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MIXED BAG INSURANCE LAW ROCKS RATES

By Eric Berkowitz

Senator Garrett Richter, a Naples banker elected in 2008, was the Florida Insurance Council's Legislator of the Year in 2009. He snagged the Florida Insurance Council's Special Leadership Award in 2010. That same year, he successfully steered Senate Bill 2044 through the Florida Legislature before former Governor Charlie Crist signed its death warrant. Watching the demise of his luxury-laden gift to the insurance industry, Richter's subsequently sullen and moody outlook ended suddenly after the November elections bathed his brain in serotonin, dopamine and melatonin. With Rick Scott in the Governor's mansion, the insurance industry's personal legislator whispered under his breath "Let's do it again!" When the 2011 session opened, he filed Senate Bill 408, a clone of last year's failed enterprise. This year would be different. Richter was not alone.

After convincing voters that his promised economic measures would somehow differ from the colorful business tactics that nearly landed him in a cell, newly elected Governor Rick Scott initiated an aggressive campaign to increase the cost of living in Florida. Having failed to assure befuddled Floridians that pill mills were a contributing part of Florida's economy and disappointed by the legislature's refusal to deregulate the State's "top ten most notorious" industries, Scott sought to place his horses behind some alternative economic initiative – preferably one without direct links to organized crime. Compared to his enigmatic struggle to protect the privacy rights of drug mules, a legislative gift to the insurance industry would appear downright patriotic. Additionally, the insurance bill came pre-packaged with support from the legislative leadership. Richter knew that Scott had his back. He also knew that the 2011 political climate presented lawmakers with a rare opportunity to repay their pet special interests for past expressions of generosity.

The insurance industry was drowning in cash. The \$27 billion profit realized by American insurance companies in the first nine months of 2010 bettered the previous year's windfall by a whopping 63-percent. No longer threatened by a prospective gubernatorial veto, dozens of lobbyists retained by property insurance trade associations plied key lawmakers with nearly \$800,000 to help launch Senator Richter's insurance pinata (State Farm – Florida's 2nd largest property insurer behind Citizens – spent about \$150,000 and regional commercial insurer FCCI contributed \$250,000).

The Property Casualty Insurers Association of America (PCI) helped guide the bill's field strategy and mapped out how the industry's deep pockets could best actualize Richter's handiwork. PCI assistant vice president and regional manager William Stander announced "This new law will address the concerns of consumers and policyholders about the cost of property insurance in Florida and help stabilize the state's insurance marketplace. It is an excellent example of how government, industry and the people of Florida can work together to stabilize and improve the state's insurance market. It is a common-sense, long-term solution that utilizes market-based solutions and means stronger homes and safer families." Among the trade groups drafted to either pump in funding or provide expert testimony were the Florida Associa-

tion of Insurance Agents FAIA) and the National Association of Mutual Insurance Companies (NAMIC).

The bill itself was a mixed bag, blending provisions that limited sinkhole losses, revised a holdback formula for dwelling and contents coverage, shortened the statute of limitations for hurricane and sinkhole claims, capped compensation and marketing tactics for public adjusters, laid the groundwork to relieve Citizens Insurance of its huge liability burden and removed a number of obsolete, questionable and counterproductive regulations. Unfortunately, the bill also facilitated a carrier's ability to hike rates while minimizing or foregoing accountability. Claiming that carriers will only return to Florida if regulations are softened or removed, insurance lobbyists crafted provisions allowing insurers to step over regulators and squeeze ratepayers at their discretion.

To help the bill navigate bumpy committee reviews, insurance lobbyists that comprised two-thirds of the Hearing audience nursed it through each stage of the vetting process. Despite close calls like the April 27th Senate vote wherein a single Senator enabled a favorable outcome, the bill passed both houses and was bundled off to the Governor's office on May 11th. A week later, Governor Scott enacted the bill into law at a well attended May 17th bill signing ceremony.

Rate Racket

The new law allows insurers to raise premiums by up to 15 percent a year for reinsurance costs or financing products used as a replacement for reinsurance (including a healthy profit margin on those costs), without the normal oversight required for rate hikes. Instead, the Office of Insurance Regulation has 45 days to either approve the rate increase or disapprove and reject the filing as excessive, inadequate, or unfairly discriminatory. This provision was one of the main battlefields for Consumer groups and industry lobbyists. Similar to the manner in which compound interest explodes savings, compounding the 15% annual increases could conceivably double insurance rates in less than 5 years.

Since 2009 legislation enabled expedited rate filings for up to 10% per policy, insurance spokespersons sought to diffuse concerns by pointing out that the new law only raises the ceiling by another 5%. However, when compounded over eight years, that seemingly small increase is the difference between doubling and trebling our premiums. Also, the increase can only be applied to that portion of the premium used to pay for reinsurance. For instance, if 30% of your premium goes to buy reinsurance and that cost jumps by 15%, your rate would increase by 4.5%. Another provision prevents regulators from interfering with insurer attempts to charge customers for advertising costs and agent commissions.

Claims Deadlines

The law sets time limits for bringing a hurricane or sinkhole claim and also creates a statute of limitations for bringing a breach of contract property insurance action in court. It shortens the five year span that policyholders currently have to file claims to two years for sinkhole claims and three years for hurricane claims. Although industry lobbyists insisted that homeowners should know whether their property is damaged within a few years of a disaster, thousands of homeowners filed claims for Hurricane Wilma three or four years after the storm for several good reasons. When a building is slammed by a hurricane, it is common for structural damage to surface years later. Secondly, beneficiaries underpaid or denied payment are often misinformed by their carrier about their right to challenge the settlement.

The abbreviated submission deadlines will allow carriers to exploit a common homeowner behavior when facing sinkhole damage. The small cracks that are initially discovered in a home's walls and foundation are seldom indicative of the total damage a property sustains when destabilized by a sinkhole. Since an insurer must notify County officials upon receipt of a sinkhole damage claim, policyholders hesitant to risk the subsequent devaluation of their property will often delay reporting minor damage to their carrier. By the time the ground settles and

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THE 2011 OMNIBUS ASSOCIATION BILL

By Eric Berkowitz

Rookie District 91 Statehouse Representative
George Moraitis Hits Home Run.

During her final year as a Statehouse Representative, our District 25 Senator Ellyn Bogdanoff sponsored a bill that shielded thousands of local association members from an impending \$million plus assessment for a fire sprinkler retrofit. That celebrated provision was a small part of an Omnibus Association bill that clarified a litany of grey areas in association law while correcting dozens of expensive, pointless and/or damaging regulations (glitches). Calling corrective legislation a "Glitch Bill" implies that some faulty regulation was an unintended byproduct of human error. In fact, when controversial provisions threaten to weaken support for an important bill, they are often intentionally left open to broad interpretation to protect the bill's survivability. By deciding against removing the problematic provision and leaving it in an unfinished state, the bill sponsor provides impetus to resolve the "glitch" in the future. Association advocates planned to address the "glitches" in Bogdanoff's bill during this year's legislative session.

At the onset of the 2011 session, Senator Mike Fasano filed Senate Bill 530 (SB 530) and Rep. James Grant filed an identical House Bill 1035 as companion legislation. The bills were supported by Becker & Poliakoff's Community Association Leadership Lobby (CALL), an association advocacy organization seeking to correct glitches in Bogdanoff's landmark legislation. At the same time, Senator Jeremy Ring filed Senate Bill 1516 and Rep. George R. Moraitis filed House Bill 1195 (HB 1195), a sister bill in the Statehouse. These bills were supported by Katzmann Garfinkel & Berger's Community Advocacy Network (CAN), another association advocacy coalition anxious to build on Bogdanoff's 2010 work product.

Although the two sets of legislation addressed different aspects of Bogdanoff's bill, neither could survive on its own. While Fasano's CALL-supported Senate bill zipped through review committees, Grant's sister House bill was catatonic. Similarly, as Moraitis' CAN-supported House bill bounced right along, Ring's Senate counterpart rotted in place. Halfway through the session, the two legal powerhouses decided to work together. They would support Fasano's bill in the Senate and Moraitis' bill in the Statehouse.

Two adverse repercussions surfaced when the bills were redrafted to achieve compatibility. Tallahassee bottom-feeders plied the bills with provisions beneficial to the supporting law firms and their non-association clients. On April 12th, as CALL lobbyist Travis Moore addressed the House Economic Affairs Committee while it was vetting HB 1195, 3 amendments were proposed to allow condominium, cooperative and homeowners' associations to charge delinquent owners for collection services by community association management firms. As the late remittances rolled in, the funds would first be applied to pay the management firm, legal fees next and lastly the association would be made whole. Although the enigmatic amendments were withdrawn for lack of support, it's no coincidence that Moore also represents the Continental Group, Inc, the parent company of Continental Management, the state's largest association management firm.

They also eliminated some of the bills' most useful tools. For instance, suddenly eviscerated was a CAN provision that would have required insurance companies to notify condominium owners when the building's master insurance policy was canceled by unilateral board action. Responding to a recent catastrophic event that took place in Fort Lauderdale, CAN Executive Director Donna Berger placed this protection for unit owners into Moraitis' original bill.

When the Park South Six condominium in Lauderdale was barbecued last May, stunned unit owners learned that board president Consuelia Howard cancelled their master insurance policy to save money, despite having collected the assessed premiums from members. When such a policy is cancelled, current Florida law only requires the insurer to notify lenders holding mortgages on the property. Although not required by Florida Law, lenders usually notify mortgaged unit owners that coverage will be force placed unless or until they provide a replacement insurance certificate. However, since many lenders don't view this bill as a high priority, the notices may not be sent for months, if at all. By mandating a direct warning to the unit owners, Donna Berger's excised provision would have provided suddenly unprotected unit owners with an opportunity to reverse an ill-advised and potentially ruinous policy cancellation. The South Park Six unit owners lost everything. Attorney-author-lobbyist Peter Dunbar and Moore, who also represent insurance interests, were instrumental in washing out the provision.

Earlier, Moore and Dunbar double teamed Moraitis to purge a provision that would have replaced the hopelessly skewed HOA election process with the more equitable format mandated in the Condominium Act. Also stripped from the bill was a requirement that third party purchasers at a judicial foreclosure sale pay all costs due on the property, not only the past due assessments. By their conflicted actions, this two-headed "man behind the curtain" transformed originally productive legislation into a double edged sword.

Prior to its placement on the Consent Calendar for May 3, 2011, Senate committees that vetted Fasano's SB 530 were Regulated Industries (12 Yeas vs. 0 Nays), Community Affairs (9 Yeas vs. 0 Nays), Judiciary (7 Yeas vs. 0 Nays) and Budget (19 Yeas vs. 0 Nays). In the Statehouse, Moraitis' HB 1195 was reviewed favorably by the Civil Justice Subcommittee (13 Yeas vs. 0 Nays), the Economic Affairs

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Committee (16 Yeas vs. 0 Nays), the Judiciary Committee (18 Yeas vs. 0 Nays) before being placed on the Special Order Calendar for April 29, 2011, where it passed a full House vote by 113 Yeas vs. 1 Nay. On May 3rd, Fasano's Senate bill was replaced by Moraitis' HB 1195 which then passed a full Senate vote by 38 Yeas vs. 0 Nays.

While the final bills address a variety of moderately important problems, they aren't the kind of legislative imperatives that ordinarily draw overwhelming support. By working together, CALL and CAN were able to combine the associations represented by their respective parent law firms, creating an intimidating political force that included thousands of associations or several million association members. With that magnitude of lobbying firepower, any support eroded by the insertion of questionable self-serving provisions would hardly be missed. Despite the bill's neutering, it still features more productive provisions than pork byproducts. In summary, the bill addresses the following issues:

Official Records (Condominiums and HOAs)

- Owners will be allowed to consent in writing to the disclosure of their protected contact information.
- While personnel records will remain unavailable for inspection, owners will be permitted to inspect employment agreements as well as budgetary and financial records that indicate compensation paid to employees.

Open Meetings (Condominiums)

- To address "personnel" issues, condominium boards may hold closed meetings (not open to unit owner observation). Legal counsel need not be present. (This already applies to homeowners' associations.)

Attachment of Rents (Condominiums, Cooperatives and HOAs)

- Clarifies that "future monetary obligations" includes all rent due from the tenant to the unit or parcel owner and must be paid to the association until all delinquent accounts are paid in full.

Director Certification (Condominiums)

- In lieu of signing the certification form, condominium association directors may submit proof of having completed an approved educational curriculum 1 year before or 90 days after the date of their election or appointment.
- The written certification or educational certificate is valid as long as the director serves on the board without interruption.

Suspensions (Condominiums, Cooperatives, HOAs)

- Will allow suspension of common element use rights for non-payment (no hearing is required) and for violating any provision of the association's declaration, bylaws or rules by a unit owner, tenant, guest or invitee (hearing is required).
- If voting rights are suspended, the suspended vote will not count towards the total voting interests required to constitute a quorum, conduct an election or approve an action.
- Although suspensions for non-payment will not require a hearing, they will require board approval at a properly noticed meeting.

Collection of Rent from Tenants (Condominiums, Cooperatives, HOAs)

- As suggested by Florida Legal Aid to diminish litigation prospects, a form letter created to explain a tenant's obligation to pay rent to the association will be sent to tenants of delinquent unit owners.
- Tenant would be immunized to any claim by the landlord related to the rent timely paid to the association after the association makes written demand.

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LEE FELDMAN WINS CITY MANAGER LOTTO

By Eric Berkowitz



New Ft Lauderdale City Manager Lee Feldman

And then there was one. On May 17, 2011, the Fort Lauderdale City Commission identified Lee Feldman as the winner of Fort Lauderdale's City Manager lotto. The 48-year-old former Palm Bay City Manager was the last man standing in a field of 90 prospective applicants. In their wisdom, the City's Charter founders decided to place Fort Lauderdale's operational governance in the hands of a Strong City Manager. Although the road less travelled, the advantages of running the city like a business were self-evident. They likened the City Commission to a corporate Board of Directors that sets policy and the City manager to a chief executive responsible for implementing their vision. Instead of entrusting a major metropolitan municipality's daunting management challenges to periodically popular politicians, a City Manager can be screened for strong professional administrative credentials, a specialized education and training in government operations and a measurable history of past successes.

Since a strong mayor must survive a popularity contest every three years, a productive city manager provides significantly more stability. Conversely, an incompetent city manager can be fired while a comparably inept mayoral cheese head must be helplessly tolerated for up to three years of painful decline. A city manager is expected to bring fiscal efficiency to the office while voters can only hope that their baby kissing mayor is also a modestly competent fiduciary guardian. As exclaimed by former Fort Lauderdale Mayor Bob Cox, "Day-to-day operations should be run by trained administrators, not politicians."

During the past few decades, many

Broward cities revised their charters, swapping out strong Mayors for strong City Managers. After watching abrasive strong mayors like John Lomelo and Larry Hoffman bend or ignore ethical rules, reward cronies, arrogantly abuse their power and meddle at will with the City's administration, a thoroughly disgusted City of Sunrise converted to city manager-based governance. Except for Plantation and Lighthouse Point, Broward municipalities are all run by elected councils or commissions which appoint professional city managers.

After former Fort Lauderdale City Manager George Gretsas was ousted by Mayor Jack Seiler, Commissioner Charlotte Rodstrom and Commissioner Bruce Roberts despite vehement protests by more than 400 City residents attending a public meeting last summer, the post was temporarily filled by acting City Manager Allyson Love - formerly a Gretsas team member. Stunned by their remarkable luck, the City of Homestead snatched up Gretsas and Love decided to sidestep further fallout from the City Commission's political agenda by politely declining to compete for the permanent placement.

The City Commission debated search protocols, empanelled a City Manager Search Committee, hired executive recruitment firm Bob Murray and Associates to support the search effort and chipped away at the imposing pool of prospects. On April 20th, the City Commission interviewed surviving candidates Feldman, former Coral Springs City Manager Michael Levinson and San Antonio deputy city manager Pasquale DiGiovanni, exclaiming that the final decision would be revealed at the May 17th Commission meeting. During the final month of a process that closely mimicked a Star Search competition, the inside money was initially on Michael Levinson.

The 59 year-old Levinson was the Steven Spielberg of the applicant list. In 1997 and 2003, Coral Springs received the Governor's Sterling Award under his oversight, Florida's highest honor for organizational performance and management excellence. In 2007, Levinson earned Coral Springs the Malcolm Baldrige National Quality Award for Excellence in business performance and leadership. The fact that this award is only given to corporations and that Coral Springs was the first city ever recognized for this honor speaks to the unique nature of Levinson's achievement. Unfortunately, Levinson carried some political baggage.

Levinson was rumored to have left Coral Springs to avoid being targeted by two mudslinging Commissioners who blamed him when they were charged with holding an illegal meeting. While feuding with Coral Springs Police Chief Duncan Foster, City Commissioners Tom Powers and Vincent Boccard violated the Government in the Sunshine Law when they met privately with police union officials Michael Hughes and Christopher Swinson on March 11th at Bru's Sports Bar & Grill in Coconut Creek. When Foster dropped a dime on Powers and Boccard, prosecutors filed a misdemeanor charge on March 29th, alleging the four were illegally discussing city business in the closet. The charges were dropped. Despite Foster's public statement that he was unilaterally responsible for informing the authorities, Powers insisted that Foster acted on Levinson's behalf and demanded that Levinson be investigated. Rather than report to a panel whose members wanted his head on a platter, Levinson wisely opted for a change of scenery.

Ironically, the anecdote served to affirm Levinson's integrity to his potential employers on the Fort Lauderdale City Commission. When asked about the rumored incident, Commissioner Bruce Roberts said "If anything, I think it worked in Levinson's favor." Notwithstanding, Levinson's relocation to Fort Lauderdale wasn't in the cards. Feldman grabbed the brass ring while Levinson and Pasquale DiGiovanni were given bus tickets.

At the May 17th meeting, Fort Lauderdale Mayor Jack Seiler lined up behind Levinson with Commissioner Charlotte Rodstrom in tow. They were shut out by Commissioners Bobby DuBose, Romney Rogers and District 1's Bruce Roberts, who preferred Feldman. Not surprisingly, Rodstrom knocked Feldman based on gossip she traded with a Palm Bay acquaintance. Convinced that Feldman was an "empowering manager", his three commission backers offered a consensus opinion that Feldman researched the City's issues more deeply than his competitors for the job. Although characterizing any difference among the three candidates' qualifications and capabilities as "marginal", Commissioner Dubose gave Feldman points for the importance he ascribed to diversity - City Hall spin for equal attention to minority concerns. Commissioner Rogers said that he became a supporter when Feldman told him that he hadn't applied for any other job. At the May 19th GMCA Advisory Board meeting, Bruce Roberts told association officials that Feldman was "a problem solver" and confirmed that "Any of the three finalists would have been an excellent choice. We couldn't lose."

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Elections and Staggered Terms (Condominiums)

- Board member terms will not expire at the annual meeting in the absence of any candidates.
- In those cases where the board member terms expire at the annual meeting, the board members may stand for reelection unless prohibited by the bylaws. (This allows associations to establish term limits by providing for them in the bylaws).
- A candidate must be eligible to serve on the board at the time of the deadline for submitting a notice of intent (i.e., 40 days before the election) in order for his or her name to be listed as a proper candidate on the election ballot or to serve on the board.

Termination (Condominiums)

- It provides for "partial" termination of condominiums and that amendments providing for same are not subject to s. 718.110(4).
- Plan of termination in a partial termination must reflect the remaining interests in the non-terminated portion of the condominium.
- It modifies distribution protocol and mortgagee participation to reflect partial termination.
- It allows for termination because of economic waste or impossibility if a condominium includes units and timeshare estates where the improvements have been totally destroyed or demolished. It requires that a plan of termination be filed in court by a unit owner seeking equitable relief. If uncontested by the managing entity, any unit owner, any timeshare estate owner, or any holder of a recorded mortgage lien for 45 days, petitioner may move the court to enter a final judgment to authorize plan.

Membership Agreements (Condominiums)

- It will allow associations to acquire membership agreements by vote of a majority of entire voting interests instead of reference to declaration and s. 718.113(2).

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Management Fee Collection (Cooperatives)

- It removes provision from 2010 statute allowing cooperative associations to lien for collection services for which the association has contracted.

Homeowners' Associations/Bulk Television/Internet/Information (HOAs)

- Creates 720.309(2) to basically mirror condominium statute, as amended in 2010, regarding bulk purchase of communication, information or internet services.
- Prohibits homeowners' associations from denying individual service to any resident from certificated or franchised provider.

Bulk Buyers/Bulk Assignees (Condominiums)

- Definition of "bulk assignee" and "bulk buyer" will be amended to mean a person who acquires more than 7 condominium parcels in "a single condominium."
- The bulk assignee will not be liable for warranties under 718.203(1) or 718.618, except "as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser," or for design, construction, development or repair work performed by or on behalf of the bulk assignee.
- When the bulk assignee acquires title to the units and receives an assignment of developer rights, if the developer has not relinquished control of the board, for purposes of determining the timing of transfer of control, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.
- Filing with the division and certain disclosures to purchasers and lessees will be required if bulk assignee or bulk buyer is offering "more than seven units in a single condominium" for sale or for lease for a term exceeding 5 years.
- The bulk assignee or bulk buyer are not required to comply with the filing or disclosure requirements if all of the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction.
- A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012.

Homeowners' Association Board of Directors Eligibility and Meetings (HOAs)

- As provided for in the Condominium Act, persons delinquent in the payment of any monetary obligation to the association for more than ninety (90) days and convicted felons whose civil rights haven't been restored for at least 5 years will not be eligible to serve on the HOA board.
- Members of a homeowners' association will no longer be required to petition the voting interests to speak at a board meeting about designated agenda items.

Manual Fire Alarms (Condominiums and Cooperatives)

- The bill will finally clarify that a condominium, cooperative or multi-family residential building less than four stories in height with an exterior corridor providing a means of egress is exempt from installing a manual fire alarm system. This corrects the glitch from last year when two different bills adopted conflicting language. One bill referred to buildings less than four stories in height, and another bill referred to condominiums one or two stories in height.

Hurricane Protection (Condominiums)

- An association is permitted to install impact glass or other code compliant windows as hurricane protection. (The current law refers only to hurricane shutters.)

Joint and Several Liability (Condominiums and HOAs)

- An association that acquires title to a unit or parcel through foreclosure will not be liable for unpaid assessments that came due before the association's acquisition of title in favor of any other condominium association or homeowners' association which holds a superior lien interest on the unit or parcel. Referred to as "Master/Sub" language, it removes the financial hurdles for sub associations reluctant to foreclose on delinquent property for fear of being jointly and severally liable to a master association for debts associated with that property.

On June 13th, HB 1195 was sent to Governor Rick Scott for his signature. The Governor signed it into law on June 21, 2011. The effective date for the legislation is July 1, 2011, at which time the above provisions become law. If you are renting an apartment that is hopelessly in default, you might consider changing the payee in your online bill payer service from the tricky landlord to the association. If you don't receive the newly-drafted "form letter" notice from the association sometime in July, either your landlord finally paid his bills or the office manager is asleep at the wheel.*

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Lee Feldman had served as City Manager for the Space Coast City of Palm Bay, Florida since October 2002. No stranger to South Florida issues, he came to Palm Bay via the City of North Miami, where he was City Manager from May 1996 to October 2002 and Deputy City Manager from 1989 through 1996. Before that, he served as Assistant to the City Manager and Assistant City Manager in North Miami Beach. Feldman is academically equipped with a B.A. in Public Policies from Washington and Lee University, a Master's Degree in Governmental Administration from the Fels Center of Government at the University of Pennsylvania and he completed the Senior Executive in State and Local Government Program at Harvard's Kennedy School of Government. Like Levinson, Feldman came to the competition bearing some impressive kudos. In 2006, the Florida League of Cities named Feldman "City Manager of the Year". In 2008, Feldman was added to FEMA's National Advisory Council, a nationwide panel established under the Post-Katrina Emergency Management Reform Act of 2006 to provide advice, analysis and assistance in all aspects of preparedness and post-event management. He is also a past President of the Florida City and County Management Association.

In 1959, Palm Bay was platted by the General Development Corp. (GDC), which left the City with hundreds of miles of unpaved roads, few water lines and even fewer sewer lines. After buying the water treatment plant from a bankrupt GDC in 1992, the city began expanding the water and sewer services. Within a few years of his arrival, Feldman planned a build-out of the city's infrastructure, spearheaded the county's first municipal charter school, reduced city taxes to their lowest rate in eight years and managed annexations that expanded the city's jurisdiction by 10% - from 66 to about 72 square miles.

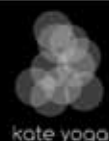
The main difference between Feldman's past and future challenges is magnitude. In Palm Bay, he managed 800 employees and a \$115 million budget. In the "Venice of America" he will oversee 2,500 employees and a \$611 million operating budget. Feldman's annual salary in Palm Bay was about \$168,000. His predecessor in Fort Lauderdale pulled down \$230,000 a year. Whether his income will reflect the proportionately greater demands of the new job remains to be seen.

Feldman comes equipped with the skills, knowledge, experience and temperament to do a laudable job. To his credit, he began making preparations to pilot the City well before he was selected. He is also unusually focused on making this his City. As soon as Feldman was offered the job, Roberts commented "He's already started doing this job in my opinion, and I gave him the edge for effort."

Every new City Manager must make peace with the ghost of his or her predecessor. After pinning the 2004 budget disaster on former City Manager Floyd Johnson, nervous city commissioners awoke to the realization that they were next in line for ambient culpability. Thanks to his predecessor's fairy tale budgets and a City Commission whose abrogated oversight responsibilities admittedly inflamed the City's fiscal nightmare, George Gretsas entered a municipal environment wherein expectations were so low that failure would be taken in stride. On his arrival in Fort Lauderdale, Gretsas was given operational autonomy by a City Commission that would be equally satisfied with a savior or a scapegoat.

Continued on page 11

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the full extent of the damage manifests itself over the next few years, the shortened deadline will have passed, making it too late to submit a claim.

Benefit Holdbacks

Unless a home is completely destroyed, insurers can now withhold full payment for home damage claims until work is performed and expenses incurred. In committee reviews, the insurance lobbyists who drafted this provision testified that it was necessary to prevent homeowners from pocketing insurance proceeds instead of paying for repairs to their property.

The law vitiates the prompt payment requirement for carriers. A carrier is only required to pay "actual cash value" less the deductible, regardless of whether or not the homeowner purchased "replacement cost" coverage. The carrier is only obligated to pay the balance of "replacement cost" funds after the insured has replaced or repaired the property.

This provision forces the policyholder to somehow finance a significant portion of the reconstruction and/or replacement of personal property without insurance proceeds (along with all the non-insured items) and patiently await reimbursement. Individual or association policyholders unable to self-finance the remaining reconstruction costs of their covered property will be precluded from collecting their replacement cost benefit, notwithstanding having paid the significantly higher premiums.

This supposedly "new" policy was actually in effect until 2005, when the legislature determined that carriers were using this tactic as a strategy to lower their payouts for replacement cost policies to the less expensive actual cash value – functionally cheating their clients. In the insurance industry's twisted universe, when carriers are forced to pay claims on replacement cost policies for which they collected higher premiums, they actually believe that they are being defrauded. By turning back the clock, the insurers hope the new law would allow them to resume paying actual cash value to settle claims filed by replacement cost policyholders who lack the resources to complete damage repairs.

The provision will create another obstacle. Many contractors already decline insurance jobs because of the inherent payment delays. The new law will further thin the field of vendors willing to undertake the repairs. Homeowners will have to prepay or bond the projected shortfall or postpone repairs until they could save or borrow enough to fully fund the temporary deficit. As the homeowner searches for the money and a flexible contractor, the property continues to deteriorate, heightening damage costs. To pacify lawmakers that raised hell over industry attempts to revive the pre-2005 scam, the original bill was amended to create a two tier pricing formula for replacement cost coverage, allowing insurers to charge more for up front full pay policies and apply a discount for policies requiring outlays that will be reimbursed.

Sinkhole Psychology

Following the 2004 and 2005 serial hurricanes, insurers took the opportunity to triple and quadruple premiums. The huge increases were based on proprietary hurricane models that promised a decade of annually worsening storms. After six years of uneventful Hurricane Seasons, industry spokespersons seeking a new straw dog turned their attention to sinkholes. Like Hurricanes, Sinkholes are capable of enormous damage and provide lobbyists with the elemental unpredictability useful for justifying irrationally large and regular rate hikes. Conversely, public adjusters have built sinkhole damage into a cottage industry that thrives on fraudulently bleeding insurers. Not surprisingly, much of the new law is devoted to curbing claims abuses perpetrated by both sinkhole insurers and their clients.

The first part of a one-two punch sinkhole strategy allows insurers to require an inspection of a property before issuing sinkhole coverage. If the inspection provides convincing evidence of a sinkhole, the insurer can limit its exposure by dropping sinkhole coverage for anything other than the main building on a property. For years, sinkhole policyholders have exploited the current statute's vague language to rip off their carriers. By adding unrelated cracks in a nearby driveway or cosmetic cracks on an adjacent structure's wall to a sinkhole claim, scamming policyholders can bang their carriers for an incremental windfall.

Although aware of the scam, insurers paid the inflated claims. A sinkhole insurance report by the Florida Senate explained that two other statutes related to attorney fees and "bad faith" laws made it more cost effective to pay the claim than risk a lawsuit. To help close the long abused loophole, the revised statute now defines "structural damage" as "foundation movement outside an acceptable variance under the applicable building code" that "prevents the primary structural members or primary structural systems from supporting the loads and forces they were designed to support." Paint cracks on appurtenant structures and cosmetic damage to sidewalks, decks, or patios will no longer be used to pad settlements.

If the owner of a covered property submits a claim for sinkhole damage, a carrier can send an engineer to ascertain whether or not the sinkhole exists. If the insurer denies the claim based on its engineer's determination that there is no sinkhole, policyholders must assume up to half of the maximum \$2500 cost for sinkhole testing to prove their claims. The additional expense is a double edged sword. While deterring capricious claims, it could also preclude insolvent property owners from proving legitimate claims.

Fiddling with Citizens

The law makes a series of eclectic changes to Citizens Property Insurance Corporation. It repealed required reductions to the high-risk Coastal accounts scheduled for December 1, 2010 and February 1, 2015. The Citizens policyholder surcharge, which must be paid upon cancellation, termination or renewal, must be fully levied before the company can levy regular assessments. Starting on January 1, 2012, coverage applicants must provide agents with a signed "Acknowledgment of Potential Surcharge and Assessment Liability" form that details their liability for a potential Citizens policyholder surcharge of up to 45% of premium and emergency assessments. The amount of notice required when the company cancels or fails to renew a property insurance policy dropped from 180 to 120 days.

Citizens' sinkhole loss policies issued or renewed on or after January 1, 2012, will not cover damages to appurtenant structures, sidewalks, decks, or patios. Such renewals will contain a mandated notice of coverage change. Citizens Property Insurance must hire an outside consultant to examine whether the state-run insurer could save money and do a better job if it outsourced work currently being done in-house. Members of the Citizens Board of Governors must disclose conflicts of interest and not vote on any measure that would inure to the gain or loss of those board members or any of their personal or business relations.

Surplus Requirements

The new law increases the surplus requirements for new home insurance companies from \$5 million to \$15 million. An existing insurer (whose Certificate of Authority pre-dates July 1, 2011) must increase their currently mandated \$5 million in reserves to \$10 million on July 1, 2016 and \$15 million by July 1, 2021. These changes apply to all carriers that aren't wholly owned subsidiaries of insurers domiciled in other states.

According to Florida Insurance Commissioner Kevin McCarty, seven Florida insurers are currently operating with reserves of less than \$6 million. McCarty said "The new minimum of \$15 million, as well as other factors, will likely spur some merger and acquisition activity."



Wilma Whacks Windows From
Colonial Bank Building

Continued on page 14

In contrast, Feldman is following in the shoes of a City manager with a legendary record of success. The commission members responsible for dumping Gretsas repeatedly assured city residents that Fort Lauderdale would thrive in his absence. For the past two years, the city budget was balanced using the reserve funds that Gretsas amassed prior to getting the boot. Having exhausted any remaining moderately painful cuts while patching together the FY 2011 budget, it is likely that 2012 will take a heavy toll on the still healthy reserves. Once those funds are depleted, the commissioners will start taking public heat.

During their April 20th candidate interviews, commissioners were encouraged when Feldman announced that he dislikes using reserves to balance the budget. If he can streamline City Hall by comprehensively restructuring the existing table of organization, Feldman may stave off the impending pain. He already told Commissioners that he would cut the number of City departments and work directly with the Police and Fire Chiefs. To accomplish this - they will have to trust Feldman with the operational control previously wielded by Gretsas. Since he was already pre-hammered by Charlotte Rodstrom for no discernible reason, Feldman won't be surprised when his administrative efforts are implemented by a series of 4 to 1 votes.

On June 23rd, Feldman accompanied Commissioner Bruce Roberts to the last GMCA Advisory Board meeting before the summer hiatus. In the two hours that followed, Feldman convinced a room peppered with skeptics that the city commission made the right choice. Find out why next month. •

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AUGUST/JULY

<p>10 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166</p> <p>Sunday Jazz Brunch Riverwalk, Downtown FL 11 a.m. to 2 p.m. Info.: 954-828-5985</p>	<p>11</p> <p>Citizens' Crime Alert City Hall, 7 p.m. Info.: 54-828-5377</p>	<p>12 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268</p> <p>Moonlight, Sea Turtles, & You Museum of Discovery and Science 9 p.m. to 1 a.m. Reservations: 954-713-0930</p>	<p>13</p> <p>Moonlight, Sea Turtles, & You Museum of Discovery and Science 9 p.m. to 1 a.m. Reservations: 954-713-0930</p>
<p>17 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166</p> <p>USTA Nat'l Boys 14 Clay Court Championships (Through 7/22) Jimmy Evert Tennis Center Schedule/Tix.: 954-828-5378</p>	<p>18</p> <p>Commissioner Bruce Roberts: Pre-Agenda Meeting Beach Community Center 6 p.m. Info.: 954-828-5033</p>	<p>19 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268</p> <p>Mama Mia Broadway (Through 7/24) Broward Center for the Performing Arts Tix.: 954-462-0222</p>	<p>20 Summerfest 2011 Broward Center 8 p.m. Tix.: 954-462-0222</p> <p>Cirque du Soleil Algeria (Through 7/31) BankAtlantic Center Tix.: www.ticketmaster.com</p>
<p>24 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166</p>	<p>25</p>	<p>26 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268</p> <p>Moonlight, Sea Turtles, & You Museum of Discovery and Science 9 p.m. to 1 a.m. Reservations: 954-713-0930</p>	<p>27 ABBA - The Concert Hard Rock Live, 8 p.m. Tix.: www.ticketmaster.com</p> <p>Moonlight, Sea Turtles, & You Museum of Discovery and Science 9 p.m. to 1 a.m. Reservations: 954-713-0930</p>
<p>31 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166</p> <p>Sunday Jazz Brunch Riverwalk, Downtown FL 11 a.m. to 2 p.m. Info.: 954-828-5985</p>	<p>1 Commissioner Bruce Roberts: Pre-Agenda Meeting Beach Community Center 6 p.m. Info.: 954-828-5033</p>	<p>2 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268</p> <p>Fort Lauderdale City Commission Meeting City Hall, 6 p.m.</p>	<p>3</p>
<p>7 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166</p>	<p>8</p> <p>Citizens' Crime Alert City Hall, 7 p.m. Info.: 54-828-5377</p>	<p>9 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268</p>	<p>10</p>

ADDITIONAL EVENTS

JULY 14: 2nd on 2nd Thursdays Block Party, 200 Block SW 2nd Street, 5 to 9 p.m., Info.: 954-468-1541
 JULY 14: Rihanna with Cee Lo Green, BankAtlantic Center, 7:30 p.m., Tix.: ticketmaster.com
 JULY 15 - SEPT 5: Harry Potter & the Deathly Hallows Part 2, Museum of Discovery & Science IMAX Theatre, Info.: 954-467-6637
 JULY 16: South Florida Bike Expo, War Memorial Auditorium, Sat: 9 a.m. - 7 p.m., Sun: 9 a.m. - 6 p.m., Info.: 954-977-2804
 JULY 19, 20: Moonlight, Sea Turtles, & You, Museum of Discovery and Science, 9 p.m. to 1 a.m., Reservations: 954-713-0930
 AUGUST 6: Home Energy Saver Saturday Workshop, Museum of Discovery and Science, 2 to 4 p.m., Info.: 954-713-0940
 AUGUST 6 - 7: West Palm Beach Antiques Festival, Americraft Expo Center - South Florida Fairgrounds, Info.: 941-697-7475
 AUGUST 13 - 14: Fort Lauderdale Gun & Knife Show, War Memorial Auditorium, Info.: 954-828-5380



THU

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SAT

14

BINGO
Southpoint's North Lounge
(3400 Galt Ocean Dr)
7 p.m.
\$5/person for 3 boards

15

Jazz on the Square
The Village Grille
Commercial Blvd. & A1A
7 p.m.

16

Riverwalk Urban Market
227 SW 2nd Ave.
8 a.m. to 1 p.m.
Info.: 954-298-5607

Moonlight, Sea Turtles, & You
Museum of Discovery and Science
9 p.m. to 1 a.m.
Reservations: 954-713-0930

Sade
BankAtlantic Center, 8 p.m.
Tix.: ticketmaster.com

The Tropical Symphony Concert
BankAtlantic Center, 8 p.m.
Tix.: 800-745-3000

21

ArtWalk Las Olas
Las Olas Blvd from
MOA to SE 16th Ave
5 to 9 p.m.
Info.: 954-258-8382

22

Jazz on the Square
The Village Grille
Commercial Blvd. & A1A
7 p.m.
Info.: 954-776-5092

23

Riverwalk Urban Market
227 SW 2nd Ave.
8 a.m. to 1 p.m.
Info.: 954-298-5607

BINGO
Southpoint's North Lounge
7 p.m.
\$5/person for 3 boards

The Red Eye
ArtServe (1350 East Sunrise Blvd)
6 to 9 p.m.
Info.: 954-462-8190

Buckler's 3rd Annual Ft Lauderdale Craft Fair
(Through 7/24)
War Memorial Auditorium
Info.: 386-860-0092

28

BINGO
Southpoint's North Lounge
(3400 Galt Ocean Dr), 7 p.m.
\$5/person for 3 boards

29

Jazz on the Square
The Village Grille
Commercial Blvd. & A1A
7 p.m.

30

Riverwalk Urban Market
227 SW 2nd Ave.
8 a.m. to 1 p.m.
Info.: 954-298-5607

Moonlight, Sea Turtles, & You
Museum of Discovery and Science
9 p.m. to 1 a.m.
Reservations: 954-713-0930

Hello Dolly
(Through 7/30)
Broward Center for the Performing Arts
Tix.: 954-763-6701

Ft Lauderdale Antique Collector Faire
(Through 7/31)
War Memorial Auditorium
Info.: 954-563-6747

4

BINGO
Southpoint's North Lounge
(3400 Galt Ocean Dr)
7 p.m.
\$5/person for 3 boards

5

Jazz on the Square
The Village Grille
Commercial Blvd. & A1A
7 p.m.

6

Riverwalk Urban Market
227 SW 2nd Ave.
8 a.m. to 1 p.m.
Info.: 954-298-5607

11

2nd on 2nd Thursdays Block Party
200 Block SW 2nd Street
5 to 9 p.m.
Info.: 954-468-1541

12

Jazz on the Square
The Village Grille
Commercial Blvd. & A1A
7 p.m.

13

Riverwalk Urban Market
227 SW 2nd Ave.
8 a.m. to 1 p.m.
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(Through 8/14)

Summer Gardening Class
Flamingo Gardens
1 to 3 p.m.
Info.: www.flamingogardens.org

ADDITIONAL EVENTS

Saturdays: Yoga @ Riverwalk, West side of Esplanade Park, 10:30 to 11:30 a.m., free, Info.: 954-732-0517

Saturdays: Cardio & strength training @ Riverwalk, Esplanade Park, 11 to 12 p.m., free, Info.: 954-732-0517

Wednesdays: Cardio & strength training @ Riverwalk, Esplanade Park, 6:30 to 7:30 p.m., free, Info.: 954-732-0517

Saturdays through September 3: 3rd Annual Saturday Nite Alive, Fort Lauderdale Beach A1A, 7 to 11 p.m.

Fridays (June 17th - August 5): Starlight Musicals, Holiday Park, 7 to 10 p.m., Info.: 954-828-5363

Bank of America



UPCOMING EVENTS IN OUR AREA

August 18

Art Walk Las Olas

Las Olas Blvd from MOA to SE 16th Ave, 5 to 9 p.m.

Info.: 954-258-8382

August 19 - 20

Monster Jam

BankAtlantic Center

Tix.: ticketmaster.com

August 20

Buckler's 21st Annual Craft Fair

Americraft Expo Center - South Florida Fairgrounds

10 a.m. to 5 p.m.

Info.: 386-860-0092

August 21

Sunset Blue Block Party

NE 33rd St, Galt Ocean Village Shoppes, 6-10 p.m.

Info.: 954-260-6194

August 26

Where the Cars Are

Riverside Hotel Lawn, Las Olas Blvd., 6 to 9 p.m.

Info.: 954-771-0729

August 27

The Fort Lauderdale Bus Loop

300 SW 2nd Street, 6 to 11 p.m.

Info.: 954-260-6194



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Public Adjusters

In the years following the 2004 and 2005 Hurricane Seasons, some Galt Mile associations were worn down by carriers whose numerous requests for additional information were followed by long, frustrating delays. After years of little or no progress, cash-strapped associations reluctantly agreed to accept settlements that dwarfed their covered damage costs. Other Galt Mile associations hired public adjusters to help make their case. While a few legitimate adjusters won modest incremental benefits, others convinced naïve and angry association officials that they were entitled to insane damage benefit sums, in some cases exceeding the replacement cost of the entire building. As starry-eyed association directors drooled over their expected windfalls, carrier attorneys closed ranks. Having received a steady diet of fees for delivering pipe dreams, the fat and happy adjusters simply vanished. Not surprisingly, they soon reappeared on the Florida Attorney General's fraud watch list.

This scenario played out all over the state. The new law takes some swipes at unscrupulous insurance adjusters. It bars them from using advertising with logos that resemble those of a government agency or guaranteeing results when filing a claim. It slaps a 20% maximum on fees for reopened/supplemental claims or insurer payments made one year after an emergency declared by the Governor. For claims against Citizens Insurance, it prohibits public adjusters from charging more than 10 percent of the amount paid by Citizens in excess of the amount originally offered to settle the claim. By requiring public adjusters to provide a copy of their contracts with policyholders to insurers, it helps red flag adjusters with a contractual incentive to inflate claims and bloodlet carriers.

Covert Carrier

Evidently, Bill sponsor Senator Garrett Richter admitted to negotiating unilaterally with some unnamed nationwide carrier and added an eleventh hour gateway perk to the bill. Inserted to attract the secret carrier back to Florida, the law allows insurers that offer home and vehicle policies to drop coverage if they warn policyholders at least 90 days in advance. Senator Ellyn Bogdanoff explained that another of the bill's provisions had already cut the drop notice for homeowner policies from the existing 100 - 180 days to 90 days, and the existing drop notice for auto policies was only 45 days. Therefore, the provision's only real impact was to extend the 45 day drop notice for vehicles to 90 days.

It Could Be Worse

Richter's original bill was a bald-faced insurance industry wish list. As it navigated reviewing committees in the House and Senate, lawmakers continuously amended the bill, modifying a laundry list of automatic and self-directed rate increases with reasonable regulatory oversight. The bill's primary critic in the legislature, Republican Senator Mike Fasano, worked to beat back the army of lobbyists assigned to each of the hearings. As the heavily amended bill headed for final passage, Fasano diagnosed the bill's impact, "Big business has triumphed over the needs of the consumer. Insurance companies will only get richer because of this legislation while policyholders will have to pay more of their hard earned money for what will amount to less coverage."

Although displeased that the bill "virtually guarantees a 15% hike in premiums for many Floridians," Fasano commented "lawmakers made many changes that benefited consumers." Describing the motivation for his peers to fix many of the bill's shortcomings as election jitters, Fasano said "In the end my colleagues realized how detrimental some of these provisions would have been to their constituents back home."

Insurance Commissioner Kevin McCarty, who chaired the 2008 insurance hearings that exposed industry attempts to doctor evidence in support of unjustified rate hikes, was more optimistic about the bill's final incarnation. McCarty explained "This bill focuses on addressing cost drivers in the system and will yield long-term benefits for Florida by stabilizing the property insurance market and attracting new capital investment to our state."

Lawmakers that either support or oppose the new law agree that closing loopholes used to defraud insurers makes sense. They differ primarily over whether the rate tweaks plastered throughout the bill will have any impact on reviving a competitive Florida insurance market.

Continued on page 15

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Insurance...Continued

The key to that is Citizens. The state-backed insurer doesn't base its rate structure on the actuarial impact of disaster (i.e. hurricane) models. Instead, rates are tailored politically (using magic) and are virtually unrelated to damage costs. If a disaster hits Florida, the total damage costs will be divided among and assessed to every single insurance customer in the state (multi-peril, windstorm, automobile, etc), virtually dispensing with the factors that ordinarily determine premium rates.

Here's the problem. Since Citizens uses taxpayer subsidies to undercharge for any coverage they provide, no legitimate carrier can compete with the State-backed insurer. Until Citizens is returned to its original mandate as an "insurer of last resort," out-of-state carriers will not even consider returning to Florida since, by definition, they would always have to charge more for the same coverage. In a nutshell, no matter how much the new law skyrockets rates over the near future (and it will), as long as Citizens is allowed to undercharge private insurers, they will not return and bring competitive benefits to the Florida market.

Lobbyists, risk management statisticians, and economists professing support for the bill to vetting committees used probability theory and tendered actuarial proof of impending disaster to emphasize the importance of reestablishing a competitive insurance market in Florida. A local associate in one of the firms that provided supportive testimony simplified the new law's hypothetical rationale "If we offer enough money to insurance companies, they may return to Florida in order to collect it." Just below the surface of the convoluted econobabble was an explanation worthy of Mr. Rogers!•



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1202.....\$949,000

lhermitage1-1202.com

2403.....\$949,000

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1603.....\$899,000

1710.....\$1,895,000

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1410.....\$1,629,000

710.....\$1,499,000

NEW LISTING

403 BLDG II.....\$839,000

A True 3 Bedroom with 3 Full Bathrooms
Feels like a beach house with exceptional
ocean front views.

Virtual Tour: lhermitage2-403.com

ASCOT DREAM HOME

1110.....\$1,799,000

Open gourmet kitchen, fully furnished

All rooms face Southeast

Over 3,000 total square feet (incl. balcony)

Virtual Tour: lhermitage1-1110.com



Over 30 apartments available

Prices start at \$525K

Shirley Attias

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Rentals Available Annual from \$2,900 Seasonal from \$4,700

OVER 15 UNITS FOR SALE NOW AT SOUTHPOINT STARTING UNDER \$370,000.



2 / 2 with balcony overlooking ocean & pool; updated kitchen marble flooring. \$449,000.



Southeast split 2 / 2 - ocean-view from every room! Updated kitchen and bathrooms. \$498,500.



2 / 2 1,550 Sq Ft. Marble Flooring. Short Sale, first time on the market and **priced to sell \$355,000**



Large North Tower penthouse with amazing views of the ocean, intracoastal and city...**SOLD!**



South-facing 2 / 2 with great ocean, pool, and city views. Updated kitchen and bathrooms. \$459,000.