

FINAL POST SESSION REPORT

NUMERICAL INDEX SUMMARY OF 2010 LEGISLATIVE ISSUES

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The final post-Session report follows below. The Session produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were a part of the Section’s legislative package. The Section’s initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The parts following list other items of interest that passed and items of interest that did not pass.

The Governor has taken final action on all of the measures, and the appropriate Session Law number follows the summary on each bill where the Governor has approved the legislation. The full text of each enrolled bill, as well as applicable legislative staff reports are available on the legislative web sites (www.flsenate.gov; www.myfloridahouse.com; and www.leg.state.fl.us). A summary of each measure that passed appears below in numerical bill order.

I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE

Doc Stamps–“Short-Sales”: CS/HB 109 by Representative Jenne limits the excise tax due to the sale price in a “short-sale” of real property when the sale price is less than the outstanding mortgage amount. This provision is also contained in CS/HB 7157. (*Chapter 2010-32, Laws of Florida.*)

MRTA Exemptions: **CS/CS/HB 435 by Representative Abruzzo** provides for exemptions from MRTA for agencies of state and local government, and it permits the notice required under MRTA to be provided by publication in a newspaper of general circulation in the county where the property is located. The bill **includes the Section's language** that narrows the MRTA exemption. (*Chapter 2010-104, Laws of Florida.*)

Trusts—Life Insurance Contracts: **CS/SB 926 by Senator Richter** provides additional delegable investment functions; revises notice requirements and criteria for delegation to an investment agent; specifies activities are under no obligation to undertake; limits liability for trustees; and modifies specified notice requirements. The bill is primarily an initiative by the Florida Bankers Association that is **supported by the Section.** (*Chapter 2010-172, Laws of Florida.*)

Transfer of Property: **CS/CS/HB 927 by Representative Kiar** is the **Section's initiative** to amend and clarify Subsection 193.155 (3) to permit the transfer of homestead property to a person's spouse without losing the benefits under Save Our Homes. (*Chapter 2010-109, Laws of Florida.*)

Trust Administration: **CS/CS/SB 998 by Senator Thrasher** is the bill containing the **Section's trust initiatives.** The legislation limits the personal representatives entitlement to payment from the trust for certain expenses; specifies certain estate expense and obligation payments; deletes notice requirements for the employment of specified persons; authorized expert witness fees; establishes criteria for determining trust contributions; requires application of priorities for pro rata abatement of nonresiduary trust dispositions together with nonresiduary devises; and revises fee payment provisions. The bill includes the Section's recommended "tax patch." (*Chapter 2010-122, Laws of Florida.*)

Condominium and Community Associations: **CS/CS/CS/SB 1196 and 1222 by Senator Fasano and Senator Ring** is the major community association package for the Session. It includes the **Section's "Bulk Buyer" initiative, multiple Section initiatives** from the Condominium Committee, and it proposes a series of changes to the provisions in Chapters 718 and 720. The legislation would make the following changes: (*Chapter 2010-174, Laws of Florida.*)

1. **Condominium Insurance:** The bill makes technical corrections to s. 718.111 (11) enacted in 2008; it clarifies the meeting notice procedures for setting insurance deductibles; and it eliminates the mandatory requirements for individual unit owner policies.

2. **Board Elections:** The provisions modify the eligibility requirements for board members, and it modifies the certification process for board members, requiring the certification after election.

3. **Elevators:** Authorizes a condominium association to waive, by majority vote of the membership, the retrofit of an elevator to operate at time when power is not available to the building, and it provides for a delay in the retrofit of a special access key for elevators until the elevator is replaced or requires major modification.

4. **Telecommunications Services:** The provisions modify the provisions for bulk telecommunication services and expands the language to include new technologies.

5. **Distressed Communities–Bulk Buyer:** The provisions contain an initiative to provide for modified regulations of a purchaser of condominium units in bulk in circumstances of financial distress or pending bankruptcy. It provides regulations for the protection of existing unit owners and clarified responsibilities and liabilities for the bulk purchaser.

6. **Assessment Delinquencies–Directors:** The provisions would require a director to vacate the office when delinquent in the payment of any fee, assessment or special assessment due to the association for more than 90 days and would disqualify any unit owner from seeking election to the Board if the owner is more than 90 days delinquent in a financial obligation to the Association.

7. **Rental Units–Assessment Delinquencies:** The provisions provide new statutory procedures to allow a delinquent financial obligation due the association from a delinquent unit owner directly from the rental payments of a tenant occupying the unit. The bill also modifies s. 718.110 (13) to permit amendments allowing the Association to collect delinquent assessments directly from tenants when the unit owner/landlord is delinquent and provide for other sanctions against the delinquent owner.

8. **Assessment Delinquencies–Suspension of Rights:** The provisions would permit the association to suspend the use rights to common elements and recreational amenities of a unit owner or unit occupant when the unit owner is more than 90 days delinquent in a financial obligation due the association. It will also permit the association to suspend the voting rights of a unit owner who is more than 90 days delinquent in financial obligations due the association.

9. **Official Records:** The provisions modify right of unit owners to access records of the association to protect proprietary software, computer passwords and other personal information of unit owners and association employees.

10. **Community Association Boards–Compensation and Elections:** The provisions prohibit compensation for officers and board members of an association governed by Chapter 720, and the bill clarifies election procedures when Directors are elected by secret ballot.

11. **Conforming Changes:** The legislation adds conforming changes to Chapter 720 that authorize community associations to enter recreation and use agreements with membership approval in the same manner as condominium associations; it prohibits a developer from levying a special assessment prior to turnover; it provides procedures for the election of board members by secret ballot; and it prohibits compensation for officers and directors of an association unless authorized by the governing documents.

12. Termination: The bill modifies the termination section of the Condominium Act to clarify the criteria for economic distress and the ability to recreate a condominium on the property.

13. Fire Sprinklers and Alarms: The bill extends the deadline for retrofitting fire sprinklers from 2014 to 2019, and it eliminates the restrictions on unit owners to waive the retrofit requirement by a majority vote. It also exempts buildings of less than four (4) stories with exterior corridors from installing a manual alarm system.

14. Escrow Deposits: The legislation clarifies the current policy of the Division of Condominiums requiring a separate accounting for escrow deposits in new condominium projects.

15. Assessment Responsibility: The legislation increases the responsibility of a mortgagee for delinquent assessments from 6 months to 12 months or 1% of the original mortgage balance whichever is less.

16. Limited Common Elements: The legislation provides an amendment option to a declaration of condominium for limited common elements.

Probate: CS/HB 1237 by Representative Hukill is the **Section's probate initiative** and contains provisions relating to the access to safe deposit boxes; provides for inter vivos transfer of homestead property; clarifies the rights of intestate succession; and denies certain rights to a surviving spouse procured by fraud or undue influence. The bill contains the Section's recommended "tax patch." (*Chapter 2010-132, Laws of Florida.*)

Non-Judicial Foreclosure—Timeshares: CS/HB 1411 by Representative Dorworth is the proposal by ARDA to allow for non-judicial foreclosure of timeshare estates by means of a foreclosure trustee. The bill provides for access to the judicial process at anytime during the proceedings by the owner of the timeshare estate, and contains the other due process **protections requested by the Section**. The legislation permits the provisions of the bill to be applied retroactively in assessment foreclosures, and **the Section opposed this element and opposed the bill** because of the provision. (*Chapter 2010-134, Laws of Florida.*)

Design Professionals—Liability Limitation: CS/CS/SB 1964 by Senator Negron is legislation that would limit the liability for malpractice or negligence by design professionals to incidents that resulted in personal injury or property damage. The legislation eliminates tort remedies for property owners, condominium associations, and homeowners association. The **Section opposed** the legislation and is requesting a veto by the Governor. (*Vetoed by the Governor.*)

II. INITIATIVES OF INTEREST

Real Estate Appraisers: CS/CS/HB 303 by Representative Hudson would provide a regulatory scheme for real estate appraisers, appraisal management companies and

appraisal management services at the Department of Business and Professional Regulation. (**Chapter 2010-84, Laws of Florida.**)

Residential Property Disclosures: HB 545 by Representative Patterson repeals s. 689.262 that currently requires disclosures of residential property windstorm mitigation ratings to purchasers in wind-borne debris regions. (**Vetoed by the Governor.**)

Water Quality and Water Supply: CS/CS/CS/SB 550 by Senator Constantine is the comprehensive water supply legislation from the 2010 Session and it includes the initiative that reorganizes the water supply provisions in Chapter 373 for public and private water systems by creating a new Part VII. Among the other provisions in the bill that may indirectly affect the agency are the following. (**Chapter 2010-205, Laws of Florida.**):

1. **Landfills and Septic Tanks:** The bill requires lining of all new and expanded landfills. It also establishes a statewide septic tank evaluation program, requires completion of a study by DEP, and provides a grant program for low income owners of septic tanks.

2. **Consolidated Appeals—Comp Plan Approvals:** The legislation requires the consolidation of any applicable state permitting issues with an appeal of local comprehensive plan approvals.

Reclaimed Water: The bill clarifies the calculations used for determining the quantity of reuse that wastewater facilities must produce.

Building Safety—Fire Sprinklers and Condominiums: HB 663 by Representative Aubuchon is a comprehensive building safety bill. Among its provisions are three items of note: (**Chapter 2010-176, Laws of Florida.**)

1. **Fire Sprinklers—Single-Family Homes:** Section 32 of the bill provides that any local amendments to R 313 of the Florida Building Code regarding fire sprinklers in single family homes shall not be included in the Florida Building Code. The provision basically prohibits local governments from requiring the installation of fire sprinklers in single-family homes. The provision is also contained in CS/CS/SB 846.

2. **Condominium Building Reports:** Section 59 repeals subsection 718.113 (6) that required condominium associations to contract for a building report by an architect or engineer every five (5) years for buildings greater than three (3) stories in height.

3. **Fire Alarms—Condominiums:** Section 47 exempts one (1) and two (2) story buildings with exterior corridors from the requirement to install a manual alarm system. The height in this provision conflicts with a similar provision contained in CS/CS/CS/SB 1196 and 1222 that grants the same exemption to buildings of less than four (4) stories.

UCC—Article VII: HB 731 by Representative Carroll updates Article VII of the Uniform Commercial Code in accordance with the recommendations from the National Conference of Commissioners of Uniform State Laws and authorizes negotiable electronic documents of title for goods and tangible personal property. (*Chapter 2010-131, Laws of Florida.*)

Mandatory Fire Sprinklers—Building Code: CS/CS/SB 846 by Senator Bennett provides that any local amendments to R 313 of the Florida Building Code regarding fire sprinklers in single family homes shall not be included in the Florida Building Code. The legislation basically prohibits local governments from requiring the installation of fire sprinklers in single-family homes. (*Chapter 2010-99, Laws of Florida.*)

Real Property Appraisal—“Chinese Drywall”: CS/CS/HB 965 by Representative McKeel would direct the county property appraiser to reduce the value of real property requiring remediation as a result of “Chinese drywall” during the process of remediation. (*Chapter 2010-170, Laws of Florida.*)

Condominiums—Elevators: CS/HB 1035 by Representative Frishe revises the regulatory provisions for elevator inspections, and includes a provision also found in CS/CS/CS/SB 1196 and 1222 that provides for a 5-year delay from July 1, 2008 in the retrofit of a special access key for elevators or until the elevator is replaced or requires major modification whichever occurs first. (*Chapter 2010-110, Laws of Florida.*)

Single-Family Residential Docks: CS/SB 1118 by Senator Altman revises the provisions of Chapter 403 relating to the regulatory procedures for residential docks and permits docks to be roofed. It authorizes the Department to promulgate rules for docking facilities of 10 slips or less in Class II and Class III waters. (*Chapter 2010-208, Laws of Florida.*)

Planned Residential Communities: SB 1166 by Senator Altman provides a definition for “planned residential community” for purposes of residential housing for persons with disabilities, and the legislation limits the ability of local governments to restrict the placement of such housing facilities. (*Chapter 2010-193, Laws of Florida.*)

Assessment of Back Ad Valorem Taxes: HB 1279 by Representative Rivera amends s. 193.092 to provide that the retroactive assessment of ad valorem taxes does not apply when the owner has complied with all necessary permitting requirements or has voluntarily disclosed the improvements to the property prior to January 1 of the year that the property was first assessed. (*Chapter 2010-66, Laws of Florida.*)

Development Permit Extensions: CS/SB 1752 by Senator Gaetz is the economic development package from the 2010 Session. Sections 30 and 31 of the bill reauthorizes the 2-year extension of development permits, water management districts and transportation concurrency exemptions granted during the 2009 legislative session. (*Chapter 2010-147, Laws of Florida.*)

Transportation Projects—Rights of Adjacent Owners: **CS/CS/SB 1842 by Senator Bennett** creates a new section 335.199 in the Florida Transportation Code requiring abutting property owners to be notified when a state highway will be divided, median barriers erected, or existing access to property is being modified. It requires a public hearing to be held on the changes and requires the Department of Transportation to take alternatives presented at the hearing to be taken into consideration in the final project design. **(Vetoed by the Governor.)**

Property Insurance—Windstorm Claims: **CS/CS/SB 2044 by Senator Richter** is the property insurance package from the 2010 Session. Section 13 of the bill will require all windstorm or hurricane claims, supplemental claims, or reopened claims by property owners and condominium associations to be filed within 3 years of the storm event instead of 5 years from the event. **(Vetoed by the Governor.)**

Insurance—Annuity Sales: **CS/CS/SB 2176 by Senator Peadon** deals with a variety of insurance products. Sections 41, 42, and 45-51 of the bill make several changes to the insurance code to deal with unethical annuities sales practices and require more favorable contract terms for annuities marketed to seniors. **(Chapter 2010-175, Laws of Florida.)**

Foreclosure—Transfer of Tax Liabilities: **CS/HB 5801 by Representative Bogdanoff** provides in Section 8 of the bill that the tax liabilities of a business are transferred to the new owner of the business or business assets when the transfer occurs through the foreclosure of a security interest, eminent domain, bankruptcy, or a transfer made to satisfy the transferor's debt. **(Chapter 2010-166, Laws of Florida.)**

Taxation—Liens and “Short Sales”: **CS/HB 7157 by Representative Fresen** is the Department of Revenue's comprehensive tax package for the 2010 Session. Among its provisions, the legislation would make the following changes: **(Chapter 2010-138, Laws of Florida.)**

1. **Unemployment Tax Liens:** The bill provides that liens securing the payment of unemployment tax obligations lapse 10 years after the original filing.
2. **“Short Sales”:** The bill contains the same language found in CS/HB 109 that limits the excise tax to the sale price in a “short-sale” of real property when the sale price is less than the outstanding mortgage amount.
3. **Revocation of Licenses and Permits:** The bill provides that if DOR files a warrant, notice of lien, or judgment lien certificate against the property of a tax payer, it may also revoke any state registration, permit or license.

Real Estate Sales—Non-Ad Valorem Assessments and Contract Disclosure **HB 7179 by Representative Precourt** authorizes new local government programs to help fund “energy-efficient,” “energy-renewal,” and “wind-resistant” improvements to real property within designated areas and authorizes the levy of non-ad valorem assessments to fund the improvements. The bill contains a new real estate contract disclosure requirement for

the sale of properties in area subject to the assessments. (*Chapter 2010-139, Laws of Florida.*)

Community Development Districts: HB 7203 by Representative Bogdanoff would permit CDDs without qualified electors to levy a tax of up to 1% on commercial rental transactions within the district subject to s. 212.031 to promote and support commercial activity, including festivals and special events that enhance the commercial activity. The tax must be approved by a 4/5ths vote of the board of supervisors of the CDD. (***Vetoed by the Governor.***)

III. **INITIATIVES OF INTEREST THAT FAILED**

Community Associations–“Home Court”: CS/HB 115 by Representative Ambler and SB 398 by Senator Dockery proposed a variety of changes to the law governing condominiums and mandatory homeowners associations, and included alternative dispute procedures the **Section opposed**. The legislation died in the Council upon adjournment.

Title Insurance–File-and-Use: SB 260 by Senator Bennett proposed to revise the regulatory procedures governing title insurance agents, charges for service by title agents, and title insurance products. The bills provided for file-and-use procedures and approval of rates by the Office of Insurance Regulation. The Office is a proponent of the bill and the **Section opposed** the legislation. The legislation died in committee when the Legislature adjourned.

Adverse Possession: CS/SB 292 by Senator Dockery and HB 887 by Representative Schultz would have required that a person seeking to claim property by adverse possession to send to the property owner of record a copy of the return filed with the property appraiser. The **Section had technical concerns** with the language in the legislation.

Title Insurance: CS/HB 853 by Representative Ambler and SB 1836 by Senator Baker is the implementing legislation for the Task Force recommendations. HB 855, HB 867, SB 1838, and SB 1840 were related bills by Ambler and Baker that create the trust fund and provide public records exemptions for parts of the regulatory scheme. The legislation died in committee when the Legislature adjourned, but it is being considered for interim project by the Senate Banking and Insurance Committee.

Hidden Liens: HB 1069 by Representative Wood and SB 2248 by Senator Negron is the **Section’s hidden lien initiative**. The legislation provided a uniform process for creating and recording liens that are authorized by municipal or county ordinances.

Guardianship: HB 1159 by Representative Hukill and SB 1548 by Senator Joyner was the **Section’s initiative** that revises the definitions of “benefits” and “income” for purposes of the Veterans Guardianship Law.

Electronic Recording: HB 1179 by Representative Grimsley and CS/SB 1288 by Senator Negron was the **Section's initiative** to make revisions to the UPERA to retroactively and prospectively ratify the validity of electronic documents that have been accepted by the county clerk for recordation.

Estate Tax: CS/HB 1197 by Representative McBurney and SB 2620 by Senator Altman propose to amend s. 198.03 relating to the imposition of taxes on the estates of nonresident decedents.

Guardianship: HB 1431 by Representative Schwartz (HB 1433 and HB 1435) and SB 2626 by Senator Aronberg (SB 2624 and SB 2628) create Part II of Chapter 744 with the intention of providing harmony with guardianship orders from other state jurisdictions. The **Section had technical concerns** with the bill. The primary bills are traveled with two bills that provide public records exemptions to certain records in the guardianship proceedings.

Non-Judicial Foreclosure: HB 1523 by Representative Grady and SB 2270 by Senator Bennett is the non-judicial foreclosure proposal initiated by the Florida Bankers Association. **The Section opposed the bills.**
