statutes, to allow an owner, tenant, or guest to park his or her assigned law enforcement vehicle in an area where the owner, tenant, or guest may otherwise park. If your governing documents restrict commercial vehicles, that restriction may not be applied to the parking of a law enforcement vehicle. Rather, the law enforcement vehicle must be treated as the owner's, tenant's, or guest's personal vehicle.
- **Senate Bill 1084 - Emotional Support Animals.** Applies to condominium, cooperatives and homeowners' association. The changes are quite lengthy and have been discussed in previous CALL Alerts. The new law allows a housing provider, such as a community association, to request certain written documentation prepared by a health care practitioner in a format prescribed in rule by the Department of Health. The practitioner or provider of the supporting information must have personal knowledge of the person's disability and must be acting within the scope of his or her practice. If a person falsifies information or written documentation or knowingly provides fraudulent information to obtain an emotional support animal, they can be charged with a misdemeanor of the second degree.
- **House Bill 469—Subscribing Witnesses for Leases.** The new law provides that witnesses are no longer required for a lease of real property or any instrument pertaining to a lease of real property by amending Section 689.01, Florida Statutes, to eliminate the requirement that two subscribing witnesses be present when the lessor, or lessor's lawfully authorized agent, signs a lease with a term of more than one year.

- **Senate Bill 1362 - Rental Agreements upon Foreclosure.** The law was enacted as of July 1, 2020, but the provisions only take effect upon the repeal of the federal Protecting Tenants at Foreclosure Act (PTFA). This amendment is intended to clarify the preemption of Section 83.561 by repealing that law and enacting Section 83.5615, which similar to the federal PTFA, requires that a tenant receive 90 day notice to vacate in the case of any foreclosure on a federally-related mortgage loan. Now under the state law, the immediate successor in interest at foreclosure must: (a) provide bona fide tenants with 90 days' notice prior to eviction; and, (b) allow bona fide tenants with leases to occupy property until the end of the lease term, except the lease can be terminated on 90 days' notice if the unit is sold to a purchaser who will occupy the property.
- **Senate Bill 140—Fireworks/HOA Rules.** Creates Section 791.08, Florida Statutes, which prohibits a homeowners' association from promulgating rules that abrogate a homeowner's right to use fireworks on Independence Day, July 4; New Year's Eve, December 31; and New Year's Day, January 1. The law does not supersede any prohibition against the use of fireworks contained within a recorded declaration, but an HOA board may not promulgate rules that prohibit a homeowner's right to use fireworks during one of the three designated holidays.
- **Senate Bill 374 - Housing Discrimination.** Creates Section 712.05, Florida Statutes, which declares void and unenforceable all "discriminatory restrictions" contained in any recorded title transaction. Defines a "discriminatory restriction" as a provision which restricts the ownership, occupancy, or use of any real property by any natural person on the basis of a characteristic that has been held, or is held after the effective date of the act, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under Section 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability. Upon request of a parcel owner, a discriminatory restriction appearing in a covenant or restriction affecting the parcel may be removed from the covenant or restriction by an amendment approved by a majority vote of the board of directors of the respective property owners' association or an owners' association in which all owners may voluntarily join, notwithstanding any other requirements for approval of an amendment of the covenant or restriction. Amends Section 760.34, Florida Statutes, to allow a person alleging housing discrimination to file a civil action under the Florida Fair Housing Act ("FFHA") without first having to "exhaust" his or her administrative remedies (i.e. filing and waiting for the resolution of a housing discrimination complaint with the Florida Commission on Human Relations)
- **House Bill 529 - Insurance Guaranty.** Amends Section 631.57, Florida Statutes, to increase the amount of coverage for property insurance claims by a condominium, cooperative or homeowners' association under the Florida Insurance Guaranty Association (FIGA) from \$100,000 to \$200,000 multiplied by the number of units.

- **House Bill 255 - Florida Commission on Human Relations.** The bill amends several statutes pertaining to the Florida Commission on Human Relations (“FCHR”) which administers Florida’s civil rights and fair housing laws and among other things is empowered to investigate and hold hearings concerning complaints of discrimination. Most significantly to associations operating as 55+ communities, the amendment to Section 760.29, Florida Statutes, deletes the registration requirements for claiming the “Housing for Older Persons” exemption and eliminates related forms, fees, and fines. Under what is known as the 80/20 Rule, the State allows communities an exemption from the Fair Housing Act if certain criteria is met including: (1) that at least 80% of the units must be occupied by at least one resident over the age of 55; (2) the community publish and adhere to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older; and (3) the association engage in appropriate age verification procedures that includes a community census from time to time. While the prior version of the law also required associations to submit a registration letter to the FCHR once every two years, with a fine of up to \$500 for failing to do so, the amendment removes this obligation.

Wishing you continued health and safety in these challenging times.

Your CALL Team,