

GALT MILE NEWS

JANUARY 2012

THE OFFICIAL NEWSLETTER OF THE GMCA



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A TALE OF TWO BAD BILLS



Senator Michael Bennett



Representative Frank Artiles



Senator Chris Smith



Representative Hazelle Rogers

By Eric Berkowitz

While association bills abound at the outset of every legislative session, the committee vetting process soon reveals each bill's intent, beneficiaries, supporters and opponents. The wide range of filings are sorted into categories and identified as productive for or damaging to associations and/or their members.

Anti-association bills are generally propelled by one of three motivations; money, political capital or ignorance. Individual businesses or entire industries that envision an opportunity to financially exploit common interest communities will call in a meticulously cultivated marker in order to lay some statutory groundwork for their agenda. The lawmakers that carry their water seek to repay past or future campaign funding largesse by relieving associations (and/or their members) of whatever rights or protections that their clients perceive as obstacles to an anticipated windfall.

In 2012, Bradenton Senator Michael Bennett and Miami Statehouse Representative Frank Artiles volunteered as waterboys for some extremely generous construction industry trade organizations. This comes as no great surprise, since Bennett is an electrical contractor and Artiles is a State of Florida licensed general contractor, real estate agent and public adjuster (what conflict?).

After hearing the case "Lakeview Reserve Homeowners v. Maronda Homes, Inc., No. 5D09-1146 (Fla. 5th DCA)" on October 29, 2010, Florida's Fifth District Court of Appeal ruled that home buyers and homeowners' associations are entitled to recover damages for Breach of Common Law Implied Warranties from the builder or developer who saddles them with defective roadways, drainage systems, retention ponds and underground pipes. The developer asserted that since these elements aren't physically part of the home's structure, marketing materials indicating that homes were in "move-in" condition and available for immediate occupancy weren't fraudulent or misleading. The court disagreed, stating that certain types of common element improvements were necessary to live in a home, and that a home buyer is forced to "rely on the expertise of the builder/developer for proper construction of these complex structures". The case went to the Florida Supreme Court.

While community association advocates supported the lower court's decision, construction industry associations filed amicus briefs in opposition to implied warranties. When the court first ruled against them, the Florida Home Builders Association (FHBA) and National Association of Home Builders (NAHB) paid a call on Bennett and Artiles to hedge their bets. Despite its pendency before the Supreme Court of Florida (which heard oral arguments on December 6th), on December 7th they decided to buy some insurance in the legislature. In his Senate Bill 1196, Senator Michael Bennett seeks to protect developers who sell properties afflicted with critical common element

construction defects by squelching their common law exposure to implied warranties. Artiles filed an identical companion bill, HB 1013, in the Statehouse. Their legislation would undermine homeowner rights and remedies for common area construction defects.

Exclaiming that he is a friend to the struggling Real Estate market, the Senator believes that thousands of hoodwinked homeowners are a small price to pay for the confidence his bill would give to developers, thereby stimulating the housing economy. In short, more developers would risk entering the shaky market if they could avoid legal entanglements for performing substandard or defective construction. After all, using scotch tape instead of nails appreciably improves the bottom line. Then again, why should we care about the fate of homeowners' associations or their members?

Bennett's bill doesn't only apply to HOAs. Since it targets anyone buying a home, the limitations would victimize homeowner associations, condominiums, co-ops, timeshares and mobile home parks. The legislation infers that condo and co-op owners in new developments who discover that the building's defective drainage system spits sewage into the master bath or that their roof is made of sponge should "suck it up". Bennett refers to these construction disasters as "off-site improvements" and disputes that they diminish a home's habitability.

The Fifth District Court set this simple test to ascertain whether any residential construction element is eligible for implied warranty protection, "In the absence of the service, is the home habitable?" Construction Law Specialist Sanjay Kurian (Becker & Poliakoff, P.A.) holds that since these common area improvements are necessary in order to utilize the residential dwellings for their intended purpose, they are part and parcel of the sale and purchase of a residential dwelling in Florida. In fact, a developer couldn't even qualify for a Certificate of Occupancy absent these improvements. Since association members are assessable for repairing or correcting defective common elements, the bill shifts liability for a developer's negligence to associations and their members. With our support, association advocates hope to euthanize Bennett's bill, thereby depriving the FHBA and the NAHB of the elephantine negligence loophole they helped finance.

While most anti-association bills thinly veil a mercenary game plan to sell out homeowners, some are filed by misguided lawmakers trying to fix complex problems they don't fully understand. It's no secret that associations appeal to career-minded politicians in search of a sizable statewide constituency. Often more concerned with cultivating a politically productive relationship with the State's two million association members, their proposed bills suffer from a superficial knowledge of association issues. Their legislation's simplistic resolutions would wreak havoc on the same people they aspire to befriend.

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COMMISSIONER BRUCE ROBERTS



December 2011 Newsletter

the 75 BSO staffers that handle the City's dispatch operations at the FLPD station on Broward Boulevard. At an October 6th joint meeting with the County and the Sheriff's Office, Fort Lauderdale officials bought a 30-day stay for its 911 service when each party tossed \$167,000 into the pot and further agreed to work out a one-year extension.

For years, public safety officials in the County and most of its cities agreed that unifying their efforts would save money and response time, a significant improvement for a service wherein seconds can spell the difference between life and death. In 2002, 80% of Broward's voters passed a referendum demanding consolidation of emergency 911 communications and dispatch services. Although every Public Safety agency in the jurisdiction has long extolled the virtues of a unified service, elected officials initially couldn't get past a blinding paranoia fueled by turf protection. When the economy tanked, funding reluctance compounded the stumbling block.

In his last newsletter of 2011, District 1 Commissioner Bruce Roberts reviews the many neighborhood initiatives he helped nurse to fruition in 2011, highlights the City's budgetary achievements, offers a defense against a recent crime trend, describes a city ordinance enacted to clamp down on Pill Mills that fuel the street drug trade, invites local residents to share their concerns at his twice monthly pre-agenda meetings and thanks constituents for their input and his opportunity to serve the District - and the City. Among our Commissioner's updates is news of a long-awaited improvement in the Emergency 911 safety net that could save countless lives.

At an October 25, 2011 meeting of the Broward Board of County Commissioners, Sunrise Mayor Michael Ryan (who also chairs the Broward League of Cities Public Safety Committee) recommended constituting a committee to develop a plan that consolidated public safety communications and dispatch operations. After approving a motion for consolidated dispatch, the County Commission requested that nominations for members to serve on the Committee be brought back for the Board's consideration.

On November 1st, Ryan returned with a list enumerating prospective committee members. Roberts and Committee co-chair Ryan were appointed by the Broward League of Cities. While the Broward Commission's selection of Commissioner Lois Wexler as the other co-chair will cause Galt Mile library advocates to cringe, on the bright side, the County Board also named District 4 Commissioner Chip LaMarca to the committee.

During the infamous books-cooking fiscal fracas of 2003, former Fort Lauderdale Fire Chief Otis Latin recommended eviscerating the EMS response station that served the Galt Mile as a cost-cutting measure. Overnight, an explosive outcry by local residents induced Latin to seek an alternative sacrifice to the City's "fairytale" budget. 14,000 predominantly elderly residents convincingly demonstrated their compelling stake in how local Emergency Services are dispatched. Since most Galt Mile residents are unaware of new developments that will soon impact this critical service, Roberts included them in his December 2011 Newsletter.

In the State of Florida, Volusia and Leon Counties cooperatively consolidated their dispatch services. Ryan also lists 13 counties across the country that benefit from a unified Emergency dispatch. Of the many available models, Ryan selected the one deployed in Charleston County, South Carolina as exemplary of his board's objectives. In fact, the supporting "endorsements" mentioned by Commissioner Roberts were actually those originally conceived by Charleston County officials.

Ryan opened his presentation with Article V, Public Safety Section 5.03(A) of the Broward County Charter, citing "The County Commission with cooperation from Municipalities shall establish a countywide communications infrastructure for fire and emergency medical services. The County shall provide funding for the communications infrastructure and all service providers will utilize the elements of the communications infrastructure. The communications infrastructure shall facilitate closest unit response for life-threatening emergencies and support for regional specialty teams." Currently, a dozen different call centers dispatch units primarily according to jurisdiction, not proximity.

Public safety pundits have characterized the Emergency 911 (E-911) service in Broward County and many of its 31 municipalities as erratic, inequitable and inefficient, disparaging the disjointed Rube Goldberg infrastructure that strings together its components. While cities like Sunrise maintain independent dispatch capabilities, others rely on the Broward Sheriff's Office to coordinate Emergency Services. On January 25, 2011, Broward County Administrator Bertha Henry notified Davie, Hallandale Beach, Lauderdale, Miramar and other client municipalities that they would have to begin paying for the service on October 1, 2011, ending a decades-long freebie. When municipalities balked at the county's demand, Broward Sheriff Al Lamberti threatened to execute a "nuclear option" and begin removing dispatchers. Hallandale Beach officials told County Commissioners that they should raise Broward's millage rate to fund Hallandale's E-911 dispatch costs. In Fort Lauderdale, Lamberti refused to continue coughing up \$5.7 million annually for

What about the expense? In the South Carolina model, Charleston County laid out start-up costs for the Consolidated Dispatch Center, after which participating municipalities would phase in funding. The Broward proposal envisions three locations, the BSO Public Safety Building, the Fort Lauderdale Center and the Pompano Beach Center. In one funding formula, contributions would be based on the number of calls managed for each municipality. In addition to the benefits described by Roberts (as elicited from a 2010 Feasibility Analysis) are a reduced need for E-911 call transfers, improved safety for emergency responders, better consistency of E-911 call handling and dispatch, seamless interoperability amongst participating agencies and an anticipated county-wide annual savings of nearly \$8 million on staffing alone.

By shaving minutes from critical emergency response times, more of our family, friends and neighbors will survive heart attacks, sudden cardiac arrest (SCA), deadly force assaults, fires, and a wide range of other time-critical emergencies. Unlike most city-county collaborations that historically neglect Galt Mile residents, this new protocol should stiffen a safety net for our most vulnerable neighbors. The fact that Roberts and LaMarca share seats at the table underscores the importance of this safety net to their constituents - us. After all, in 2003, it was then Police Chief Roberts who backed our efforts to frustrate Latin's ill-conceived "budget concession."

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FROM THE DESK OF COMMISSIONER BRUCE G. ROBERTS

District 1 Newsletters If you want to keep current on present and past newsletters from my office, please go to the webpage <http://www.fortlauderdale.gov/roberts> where you can view postings for the past year. Also, we would like to highlight events occurring in your neighborhood in each publication; please email my office and we will gladly share the news with all of our District 1 neighbors. Examples would be awards and recognition for area residents, businesses, community involvement, birthday celebrations of 99+, etc.

Neighborhood Initiatives Our office received 313 requests for service from January through November 2011. Some of the primary concerns involved reducing traffic cutting through neighborhoods; the maintenance of foreclosed properties; and public safety. I will continue to work with you to resolve these issues. Communication with our neighbors in District 1 is a top priority. Other initiatives from our office have included conducting traffic studies and upgrading our roads and bridges within the neighborhoods; advocating for the Greenway Program Enhancements along A1A; opening new parks, revitalizing existing parks and installing lightning warning systems; landscaping along East Commercial and East Oakland Park Boulevards and NE 18th Avenue; strengthening enforcement and working towards solutions to address the growing homeless population impacting our City; implementing changes to our municipal codes designed to enhance opportunities for our small businesses; expanding trolley connectors from the Galt to the Galleria Mall, Coral Ridge Shopping Center and Holy Cross Hospital. Lastly, I urge you to review our previous newsletter of October 2011, which describes the progress on many major projects underway throughout the City.

Budget Information As we move forward into a new year and our second century as a City, I feel I must re-emphasize the City Commission's approach towards exercising one of our most important

responsibilities, i.e. reviewing and approving the City's Annual Budget. It is a transparent and inclusive process, which involves the participation of quarterly public workshops with our Budget Advisory Board, community meetings, Commission meetings and Public Hearings. It is a disciplined method built on sound fiscal policies, which promote neighborhood enhancements, economic development, public safety, green space, transportation and our infrastructure. As required by law, we have produced the third balanced budget. Just a few of the highlights include:

1. Of Florida's 25 largest cities, we have the 2nd lowest operating millage rate at 4.1193.
2. In addition to not raising the millage rate, the Fire Assessment Fee has not been raised since 2009.
3. We have a General Fund balance of 20%, which exceeds the recommended 16.7%.
4. While not sacrificing vital City services, we have reduced the size of government by reducing the number of departments from 15 to 9, consolidating divisions, and eliminating 158 positions.
5. In the past three years, we have reduced the General Fund Operating budget by \$18 million.
6. We will save \$6 million by reducing our unfunded pension liabilities through the issuance of pension obligation bonds.
7. We project generating \$11.2 million in revenue by initiating a Return on Investment (ROI) strategy for the Parking System, Water & Sewer Fund and Stormwater Fund. This strategy replaced Payment in Lieu of Taxes (PILOT).
8. We continue to implement further reorganization, which will put into practice performance measures, which permit us to assess our effectiveness in efficiently addressing your priorities.
9. Our net assets over liabilities are \$1.04 billion.

Pain Clinic Update I have mentioned these clinics in previous newsletters; however, we continue to receive calls for updates. Our City Commission has enacted an ordinance strengthening the State's laws regulating the operations of pain clinics.

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Your
CITY COMMISSIONER
Bruce
ROBERTS

**continues to
achieve results
for our residents...**

Since elected, No increase in our operating millage rate of 4.119 or fire assessment fee. Fort Lauderdale is now rated as having the second lowest millage rate in Florida's top 25 largest cities.

Commissioner Roberts has advocated for Galt Ocean Mile projects including the Greenway Program; A1A enhancements and expansion of the Sun Trolley. He passed a stricter ordinance to strengthen state regulations to reduce pill mills and pain clinics in our city.

Finalized public safety contract negotiations with strict pension reform which is looked at as a model for other communities. Commissioner Roberts has recently been appointed to work with the county and cities on regionalizing a 911 Dispatch Service.

**A Commissioner All of District 1 Can Be Proud Of!
Vote March 13, 2012 And Keep Commissioner Bruce Roberts Working For You.**

THE 2012 OMNIBUS ASSOCIATION BILL

By Eric Berkowitz

The Omnibus Community Association bill in 2012 is House Bill 319 (HB 319) – filed by District 91 Statehouse Representative George Moraitis. Building on the legislative momentum initiated by then Representative (now Senator) Elyn Bogdanoff in 2010 (SB 1196) and Representative Moraitis last year (HB 1195), this year's incarnation impacts Condominiums, Cooperatives and Homeowner Associations. Its sister bill in the Senate was filed by our District 25 Senator Elyn Bogdanoff. As these bills navigate committee reviews, vested interests will attempt to steer the agenda by surgically adding or purging provisions.

A majority of the legislative content was collected by two powerful Florida law firms via dedicated corporate appendages created to cultivate client relations in the flourishing field of "Community Association Law." A longtime friend to the Galt Mile community, association attorney Donna Berger directs the Community Advocacy Network (CAN) for Katzmann Garfinkel & Berger (KG&B) while former Department of Business and Professional Regulation (DBPR) Senior Attorney Yeline Goin directs the Community Association Leadership Lobby (CALL) for Becker & Poliakoff (B&P). An economic symbiosis evolved when these two lobbying organizations offered Florida associations a statewide communications network and lobbying capability in exchange for providing the two legal powerhouses with a lucrative client supermarket.

Actually, this protocol provides Becker & Poliakoff with a second income stream. Casual scrutiny of Moraitis' 2011 and 2012 association bills reveals some provisions that only benefit management companies, such as B&P client Continental Management (one for you, one for me, one for you, two for me, etc.). Although Moraitis objected to the law firm's adulteration of his bill, he needed the combined political capital of both firms to guarantee its survival. Moraitis enhanced his bill's stability by incorporating provisions drafted by the DBPR and the Florida Bar.

While these advocacy groups helped S. Florida associations realize legislative progress for three consecutive years, equally responsible for this productive window are three players that changed our region's impact in Tallahassee. Were it not for Jeffrey Atwater, Elyn Bogdanoff and George Moraitis, South Florida would still be the State's legislative laughingstock – as partisan bickering and self-serving agendas splintered Palm Beach, Broward and Miami lawmakers for two decades.

Although their efforts benefited associations in every Florida jurisdiction, Galt Mile association members vote in the districts that sent them to the Statehouse and Senate in Tallahassee. After bringing a high profile association bill to fruition during his rookie year, Moraitis met with constituents on the GMCA Advisory Board to solicit their legislative agenda. Along with a list of statutory glitch repairs, eliminating the Phase 2 retrofit deadline for elevators and piercing lender obstacles to recycling non-contributing foreclosures, GMCA officials pointed out the longstanding legislative tendency to neglect cooperatives while addressing association obstacles. Moraitis and Bogdanoff included the GMCA recommendations in their legislation. As the bills embark on their journey through House and Senate committee gauntlets, the following is a summary of the provisions that impact Condominiums and Cooperatives (Hat tips to Donna Berger, Yeline Goin, Lisa Magill and Michael Bender).

Section 1 – Elevator Retrofit (F.S. 399.02 – Condominiums & Cooperatives)

- **Elevator Retrofit** - The bill opens with a provision that eliminates the 2015 compliance deadline for retrofitting association elevators with Phase II Firefighter Service, an adaptation that enables Firefighters to control all of an association's elevators with a single master key instead of several keys that respectively control each cab. While the retrofit could conceivably save the couple of minutes it might take to sort out the few keys that control the elevators, there has never been a single case in Florida history wherein a death or injury was attributed to non-compliance with this mandate. The bill postpones the retrofit until an association opts to modernize its elevators, at which point the installation costs for Phase II service would drop to nearly nothing.

Section 2 – CAM Home Addresses (F.S. 468.433 – Condominiums & Cooperatives)

- **CAM Home Addresses on DBPR's Website** - Inexplicably, lawmakers reserve their most brazenly besotted legislative blunders for community association bills. Some raving genius felt the public interest would best be served by publishing the names and addresses of association managers on a state website. Since managers issue board-mandated warnings or fines to unit owners for violating association rules, it is not uncommon for irate, tenuously balanced scofflaws to threaten a manager's grizzly demise. Providing borderline sociopaths with the manager's home address is tantamount to painting a target on their perceived nemesis. Enabling screwballs to harass an association employee at home is malicious, if not dangerous. Since the home address of every Florida licensed community association manager (CAM) is also available through the formal public records request system (which at least leaves a paper trail if abused), the bill amends Section 468.433(5), F.S., ordering the DBPR to yank them from their website.

LAWS FOR CONDOMINIUMS

Section 3 – Bylaw Glitch Repairs and Clarifications (F.S. 718.112 – Condominiums)

- **Unit Owner Meetings** – By inadvertently fumbling the phrases "in lieu of" and "in addition to", last year's Omnibus Association Bill (HB 1195) mandated associations to broadcast notices 4 times every hour notwithstanding the notices physically posted on association property. The bill fixes this "notice overkill" glitch.

- **Board Member Certification Records** – Amends Section 718.112(2)(d)4.b., F.S., providing that an association must keep board members' certification records for the duration of their uninterrupted tenure or five (5) years (whichever is longer).

- **Election Challenges** – Creates Section 718.112(2)(d)4.c., F.S., providing that condominium election challenges must commence within 60 days after the announced election results.

- **Recall of Board Members** – Amends Section 718.112(2)(j), F.S., providing that:

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The City's ordinance highlights include no queuing of customers outside on the premises; restricting location to at least 500 feet from schools, churches, parks, libraries or daycare facilities; no employees with felony or drug related conviction backgrounds; and required inspection of the premises with annual license renewal.

Broward County Consolidated Communications As you probably know by now, after years of work by many people, a committee has been formed to address cooperative implementation strategies for consolidation of E-911 communications and dispatch. This committee was formed after resolutions and endorsements for the concept and feasibility of consolidated communications were passed by the Fire Chiefs Association of Broward County, Broward County Chiefs of Police Association, Public Safety Committee of the Broward League of Cities, Broward City County Management Association, Fire-Rescue Services Council, and the Board of Directors of the Broward League of Cities. The endorsements said, in essence, that cooperative consolidation of communications is technically feasible, desirable and will improve service; will reduce delay in transfer of emergency calls; will result in faster emergency response times; will enhance interoperability and coordination amongst responding agencies; and will result in fewer errors due to standardized call handling and dispatch protocols. Each of the groups designated representatives. Additional members were chosen based upon a cross-section of the types of communication models currently operating. The Committee was unanimously confirmed by the Board of County Commissioners on Tuesday, November 1, 2011. I have been asked to be a member of this committee along with 21 other city/county officials. I have also been selected to chair the governance subcommittee. I will update you of our progress in the upcoming months. You can also go to <http://www.fcabc.com> for more information regarding this committee.

Fighting Crime in your Neighborhood It is important to remember, especially this time of year, not to leave valuables in your car while it is unattended (i.e. wallets, purses, expensive sunglasses and or jewelry, GPS systems, keys, garage door openers, etc.). These items will only invite someone to break in and steal them. Please go <http://www.flpd.org/index.aspx?page=72> to view the Police Department's web page and get tips on how to safeguard not only yourself but your belongings.

Pre-Agenda Meetings A reminder that our meetings are always on the Monday before a Commission Meeting (unless that Monday is a holiday). The agenda is discussed, as well as any other topics that may arise. The first Monday of the month is at the Beach Community Center, and the third Monday of the month is at Imperial Point Hospital (south entrance) - always at 6p.m. Please call the office if you have any questions or need more information.

Office Contact Robbi Uptegrove - 954-828-5033; email: ruptegrove@fortlauderdale.gov. In addition to hosting the pre-agenda meetings twice a month, I am also available to attend your HOA meetings to update your neighborhood on what is going on in the City as well as answer any questions/concerns you may have. Please contact Robbi to schedule. If you would like to be on our email list to receive information, notifications or general information, please email us and you will be added.

Happy Holidays I would like to personally wish you all a very happy and safe holiday season. Despite any challenges we may have faced this past year, we are reminded to be thankful for family and friends and the many advantages and opportunities we have. Everyone in District 1 should know that I am grateful for all the input you have provided on the many issues that come before the Commission and those that affect our quality of life. I truly appreciate the opportunity to work with and serve you, as we find solutions that will allow the City to remain one of the most beautiful and best cities in which to live, work, play and raise a family. Be safe and let us all welcome in the New Year with high spirits, a vision for the future and a pride in our home - Fort Lauderdale! •

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o Recall Arbitration Deadlines – Under this change, the Division would not accept recall arbitration petitions if there are 60 or fewer days until the member being recalled is up for reelection; or 60 or fewer days have passed since the board member being recalled has been elected.

o Unit Owners – This language would permit unit owners to file a petition challenging the board's failure to duly notice and hold a board meeting to certify the recall or the board's failure to file a petition for arbitration if it refuses to certify the recall. The DBPR is limited to determining if the recall petition was properly served on the board and whether the written agreements or ballots are valid.

o Board Members – This measure would enable recalled board members to challenge the validity of the recall by filing a petition within 60 days following the recall certification.

Section 4 – Hurricane Protection (F.S. 718.113 – Condominiums)

• In addition to hurricane shutters, impact glass, or other code-compliant windows, this measure allows a majority of the total voting interests to approve installation of "code-compliant doors" and "other types of hurricane protection." No upgrade vote is required if the association maintains, repairs and replaces any of these code-compliant hurricane mitigations. A board may not prohibit a unit owner from installing these protections if they conform to board-approved specifications.

Section 5 – Hurricane Protection (F.S. 718.115 – Condominiums)

• This measure provides that a unit owner who installs code-compliant protections must be credited with a pro-rata share of the assessed installation cost for protections that are subsequently approved by the association.

Section 6 – Joint and Several Liability for Assessments (F.S. 718.116 – Condominiums)

• Liability for Fees Associated with Delinquent Units – When a third party purchaser (other than a bank) takes title to a property at a foreclosure sale, this provision amends Section 718.116(1)(a), F.S., thereby requiring any third party purchasers and the previous owners to share in the liability for all late fees, interest, costs and reasonable attorneys' fees associated with collection efforts against the delinquent property.

• Master and Sub Association Liability – Under this proposal, whether the master association or the sub association acquires title, one would not be liable to the other for unpaid assessments, fees, interest or attorney's fees and costs that came due prior to taking title. This measure will relieve the reluctance of master and sub associations in large communities to foreclose delinquent properties for fear of triggering liability for past due assessments. By amending Section 718.116(1)(b)2., F.S., it corrects a drafting glitch in last year's bill that restricted this protection to sub associations.

Section 7 – Suspension of Rights (F.S. 718.303 – Condominiums)

• Governing Document Violations – Intended to address another technical glitch in last year's bill, this provision amends Section 718.303(3)(a), F.S., clarifying exceptions to suspended common area and facilities use rights for unit owners (and/or a unit owner's tenant, guest or invitee) due to violations of the association's governing documents (the declaration, bylaws or reasonable rules and regulations of the association).

Like common area use rights suspended for delinquency, the suspen-

sions don't include access to limited common elements that uniquely service that unit (i.e. balconies), common elements needed to access the unit (i.e. entry and egress), utility services provided to the unit, parking spaces or elevators.

• Suspension of Voting Rights – This measure amends Section 718.303(5), F.S., clarifying how the suspended voting rights of delinquent members impacts the constitution of a quorum. Subtracting the number of unit owners whose voting rights were suspended from the number of unit owners ordinarily required for a quorum yields the new number of unit owners required to constitute a quorum. For example, if 50 unit owners are ordinarily required to constitute a quorum and the voting rights of 10 delinquent unit owners were suspended, the revised requirement for a quorum is 40 (50 - 10 = 40).

Section 8 – Phase Condominiums (F.S. 718.403 – Condominiums)

• The Real Property Probate and Trust Law (RPPTL) Section of the Florida Bar drafted this amendment to Section 718.403(1), F.S., a provision which relates to the development of condominium phases. While all phases must be added within seven (7) years of submitting the original declaration for the initial phase, during the last three (3) years the owners may vote to amend the deadline by indicating the size of any time extension albeit not to exceed a total period of 10 years.

While the Florida Bar's provision requires adherence to the amendment procedures described in F.S. 718.110(1)(a), it doesn't require compliance with terms described in F.S. 718.110(4) when voting to extend the initial 7-year period.

Section 9 – Condominiums within Condominiums (F.S. 718.406 – Condominiums)

• Frequently referred to as "hotel condominiums" or "condos in a condo", although Florida Statutes provide for a single commercial structure comprised of a master or "primary" condominium and one or more sub-condominiums or "secondary" condominiums, various legal and operational aspects of these entities were neglected when originally enacted.

The bill creates Section 718.406, F.S., providing guidance in authorizing owners of the primary condominium to exercise rights on behalf of subdivided unit owners, establishes the relationship between the board representing the primary condominium and its counterpart for the secondary condominiums, provides for the collection of assessments by the primary and secondary associations, provides that the owners of secondary units are subject to the provisions of both the primary and secondary condominium declarations, provides when owner and mortgagee consents are required to create a secondary condominium, establishes that the primary association can dictate specifications for hurricane or other building protections and establishes insurance requirements and obligations of the associations managing and operating both primary and secondary condominiums (consistent with Section 718.111(11), F.S., of the Condominium Act).

Section 10 – Condominium Ombudsman Staff Employment (F.S. 718.5011 – Condominiums)

• This provision amends Section 718.5011, F.S., removing a prohibition from "actively engaging in any other business or profession" for full-time Condominium Ombudsman staffers, as long as a secondary position does not directly or indirectly relate to or conflict with their responsibilities in the State's Condominium Ombudsman's office.

Continued on page 11

Section 11 – Bulk Buyers & Bulk Assignees (F.S. 718.707 – Condominiums)

• By shielding purchasers of 7 or more condominium units (bulk buyers) from the tough standards and liabilities enacted for developers, the "Distressed Condominium Relief Act" was passed in 2010 to expedite sales of the glut of unsold condominium units in newly built and recently converted communities. While the Act spurred sales, its July 1, 2012 expiration date deprived lenders, bulk purchasers, unit owners and associations of adequate time to realize the anticipated benefits. To remedy this unrealistic time constraint, the Florida Bar drafted this provision that amends Section 718.707, F.S., which extends the Act's sunset date from July 1, 2012 to July 1, 2015.

LAWS FOR COOPERATIVES

Section 12 – Official Records (F.S. 719.104 – Cooperatives)

• Personal Information – This measure amends Section 719.104(2)(c), F.S., providing cooperative owners with the same personal privacy safeguards that currently protect members of condo and homeowner associations when the association responds to a records request.

Unless a cooperative owner consents to waive this right in writing, a records request would exclude any Social Security Number, Driver License Number, credit card numbers, e-mail addresses, telephone numbers, emergency contact information and any address other than the addresses required for the association's notice obligations. In short, the only personal identifying information that will be made available is the owner's name, unit designation, mailing address and property address.

• Personnel Records – Already provided for in condominiums, this measure would prohibit member access to the personnel records of association or management company employees, including but not limited to, disciplinary, payroll, health, and insurance records. Since they aren't considered "personnel records," written employment agreements with an association employee or management company will remain accessible to unit owners, as will budgetary or financial records indicating the compensation paid to an association employee.

Section 13 – Lender/Mortgagee Consent Requirements (F.S. 719.1055 – Cooperatives)

• The bill creates Section 719.1055(7), F.S., duplicating a 2007 provision adopted in the Condominium Act. After the legislation's effective date, cooperative association documents would be precluded from requiring a lender's consent for amendments that don't affect the lender's rights or interests. For mortgages entered into prior to this date, the bill proposes clear protocols for boards to obtain lender consent and provides that any lender who fails to respond to an association's request for approval within 60 days after the date mailed shall be deemed to have consented to the amendment.

Section 14 – Bylaw Glitch Repairs and Clarifications (F.S. 719.106 – Cooperatives)

• Election Challenges – Amending Section 719.106(1)(d)1.a., F.S., it provides that cooperative election challenges must commence within 60 days after the announced election results.

• Board Member Certification – As currently applied to Condominium board members, this measure creates Section 719.106(1)(d)1.b., F.S., providing two options for certifying cooperative association board members. A Cooperative director can either 1) sign a statement certifying that he or she has read the association's governing documents and policies and agrees to

Continued on page 12

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uphold them to the best of his or her ability or 2) complete an educational course approved by the State and submit the certificate of completion to the Board Secretary within 90 days of election or appointment to the board. Certificates earned up to one year before they are submitted are still valid.

- **Board Member Certification Records** – This provides that an association must keep board members' certification records for the duration of their service or five (5) years (whichever is longer).

- **Recall of Board Members** – Amends Section 719.106(1)(f), F.S., providing that:

- o **Recall Arbitration Deadlines** – Under this change, the Division would not accept recall arbitration petitions if there are 60 or fewer days until the member being recalled is up for reelection; or 60 or fewer days have passed since the board member being recalled has been elected.

- o **Unit Owners** – This language would permit unit owners to file a petition challenging the board's failure to duly notice and hold a board meeting to certify the recall or the board's failure to file a petition for arbitration if it refuses to certify the recall. The DBPR is limited to determining if the recall petition was properly served on the board and whether the written agreements or ballots are valid.

- o **Board Members** – This measure would enable recalled board members to challenge the validity of the recall by filing a petition within 60 days following the recall certification.

Section 15 – Suspension of Rights (F.S. 719.303 – Cooperatives)

- **Governing Document Violations** – Intended to address another technical glitch in last year's bill, this provision amends Section 719.303(3)(a), F.S., clarifying exceptions to suspended common area and facilities use rights for unit owners (and/or a unit owner's tenant, guest or invitee) due to violations of the association's governing documents (the declaration, bylaws or reasonable rules and regulations of the association).

Like common area use rights suspended for delinquency, the suspensions don't include access to limited common elements that uniquely service that unit (i.e. balconies), common elements needed to access the unit (i.e. entry and egress), utility services provided to the unit, parking spaces or elevators.

- **Suspension of Voting Rights** – This measure amends Section 719.303(3), F.S., clarifying how the suspended voting rights of delinquent members impacts the constitution of a quorum. Subtracting the number of unit owners whose voting rights were suspended from the number of unit owners ordinarily required for a quorum yields the new number of unit owners required to constitute a quorum. For example, if 50 unit owners are ordinarily required to constitute a quorum and the voting rights of 10 delinquent unit owners were suspended, the revised requirement for a quorum is 40 (50 - 10 = 40).

Section 20 – Effective Date (Condominiums & Cooperatives) – If passed by both the Senate and the House and signed by the Governor, the provisions in HB 319 will become effective July 1, 2012.

Subcommittee Hix

On December 7, 2011, the House Civil Justice Subcommittee added 5 amendments to HB 319. One amendment clarified that condo election procedures do not apply to timeshare condominium associations while another provided for how a majority of condominium unit owners can approve creating a "condo within a condo." A third amendment spelled out mortgagee financial obligations in HOAs.

Catering to extremely lucrative client relationships with Florida banks, a Becker & Poliakoff attorney and a contracted lobbyist supported the inclusion of an amendment that openly benefits lenders at the expense of associations. Existing law states that mortgagees only have to pay 12 months of accrued base assessments prior to acquiring title or 1% of the original mortgage – whichever is less (aptly termed a "safe harbor" provision), other purchasers must share in the prior owner's debts (collection costs, attorney's fees, etc.).

Continued on page 16

THE GALT MILE NEWS

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In an action that appeared out of character for some ordinarily progressive local legislators with laudable records, Fort Lauderdale Senator Chris Smith filed Senate Bill 706 on October 26th. A friend and Broward Legislative Delegation colleague, Representative Hazelle Rogers filed companion bill HB 713 in the Statehouse. The bills threatened to catapult associations plagued with foreclosures into fiscal limbo. In his handiwork, Smith proposed adding the following language to Section 718.115 of the Condominium Act: "The share of the common expenses of a unit in the condominium which is in foreclosure may not be assessed against other units in the condominium."

When a unit no longer contributes to the association, every other unit owner is forced to make up the shortfall to address association expenses. While nobody likes it, the alternative - losing employees, utility cut-offs, neglecting pressing maintenance or repairs, or otherwise sacrificing critical services - is a recipe for disaster. An association with 30% of its units in foreclosure would be consigned to paying 70% of its bills or beg reluctant lenders for high-interest bridge financing. This enigmatic time bomb is a clumsy, short-sighted attempt to address the foreclosure Catch-22 that currently burdens associations and their members.

Since Senator Smith and Representative Rogers have reputations for integrity, association officials presumed that they were simply unaware of the catastrophic consequences threatened by their "solution". Surmising that the bills inadvertently exemplified those good intentions that pave the road to hell, after association advocates met with Smith and Rogers on December 8th, the cooperative lawmakers agreed to pull the plug and send the bills to the cornfield. •

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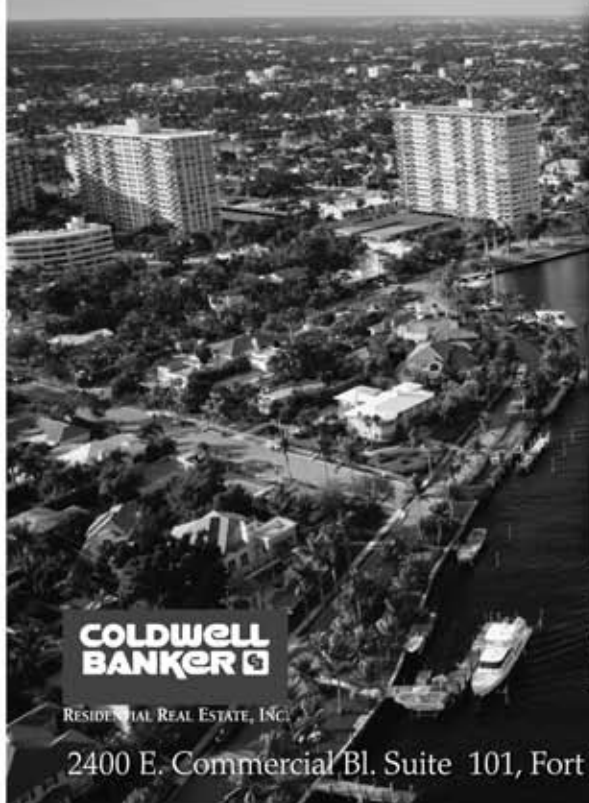
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JAN/FEB

SUN	MON	TUE	WED
8 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166 6th Annual Open Car & Truck Show Ed Morse Sawgrass Auto Mall 11 a.m. to 4 p.m. Info.: 954-980-2670	9 	10 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268	11 BINGO Regency South Party Room 7 p.m. Info.: Bob Pearlman: 954-547-4063 Jersey Boys (Through 1/29) Broward Center for the Performing Arts Tix.: 954-462-0222
15 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166	16 Martin Luther King Holiday Parade Martin Luther King Elementary (591 NW 31st Ave) 9 a.m. Info.: 954-828-5412 Commissioner Bruce Roberts: Pre-Agenda Meeting Beach Community Center, 6 p.m.	17 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268	18 BINGO Regency South Party Room 7 p.m. Info.: Bob Pearlman: 954-547-4063
Mommy and Me Tea Fairchild Tropical Gardens, 3 p.m. Info./Reservations: 305-663-8059		Fort Lauderdale City Commission Meeting City Hall, 6 p.m.	
22 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166	23 	24 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268	25 BINGO Regency South Party Room 7 p.m. Info.: Bob Pearlman: 954-547-4063
29 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166	30 	31 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268	1 BINGO Regency South Party Room 7 p.m. Info.: Bob Pearlman: 954-547-4063
5 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166 Sunday Jazz Brunch Riverwalk, Downtown FL 11 a.m. to 2 p.m. Info.: 954-828-5985	6 GMCA President's Council Meeting Location to be Announced 7:30 p.m. Info.: 954-347-5500 Commissioner Bruce Roberts: Pre-Agenda Meeting Beach Community Center, 6 p.m.	7 BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: Cyndi Songer: 954-563-7268	8 BINGO Regency South Party Room 7 p.m. Info.: Bob Pearlman: 954-547-4063 Business Education Seminar Series: Website Design and Marketing 1450 W. Sunrise Blvd 6 to 8 p.m. Info.: 954-828-4347

ADDITIONAL EVENTS

JANUARY 11: Business Education Seminar Series: Business Financing, Holiday Park Social Center, 6 to 8 p.m., Info.: 954-828-4347
 JANUARY 14 - 15: Boca Fest, The Shops at Boca Center, 10 a.m. to 5 p.m., 954-472-3755
 JANUARY 14: Flamingo Fest, Flamingo Gardens, 9:30 a.m. to 5 p.m., Info.: www.flamingogardens.org/events.htm
 JANUARY 20: Art Walk Las Olas, Las Olas Blvd., 5 to 9 p.m., Info.: 954-258-8382
 JANUARY 20 - 22: 6th Annual International Chocolate Festival, Fairchild Tropical Garden, 9:30 to 4:30 p.m., Info.: www.fairchildgarden.org
 JANUARY 20 - 22: 30th Annual Palm Beach Winter Antiques Show, Crowne Plaza West Palm Beach, Info.: 954-563-6747
 JANUARY 21 - 22: Downtown Delray Beach Festival of the Arts, 1111 E Atlantic Ave, Delray, 10 a.m. to 5 p.m., Info.: 954-472-3755
 FEBRUARY 11 - 12: 38th Annual South Florida Depression Glass Show, Emma Lou Olsen Civic Center, Pompano, Info.: 305-884-0335

ONE SOURCE FOR COMMUNITY HAPPENINGS

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SAT

12 BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. \$5/person for 3 boards	13 Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m.	14 Riverwalk Urban Market 227 SW 2nd Ave. 8 a.m. to 1 p.m. Info.: 954-298-5607
19 BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. \$5/person for 3 boards	20 Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m. Info.: 954-776-5092	21 Riverwalk Urban Market 227 SW 2nd Ave. 8 a.m. to 1 p.m. Info.: 954-298-5607
26 BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. \$5/person for 3 boards	27 Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m.	28 Riverwalk Urban Market 227 SW 2nd Ave. 8 a.m. to 1 p.m. Info.: 954-298-5607
2 BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. \$5/person for 3 boards	3 Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m.	4 Riverwalk Urban Market 227 SW 2nd Ave. 8 a.m. to 1 p.m. Info.: 954-298-5607
9 2nd on 2nd Thursdays Block Party 200 Block SW 2nd Street 5 to 9 p.m. Info.: 954-468-1541	10 Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m.	11 Riverwalk Urban Market 227 SW 2nd Ave. 8 a.m. to 1 p.m. Info.: 954-298-5607
BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. \$5/person for 3 boards	2012 International Orchid Show (Through 1/22) War Memorial Info.: 954-563-3548	The CRTS White Elephant Sale 3333 NE 34th St. 10 a.m. to 2 p.m.
G.M.C.A. Advisory Board Meeting Nick's Italian Restaurant, 11 a.m.	Stone Crab and Seafood Festival Riverside Hotel Lawn, Las Olas 11 a.m. Info.: 954-468-1541, ext. 203	West Palm Beach Antiques Festival (Through 2/5) S Florida Fairgrounds Info.: 941-697-7475

ADDITIONAL EVENTS

JANUARY 22: Household Hazardous Waste & Medication Take Back Events, 100 N. W. 1st Ave., 8 a.m. to 3 p.m., Info.: 954-828-8000
 First Saturday of every Month: Beach Cleanup, Commercial Blvd & the Beach LBS, 9 to 9:30 a.m., Info.: www.lbs.com
 Wednesdays: Yoga in the Garden, Bonnett House, 8 to 9 a.m., Info.: 954-563-5393 ext. 137
 Wednesdays: Pilates with Terry White, Esplanade Park, 6:30 p.m., Info.: 954-644-2330
 Mondays and Wednesdays: Cardio Mix with Josh Hecht, Esplanade Park, 6:30 p.m., Info.: 954-732-0517

UPCOMING EVENTS IN OUR AREA

February 14
 Love in the Park
 Bubier Park, Ft Lauderdale
 Info.: 561-447-9123

February 16
 Artwalk Las Olas
 Las Olas Blvd., 5 to 9 p.m.
 Info.: 954-258-8382

February 17 - 21
 Palm Beach Jewelry, Art & Antique Show
 Palm Beach County Convention Center
 Info.: 561-822-5440

February 18 - 19
 Riverwalk Blues & Music Festival
 Bubier Park, Ft Lauderdale
 Info.: 954-399-BLUE

February 18 - 19
 Buckler's 22nd Annual Craft Fair
 South Florida Fairgrounds, West Palm Beach
 Info.: 386-860-0092

February 19
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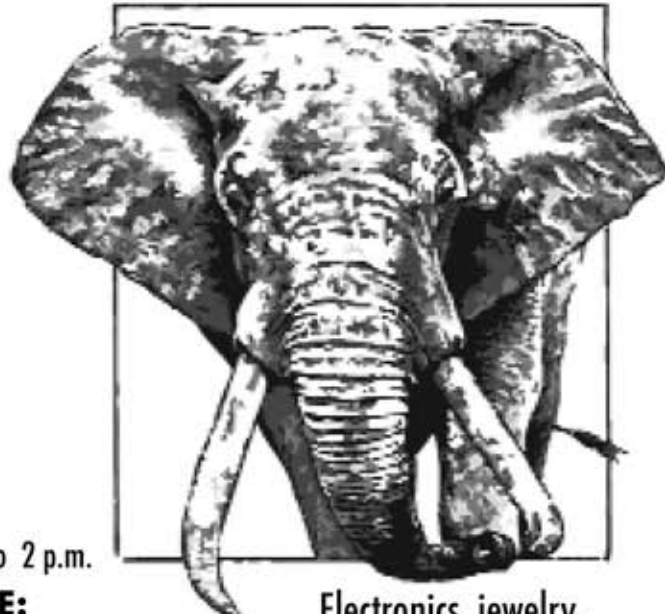
The amendment extends the bank's "safe harbor" protection to successors in title, despite the fact that they aren't party to the defaulted mortgage. The provision also expands the safe harbor lender protections by additionally shielding them from paying "interest, administrative late fees, reasonable costs and attorney fees and any other fee, cost or expense incurred in the collection process." If the association takes a foot-dragging lender to court to push a deliberately stalled foreclosure to fruition and enable a sale (thereby recycling the unit into a productive contributor), this pro-lender provision would stop the court from requiring the lender to reimburse court costs and fees to the association.

When asked why this pro-lender measure was inserted into an association bill, CALL Executive Director Yeline Goin answered "It would go a long way toward assisting in clearing out the backlog of distressed inventory." To fathom how rewarding lenders who delay foreclosures will speed up the foreclosure process, click your heels together three times and whisper, "There's no place like home!"

The Committee also approved an amendment conforming laws governing cooperative associations more closely to those governing condominiums. The bill provides for co-ops to hold closed board meetings to discuss personnel matters, to impose a deadline for challenging elections, to require board member education or self-certification and otherwise mirror portions of the Condominium Act.

Moraitis' HB 319 has yet to navigate the Judiciary Committee and the Business & Consumer Affairs Subcommittee in the Statehouse before it's out of the woods. In the Senate, Bogdanoff's companion bill, SB 680, must wade through the Regulated Industries, Judiciary and Budget committees. If the bills make it past the home stretch, and the Governor can find his pen, they will become law. •

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