

# CHAPTER 1

## LEGISLATIVE POTPOURRI

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The 2010 Regular Session of the Legislature 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 and they will be discussed during the other parts of today's program. All of the bills, with a brief summary, from today's program appear in the index below along with the applicable Chapter Law citation for each, if available. Not all of the legislation had been acted on by the Governor when the materials were submitted for inclusion in the package and the final status and full text of each enrolled bill, including the legislative staff reports and Chapter Law citation are available on the legislative web sites ([www.leg.state.fl.us](http://www.leg.state.fl.us); [www.flsenate.gov](http://www.flsenate.gov); [www.myfloridahouse.com](http://www.myfloridahouse.com)).

### **NUMERICAL INDEX SUMMARY OF 2010 LEGISLATIVE ISSUES**

#### **I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE**

**Doc Stamps—"Short-Sales":** CS/HB 109 by Representative Jenne and Senator Ring 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 and Senator Baker 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 and Representative Hukill provides additional delegable investment functions; revises notice requirements and criteria for delegation to an investment agent; specifies activities trustees 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 and Senator Altman 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 and Representative Wood** 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 and Representative Bogdanoff** 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 bulk telecommunication services and expand 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 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 and Senator Joyner 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 and Senator Gardiner 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 permit 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 and Representative Precourt 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 and Senator Constantine 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 and Senator Altman 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 be of interest 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.
3. **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 and Senator Bennett 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.

**Realtors, Mold Assessors, Home Inspectors—Licensure:** CS/CS/CS/HB 713 by Representative Workman and Senator Fasano is an omnibus “clean-up” bill for the Department of Business and Professional Regulation and contains modifications to the licensing procedures for real estate brokers and sales associates; mold assessors and remediators and home inspectors. (***Chapter 2010-106, Laws of Florida.***)

**UCC—Article VII:** HB 731 by Representative Carroll and Senator Wise 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.***)

**International Commercial Arbitration:** CS/HB 821 by Representative Thurston and Senator Gelber replaces the Florida International Arbitration Act with the uniform procedures of the International Commercial Arbitration Act. (***Chapter 2010-60, Laws of Florida.***)

**Mandatory Fire Sprinklers—Building Code:** CS/CS/SB 846 by Senator Bennett and Representative Schenck 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 and Senator Storms 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.***)

**Underground Utilities—Local Government Ordinances:** CS/CS/SB 982 by Senator Bennett and Representative Murzin will prohibit local governments for enacting a rule or ordinance that conflicts that conflict with the provisions of Chapter 556 governing excavation procedures by contractors. (***Chapter 2010-100, Laws of Florida.***)

**Condominiums—Elevators:** CS/HB 1035 by Representative Frishe and Senator Bennett 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 and Representative Patronis 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.***)

**Public Fire Hydrants—Inspections:** CS/SB 1136 by Senator Crist and Representative Burgin permits the inspection, testing and maintenance fire hydrants owned by governmental entities to be done under procedures adopted by the office of State Fire Marshal or equivalent procedures. Governmental entities are permitted to designate employees to conduct the inspections in the manner provided in the bill. (***Chapter 2010-173, Laws of Florida.***)

**Prompt Payment Act:** CS/HB 1157 by Representative Eisnaugle will revise the Local

Government Prompt Payment Act providing for a 4-day response deadline on overdue notices from a contractor; requiring the agency to identify the agent or employee who receive the request for payments or invoices; provides for the payment of any remaining undisputed contract amounts to be paid within 20 business days of receipt of the invoice; and places time limits on when the agency may begin dispute resolutions of contested invoices. (**Chapter 2010-111, Laws of Florida.**)

**Planned Residential Communities:** SB 1166 by Senator Altman and Representative Stargel 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 and Senator Bennett 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 and Representative Hukill is the economic development package from the 2010 Session. Sections 30 and 31 of the bill reauthorize 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 and Representative Abruzzo creates 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 and Representative Proctor 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 and Representative Sachs 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.**)

**Tax Liabilities—Amnesty and Transfer of Liability:** **CS/HB 5801 by Representative Bogdanoff** Section 1 of the bill provides a 3 month amnesty program, beginning July 1, 2010, as to criminal prosecution and penalties (with reduced interest in some cases) for certain tax liabilities. Section 8 provides that the voluntary purchaser of a business is not liable for taxes, interest or penalties owed by the transferor in certain circumstances. **(Chapter 2010-166, Laws of Florida.)**

**Taxation—Liens and “Short Sales”:** **CS/HB 7157 by Representative Fresen and Senator Altman** 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 and Senator Bennett** 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 and Senator Altman** 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.)**

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