GALT MILE NEWS

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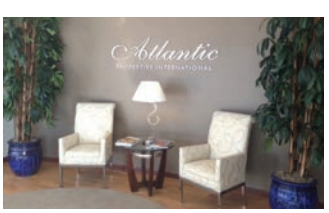

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SAFE HARBOR SCAM

By Eric Berkowitz

BANKS BUY BOX SEAT IN ASSOCIATION BILL

After decades of mounting futile challenges to the lending industry's air-tight control over Florida's banking laws, association attorneys in the early nineties exploited a chaotic economic environment and created what's known today as the lenders' Safe Harbor provision. This has recently become a flashpoint for controversy and split support for the 2012 Omnibus Association bill by Representative George Moraitis.

From 1986 to 1995, the number of federally insured savings and loans in the United States declined from 3,234 to 1,645. When simultaneous slowdowns in the finance industry and the real estate market lured thrifts into unsound real estate investments, the subsequent chain reaction of insolvencies prompted creation of the Resolution Trust Corporation (RTC). The U.S. Government-owned asset management company was charged with liquidating assets - primarily mortgage loans - held by insolvent thrifts. The RTC closed or otherwise resolved 747 thrifts with total assets of $394 billion.

Temporarily distracted by the Savings and Loan Crisis, Florida bankers preoccupied with liquidating local mortgage assets were suddenly amenable to any plan that could help rid them of inadequately secured loan portfolios. Until then, no Florida law required lenders to address obligations that accrued before they assumed title to a property. Banks had no statutory responsibility for pre-foreclosure assessments.

When a collateralized asset was liquidated, its value was parsed according to lien priority. If a borrower defaulted on an obligation, the order in which creditors were paid depended on when their lien was filed against the asset. The legal concept known as "first in time, first in right" assured bankers of the first, and often only, bite at the apple. After the first mortgagee was made whole, any residual asset value would be passed to the second, third and other lienholders until it was fully liquidated.

In 1992, association advocates cut a deal with lawmakers and lenders to introduce a statute based on two legal theories called the "relation back doctrine" and the "limited priority super lien". Enacting the "relation back doctrine" would allow an association's lien to relate back – for priority purposes – to the date that the condominium was first established. This legislation made association liens superior to judgment liens, second mortgages and other liens that were recorded earlier in time. However, since banks needed to preserve the superior status of first mortgage liens as a precondition for financing any real estate, the association's new right to lien superiority didn't extend to first mortgages. The parties agreed to an alternative formula to spell out the bank's financial obligation when foreclosing association properties. The following language was added to the statute.

"The mortgagee [shall not] be liable for more than 6 months of the unit's unpaid common expenses or assessments accrued before the acquisition of title to the unit by the mortgagee or 1 percent of the original mortgage debt, whichever amount is less."

During the "Safe Harbor" period, this modest amount would help offset the income lost to associations from defaulting members while the bank presumably recycled the foreclosed unit for resale. A successful outcome presupposed the availability of homebuyers or investors willing to purchase the property. When real estate boomed, properties flipped overnight. During periods of economic downturn, lenders saddled with foot-thick portfolios of negative-equity properties faced massive losses.

When the housing market tanked and left thousands of property owners with mortgage debt that exceeded their property's value, banks were suddenly awash in foreclosures. The prospect of paying statutory safe harbor obligations of every unit for which they assume title chilled the banking industry. As the Florida Bankers Association circled the wagons to deflect waves of governmental and public blowback, lenders ill-equipped to pay the maintenance expenses for tens of thousands of toxic properties opted to delay the process and forestall their obligations. To minimize the fiscal wreckage, lenders needed time.

It takes time to selectively renegotiate homeowner mortgage terms or reduce property prices and patiently await "short sale" investors who specialize in squeezing small profits from bulk sales. It also takes time to snatch tax deductions from burnout write-offs without flagging an audit. Each passing month forced associations to further burden members with funding an increasing shortfall. If the remaining membership was unable to weather the additional financial strain, the association was placed in receivership before finally crumbling. For thousands of associations, survival depended on finding workable vehicles for collecting past due assessments – from defaulting unit owners, their tenants or the foreclosing lenders.

In 2010, then Representative Ellyn Bogdanoff's Omnibus Association bill (SB 1196) contained a provision that extended a foreclosing lender's liability from 6 to 12 months of assessments or 1 percent of the original mortgage debt, whichever amount is less. Bogdanoff ascended to the Florida Senate in 2011, winning the District 25 seat vacated by Jeff Atwater when he was elected Florida CFO. Representative George Moraitis replaced Bogdanoff as District 91's voice in the Statehouse. His 2011 Omnibus Association bill (HB 1195) equipped associations with access, use and voting rights restrictions to help thwart strategic delinquencies and extract rental income from tenanted units in default.

When associations took dilatory lenders to court, the resulting decisions served as a primer, providing guidance about the effectiveness of various legal strategies. Palpable gains came slowly, as favorable court decisions were often reversed on appeal (Tadmore). By filing show cause orders and targeted motions, association attorneys gently pushed lenders to proceed with foreclosures. Exploring alternative legal strategies, some associations with inferior liens decided to unilaterally foreclose anyway, enabling them to realize incremental rental income until the bank took title.

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Exposed by the robo-signing scandal, lost or fatally flawed mortgage documents provided some associations with salvation. In an action brought by Vintage East Condominium Association in Miami Beach, a judge ruled that JP Morgan lost its claim to the $144,000 mortgage more than four years after the owner stopped making payments. The association took control of the unit by foreclosing their inferior lien on the owner for $24,000 in unpaid dues. The subsequent claim against the bank stated that the non-performing loan restricts the association's right to sell the property because the mortgage is worth more than the home. The bank defendant was a trustee for the loan that was sold into a mortgage-backed security, a legal structure that usually leaves the party responsible for a mortgage unclear. Ben Solomon, a Miami Beach attorney whose Association Law Group won the "Mortgage Terminator" suit for the Vintage East association, said "The lenders are stalling foreclosures. Our complaints say the banks abandoned their interest and either need to accept responsibility for the title or walk away." When the mortgage was voided, the association put the apartment on the market for $87,500.

In a similar action closer to home, Deutsche Bank forfeited its right to a unit with a $149,300 mortgage to the Palm Aire Gardens Condominium Association Inc. in Pompano Beach. Although listed as trustee, Deutsche Bank admitted that loan servicer Litton Loan was responsible for all foreclosure activity relating to the loan. Palm Aire Gardens also won title to a unit with an $184,410 mortgage after Wells Fargo failed to mount a defense. A transfer that wasn't reflected in property records proved that the bank didn't even own the loan. While a few associations hit home runs and others benefitted from minor legislative and judicial victories, those on the brink of dissolution needed immediate financial relief.

Their critical need fueled a cottage industry of specialized collection firms and attorneys willing to push the legal envelope when confronting foot-dragging lenders. While the statute detailed lender assessment obligations triggered by the assumption of title, it didn't speak to how legal expenses and collection fees must be addressed. Throughout history, favorable court decisions regularly included repayment of these outlays. Instead of tailoring legal actions to the limits set forth in the safe harbor provision, they brought actions against lenders to recover years of past due assessments, every outstanding fee and the costs of their aggressive collection strategy. Although legally untested, the strategy was unexpectedly successful. So successful that many cash-strapped associations abandoned their more conservative legal representation and hired firms that offered a significantly improved chance of survival.

Companies like Tampa based L.M. Funding advanced payments to associations in exchange for the lien rights on delinquent accounts. By researching each account, they uncovered recording irregularities or compliance failures that rendered the bank ineligible for the safe harbor protections. LM Funding president Frank Silcox described a Miami Beach condo case where they collected $52,000 in late fees, 18 percent interest and collection costs instead of the $3000 due if the bank had been entitled to the statutory limits.

Some association strategies were somewhat less than groundbreaking legal maneuvers. In certain instances, when the lender finally brought a buyer to close on a unit, the association held the estoppel certificate hostage to full payment of all assessments, fees and charges due on the account – ostensibly violating s. 718.116(1)(b), F.S. Some banks paid while others passed. Although banks have been successfully blackmailing associations for years, the courts are unlikely to view associations returning the favor as a fairness issue. They also took a page from the lending lobby playbook. Whenever lawmakers came close to passing legislation considered dangerous by the Florida Bankers Association, the Tallahassee juggernaut would whisper in the ears of the legislative leadership that the bill posed a threat to future common interest financing. Within 24 hours, the bill died in committee. Flipping the script, association lawyers leaked to offending local banks that an unfortunate loss of good will may drive their association customers to their many local competitors. Suddenly, $2000 settlements in line with statutory requirements mushroomed to more than $10,000 and included everything short of a free Dustbuster.

In Representative George Moraitis' 2012 offering (HB 319), he broadened the relief provided by last year's bill. It eliminated compliance deadlines for elevator master key retrofits, enabled hurricane protection alternatives, detailed the suspension of access or voting rights for delinquencies, brought long neglected cooperative rights more in line with those applied to condominiums, documented maintenance requirements for official records and clarified another litany of statutory contradictions (glitches).

Among the bill's supporters were hundreds of independent Neighborhood, Homeowner and Community associations as well as advocacy groups such as the Community Advocacy Network (CAN) – which is sponsored by association law firm Katzman Garfinkel Berger (KG&B) – and the Community Association Leadership Lobby (CALL) – which is sponsored by legal powerhouse Becker & Poliakoff (B&P). Not surprisingly, these competitors for Florida's sizable association law trade managed to bump heads over the bill's content. In a nutshell, CALL (Becker Poliakoff's advocacy stepchild) drafted an amendment confirming that banks are only obligated to pay the lesser of 12 months' past due assessments or 1% of the original mortgage debt. Added to Moraitis' bill on December 7, 2011 while being vetted by the House Civil Justice Committee, it would preclude an association from collecting the interest, administrative late fees, attorneys' fees, and other costs incurred by the association before the bank took title.

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COMMISSIONER BRUCE G. ROBERTS

I would like to offer my appreciation to all of the District 1 voters who participated in the March 13, 2012 municipal election. I am eager to continue serving you and this great City. The current Commission has worked well together to make our City the best place to live, work, play and raise a family. I have an open door policy, and when you contact me, I promise to respond quickly. I may not have immediate answers, but you will receive a reply right away. I will continue to engage residents and businesses in District 1 and throughout the City to help find creative solutions to the issues we face. The past three years have been a positive experience for me and I will continue to bring your voice to City government.

SR A1A Light Replacement Project - Progress Update Southeast Underground Utilities Corp. (Prime Contractor) is currently in the process of removing 101 cast-iron poles, pulling new wires through the existing conduit, drilling new holes for anchor bolts in the existing foundations and setting new poles. This project is a joint venture between the Beach Community Redevelopment Agency (CRA), the City of Fort Lauderdale Parking Division and Florida Department of Transportation (FDOT) to replace the existing city owned lights along east side of SR A1A with Turtle Friendly Lights. This project extends from Fort Lauderdale Beach Park to Sunrise Boulevard. In addition, due to our efforts, other beach municipalities have now been approved to use this fixture for their beach lighting projects. Over the past several months, City staff has worked with lighting manufacturers, FDOT and Florida Fish and Wildlife Conservation Commission (FWC) to design a permanent recessed light fixture to replace the acorn style lights. The new lights provide a non-visible source from the beach and zero tolerance of light on the sand, while at the same time producing lighting on the roadway and sidewalk. This task required development of several prototypes and field tests on site with FDOT and FWC. A total of 110 light poles and 220 light fixtures will be placed along a two-mile segment of SR A1A on Fort Lauderdale Beach.

City's Reorganization Results in a New Department of Sustainable Development As you may have heard, in October 2011, City Manager Lee Feldman began a significant reorganization of the City's operational structure. One of the main objectives of this reorganization is to break down the walls between City departments to enable them to work more efficiently together and to provide better service to our neighbors–to Build Community. As part of the reorganization, the Department of Sustainable Development (DSD) was created to combine Building Services, Code Enforcement, Planning and Zoning, Housing and Community Development, Economic Development, and both the Northwest-Progresso-Flagler Heights CRA and the Beach CRA. As staff implements this new organization, they plan to reach out to our neighbors throughout the year with e-newsletters to communicate project updates, introduce new names and faces, and share with you the improvements the City is making to our operations. I welcome you to visit, call, or email Greg Brewton (Director of Sustainable Development) if you have any comments, questions or suggestions. There is also an on-line survey you can complete to help staff identify ways to improve services to our neighbors.

Downed Stop/Yield Signs If you happen to find a downed sign in your neighborhood or elsewhere within the City, please call Broward County's Traffic Engineering Department directly. They want to ensure that these significant public safety issues are handled immediately. The number to their front desk is 954.847.2600. Thank you in advance for keeping an eye open for these hazards!

Full Sails in Fort Lauderdale is a temporary 2012 - 2013 public art exhibit in the parks, public right of ways and private landscapes in the City of Fort Lauderdale. One hundred large mast sculptured sailboats will festoon the City, cutting a vibrant bright colored swath through A1A, Las Olas Boulevard, Riverwalk, Downtown, 17th Street Harbor Shops and Sistrunk Boulevard. This program will enhance the visibility of local artists, beautify Fort Lauderdale business districts, and promote tourism. At the end of the exhibition period, the Fort Lauderdale Parks and Recreation Department Foundation will auction the sailboats to raise much needed funding for recreational programs including scholarships, events, and sport & leisure activities for the residents of Fort Lauderdale.

Strategic Plan The City Manager recently met with our Community Building Leadership Team to review the progress we are making on our Strategic Plan which is based on our mission, We Build Community. The plan is being developed around five Cylinders of Excellence: Infrastructure, Public Places, Neighborhood Enhancement, Business Development and Public Safety. More than 100 employees are participating in the strategic planning. Five interdepartmental teams represent each Cylinder of Excellence – led by our Structural Innovation Division and Department Directors, the teams have already made significant progress in three specific areas: 1) Environmental Scan (each team reviewed key demographic, statistical and performance-related data to gain insight into community trends and identify factors that will influence the direction and goals of our organization); 2) Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis (participants developed a SWOT analysis to identify the main internal and external issues that effect how We Build Community); 3) Draft Goals and Objectives (using information obtained from the Environmental Scan and SWOT Analysis, the teams developed draft goals and objectives for each Cylinder of Excellence). Over the next two months, the strategic planning teams will focus on finalizing the goals and objectives, and establishing performance measures, targets and benchmarks that will be used to evaluate how well we are achieving our goals and objectives. Throughout the process, staff will work closely with the visioning initiative to make certain that our Strategic Plan is reflective of community priorities. If you would like further information on the strategic plan, please let us know and we can send you the entire memo from the City Manager.

Fort Lauderdale's GIS Website The City of Fort Lauderdale's Information Technology Services Department invites you to explore the new Geographic Information System (GIS) website. The site catalogs our publicly available GIS applications and maps in a more dynamic and engaging fashion while making the applications you already use even easier to find. The new site is not just for City of Fort Lauderdale staff and neighbors. It contains useful information and tools for all Broward County

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residents and visitors. If you are a Broward County resident or if you are shopping for property in Broward County, you can use our FEMA Flood Zone application to determine your flood zone designation for insurance purposes. Explore the site at http://gis.fortlauderdale.gov/ and check back often to discover the new and exciting applications planned in the coming months.

Air Show After being grounded for a few years, the Fort Lauderdale Air Show is ready to take off in a big way. The mega tourist and local family event will return to the beach on April 28 and 29, 2012. Military planes and civilian aerial acts have not flown over the Fort Lauderdale sand since 2007 after organizers struggled to find sponsors to fund the event. A scaled back version nearly got off the ground last year, but was canceled at the last minute because of financial problems. Those problems no longer exist. Support from local and regional businesses have been instrumental in getting the show off the ground financially. The high-flying aerobatics - the Thunderbirds – will return to the 2012 show and organizers are trying to line-up the world famous Blue Angels for 2013. New civilian aerobat teams will also be featured. For the latest information and updates on the new and improved Fort Lauderdale Air Show, please go to www.lauderdaleairshow.com.

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.•

Comments

While You Were Out

New Turtle-Friendly Lamp To Be Installed Along A1A

****On March 13, 2012, District 1 City Commissioner Bruce Roberts was one of two Fort Lauderdale Commissioners - along with Romney Rogers - up for re-election. He paid the City's $100 fee for administrative costs and one percent (1%) of his City Commissioner's salary ($300) as required by the State of Florida. If elections are held every three years, and every seat is up for election at the same time, why did Roberts and Rogers have to wait until March 13th when Jack Seiler, Charlotte Rodstrom and Bobby Dubose nailed their seats on January 31st? The City of Fort Lauderdale website explains the rules as follows:***

"The primary election is held the second Tuesday in February, only if there are more than two candidates running for the same office. If such is the case and one candidate wins with 50% + 1 vote, then he/she is automatically elected; if not, then the two top candidates are placed on the ballot for the general election, which is held the second Tuesday in March. If, however, there are only two candidates running for the same seat, then they run only in the March election. In the case where no one qualifies to run for office against an incumbent, then he/she is automatically elected."

While Fort Lauderdale Vice Mayor Bobby DuBose skated by unopposed, Mayor Jack Seiler and two-term Commissioner Charlotte "NO" Rodstrom won their January 31st races. Wait a minute! What happened to the mandated primary on the second Tuesday in February? It became snack food for Tallahassee lawmakers playing "Chicken" with the Republican National Committee (RNC). In an effort to temporarily monopolize a national spotlight by heightening Florida's influence over the 2008 Presidential election, the Republican legislative leadership pumped out bills that moved the State's Presidential Primary from March 6th to the last Tuesday in January (January 29, 2008), predating the Iowa caucuses and presidential primaries in New Hampshire, Nevada and South Carolina (the four delegate events officially sanctioned by the RNC in February).

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CONTRACTORS TO STOCK UP ON

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By Eric Berkowitz

In 2012, Bradenton Senator Michael Bennett and Miami Statehouse Representative Frank Artiles sponsored one of the most openly abusive legislative scams of the past decade. To shield their benefactors in the building trades from liability, the two lawmakers were recruited to redefine construction defects as a blameless side effect of life in the Sunshine State. With Governor Scott grinding out enigmatic administrative anomalies and panicky lawmakers looking for an edge to survive in newly redrawn districts, construction industry trade associations launched a plan to prohibit common law implied warranties of fitness, merchantability and habitability from applying to residential construction. What does this mean to us? In short, if the pipes carrying water to your new home turn out to be hardened silly putty, consider it one of life's lessons.

For centuries, caveat emptor, "let the buyer beware," was an interplanetary rule of commercial law. It presupposed the equal footing of buyers and sellers in a marketplace. Buyers could protect themselves by exercising reasonable caution and inspecting a product prior to purchase. In today's real estate market, most new residential construction occurs in planned communities. Whether a single subdivision with roads, sidewalks, drainage and sewers or a larger master community with multiple subdivisions, containing hundreds or thousands of lots and homes with appurtenant roadways, underground piping, retention ponds, drainage areas and utilities, these common area improvements are necessary in order to utilize the residential dwellings for their intended purpose. Since home buyers have neither the access nor acumen to meaningfully inspect roads, catch basins, culverts, drainage facilities, street lighting or the underground utilities that critically impact a home's habitability, they are forced to rely on developer representations that these complex common appurtenances are fully functional, code compliant and free of defects.

Unsuspecting buyers who purchased their dream homes in the Lakeview Reserve, a residential Winter Garden subdivision in Orange County, Florida, awoke to a nightmare. The roadways, retention ponds, underground pipes, and drainage systems throughout the subdivision were plagued by defective construction. When the Lakeview Reserve Homeowners Association sued Pittsburgh-based Maronda Homes in 2007 over the pitted streets and drainage problems, the trial court blamed homeowners for not somehow checking the underground utilities, measuring the slope gradients applied to retention ponds, testing the aggregate mix used for neighborhood roads and performing other feats of engineering wizardry that clearly exceed the purview of a professional home inspection.

On October 29, 2010, Florida's Fifth District Court of Appeal took issue with the lower court's conclusions, ruling 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 substandard construction. Maronda wouldn't bring the defective common elements up to code unless the 159 homeowners chipped in $3,800 per house to re-engineer and repair problems in the west Orange County subdivision. Why shouldn't Maronda get paid for correcting substandard offsite appurtenances they marketed as fully operational? Contractors working for South Florida school districts and local governments get paid twice all the time.

The developer argued 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 basic off-site 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 – "Lakeview Reserve Homeowners v. Maronda Homes, Inc., No. 5D09-1146 (Fla. 5th DCA)" – went to the Florida Supreme Court.

While community association advocates supported the appeal court's decision, construction industry associations filed amicus briefs in opposition to implied warranties. When the court first ruled against Maronda, the Florida Home Builders Association (FHBA) and National Association of Home Builders (NAHB) dropped in 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.

They didn't choose Bennett and Artiles by accident. Bennett is an electrical contractor and Artiles is a State of Florida licensed general contractor, real estate agent and public adjuster. According to state records, of the $376,000 Bennett raised for his last Senate campaign (in the 2008 election cycle); $87,886.91 came from construction or real estate sources. With Bennett and Artiles on board, developer lobbyists began lining up committee support.

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A majority of the bill's supporters were stunned. Why was this pro-bank provision incorporated into the Omnibus Association bill? Apparently, Moraitis asked both firms to draft a provision that would "clarify" the current statute. CAN Executive Director Donna Berger refused, exclaiming that associations should make their own informed choices. In contrast, CALL Executive Director Yeline Goin avidly supported the amendment. As if in some hazy nightmare sequence from a grade B horror movie, CALL officials Goin and Travis Moore teamed with Florida Bankers Association official Anthony DiMarco to hardsell the pro-lender provision to the Civil Justice Committee. The 3 strange bedfellows evangilized about an evil cottage industry of law firms and collection specialists that profited by pursuing banks on behalf of associations. She professed moral outrage over the fact that much of the money isn't going to the associations, but to the lawyers and collection agencies. Besieged by skeptical and angry association officials from across the state, B&P dispatched firm icons Lisa Magill and Joe Adams to support Goin's position in the firm's Florida Condo & HOA Law Blog, where they did damage control. Hoping to quell association suspicions of betrayal, they suggested that foreclosures might be expedited if associations were stripped of expectation to recover outlays caused by dilatory lenders.

The bill's vocal association supporters didn't agree that protecting banks from the consequences of their delays will speed things along. Aware of the exploding rancor, Senator Ellyn Bogdanoff, who sponsored the legislation's companion bill in the Senate (SB 680), hadn't included the bank-friendly provision in her bill as of early March.

Goin had another elephantine credibility problem that was spared to Berger. Since KG&B's client roll is limited to Associations, the firm's motives weren't clouded by conflicting loyalties. In its February 17, 2012 letter opposing the "safe harbor clarification" as "an attempt to modify state law to the benefit of foreclosing banks," the Miami-based Association Law Group (ALG) accused B&P of misrepresenting their reason for injecting the pro-bank language into the association bill. Attached to the ALG letter were copies of legal actions filed by B&P against associations on behalf of clients BOA and HUD. ALG suggested that B&P actually added the language to benefit their lender clients at the expense of associations.

Goin repeatedly insisted that the provision was necessary to stop lawyers from collecting more fees and that she would rather see the money go to associations. Her statements were confusing since late fees and interest do go to associations. While the collection costs go to attorneys and collection agencies, the B&P-drafted provision would only prevent unit owners from passing those costs to the bank. Not surprisingly, Goin issued a cryptic warning against the consequences of not echoing the safe harbor language in HB 319, threatening that "the lending industry may decide to curtail borrowing in Florida or make it much more expensive to obtain a loan." It was the same mantra used by the Florida Bankers Association lobbyists to intimidate lawmakers.

Other association law firms – like the Association Law Group – have characterized this provision as another bank bailout. They contest B&P's claim that the provision only confirms existing law. While the current safe harbor provision does detail what lenders must pay toward a foreclosed unit's unpaid assessments, it doesn't limit what a court can award in interest, administrative late fees, collection costs and reasonable attorney fees incident to collection. Additionally, safe harbor limits currently only apply to condominiums and HOAs. Cooperatives have always freely passed these fees, interest and collection charges to banks. This provision would deprive co-ops of this right going forward.

Moraitis decided to add the provision after learning that certain banks brought legal actions against a few associations that exceeded the safe harbor limits in their claims against lenders. Recent actions include a claim filed by HSBC against a Tampa condominium association and a lawsuit filed by Pennymac Loan Servicing LLC against a Miami-Dade HOA. Upping the ante, CAN's Donna Berger admonished, "Depending on the cause of action a bank may bring, they may have years to go back after associations for amounts previously collected from them contrary to the Safe Harbor threshold as well as their attorney's fees and costs."

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Roberts...Continued

For leapfrogging the four early primary states in defiance of a National Republican Party rule against state primaries or caucuses convened before February, Florida lawmakers sacrificed half of the state's 99 delegates.

In 2012, the last Tuesday in January was January 31st. Since Broward Supervisor of Elections Brenda Snipes had already prepared and staffed polling places for the January 31st presidential primary, the municipal candidates thereon piggybacked their primary races to save a buck. Absent the allure of a well-publicized national contest, the standalone March 13th general municipal election offered all the excitement of watching lettuce wilt.

On the "big" day, Commissioner Roberts cornered 83.94% of the 2,235 votes cast, leaving 16.06% to challenger Mary D. Graham, a 55 year-old architect who formerly served on the Fort Lauderdale Planning & Zoning Board and currently sits on the Broward County Planning Council and the City's Fire-Rescue Facilities Bond Blue Ribbon Committee. Having offered a poorly publicized, somewhat fuzzy "pro-neighborhood" campaign platform, most Galt Mile voters knew little about Graham or what prompted her to run.

During a brief pre-meeting introduction, she told the Galt Mile Advisory Board about her civic contributions, having earned a Bachelor's degree in architecture at Cornell University in 1984 and this being her first brush with elected office. The issues she used to heighten badly needed name recognition were less than compelling. Most Galt Mile residents could care less about the city's decision to allow lights on the Cardinal Gibbons High School athletic fields or build a fire station in Hardy Park.

Her campaign finance records depict a classic shoestring campaign. On November 22, 2011, she loaned her campaign $600. Later that day, she paid the $100 City qualifying fee, the $300 State assessment and on December 21st, she paid $17.50 to the Broward Supervisor of Elections for a District 1 registered voter list. On January 24th, Graham gave Ace Printing $15.90 to Xerox something. Altogether, Graham spent $433.40 on her grand experiment.

In contrast, Roberts spent $48,065.17 of the $73,139.46 he collected to convince voters that he earned another three years. Dusting off the same rhetoric used by Seiler and Rodstrom in January, he repeated that the current commission hadn't raised the city's property tax rate or fire assessment fee, reduced the operating budget by $18 million over the past three years, permanently eliminated about 300 unfilled employee positions, and softened the City's pension obligations.

When GMCA Secretary Fern McBride returned from voting at the Galt Ocean Mile Reading Center shortly after Noon, she announced that only 34 people voted at the library all morning. Of the 7 voters who arrived at the Library between 1 and 1:30 PM, two said they read about the election in the Sun Sentinel while 4 were alerted by the Galt Mile News. One couldn't recall. The number of votes doubled a few minutes later when President Herman Gardner of the Friends of the Galt Mile Library hosted a 2 PM book review that attracted roughly 40 attendees. Fortunately, many of these avid literary boosters opted to fulfill their civic duty while Gloria Kline interpreted Alice LaPlante's "Turn of Mind". One Regency Tower resident stood by that association's entrance in the early afternoon, encouraging passing neighbors to vote. The next dribble of voters blew into the Library between 5 and 6 PM, again doubling the site's electoral output.

Despite the pathetic voter turnout, Roberts earned this election win. Association officials who harbored reservations about some early missteps in his first year ultimately conceded that Roberts got the job done in the trenches. Every concern brought up by the neighborhood association was addressed expeditiously. He rescued the Galt Mile Sun Trolley route from near extinction, helped keep the Galt Library open, forced the city to keep a contractual commitment to maintain the neighborhood in "a Disney-like manner", fought to eliminate "Utility Graffiti" and ended the weekend "A1A speedway". Maintaining "on call" status for almost three years, Roberts and Commission staffer Robbie Uptegrove regularly responded to calls from Galt Mile constituents irked by street noise, low-hanging tree branches, overly-aggressive panhandlers and sidewalk tripping hazards.

Ironically, the greatest threat to Roberts' candidacy was the general impression that he was a "shoo-in" for the commission seat. When it's widely accepted that a particular candidate is best suited to the position, most voters will view the election as a formality and leave the job of voting to others. The vast majority of Galt Mile residents first learned that they missed the election while watching the news later that evening. If pleased with the outcome, they owe a debt of gratitude to our absentee voters.

Technically, none of the voters who cast their ballots on March 13th played a part in Roberts' re-election. Of the 1,876 total votes that Roberts collected, only 837 were cast at the polls. The 1,039 absentee ballots favoring Roberts exceeded the total 359 votes snatched by Graham. As such, the District 1 City Commission contest wasn't decided in Fort Lauderdale. In fact, it probably wasn't decided in Florida.

The Hand on the Switch

One of the municipal undertakings Roberts looks at is the State Road A1A Light Replacement Project, a tribute to Murphy's Law that should resonate with Galt Mile residents. In April of 2007, the City ambushed Galt Mile associations with infraction notices footnoted with "6-51 Artificial Lighting Violation", a little known city ordinance governing turtle-safe lighting requirements for beachfront communities. After apologizing for the aspersive recrimination, City Code Compliance representatives met with Galt Mile Association officials to negotiate a formula for balancing the lighting requirements for sea turtles with the security needs of local residents. Along with curing 98% of the outstanding violations within 12 months, the plan included a methodology for addressing future compliance violations without placing undue strain on association budgets already burdened by repair costs for uninsured hurricane damage, skyrocketing windstorm insurance premiums, code compliant storm mitigation and forced carrying costs for non-contributing units frozen in foreclosure.

Simultaneously, the Florida Fish and Wildlife Conservation Commission (FWC) forced the City (which owns the street lamps on the east side of A1A) as well as the Florida Department of Transportation (FDOT) and FP&L (whose lamps jointly line A1A's west side) to black out street lighting along the beachfront State Road in deference to disoriented sea turtle hatchlings. Crime skyrocketed and tourism plummeted as waves of homeless persons waltzed into the darkened beach area arms akimbo with those who prey on them. After retrofitting hundreds of street lamps with shields endorsed by the FWC, the erratic state agency reversed its approval and threatened another blackout.

Continued on page 14

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Less skittish was association attorney Mark Adamczyk of Goede & Adamczyk. The Naples lawyer observed that of the thousands of foreclosure actions handled by his firm, only a dozen involved lender "safe harbor" liability. "These lawsuits often involve a lender that lacks standing to pursue the 'safe harbor' and is filing suit to bully the association," commented Adamczyk, who questioned the wisdom of allowing an association to go bankrupt because a lender may sue years later for amounts previously paid on estoppels.

In the February edition of the Florida Community Association Journal, Donna Berger revealed the results of a CAN survey in which thousands of board members, CAM managers, association residents and attorneys were polled about whether they support the safe harbor cap being "clarified" in HB 319. Almost 82% said no, 6% were undecided, 5% needed more information and 7% thought it was a good idea. When she asked if the respondents' associations ever pursued a lender for more than the safe harbor amounts, 59% said yes and 41% said no. Berger soon announced that she would support the language anyway. Her seemingly contradictory behavior is neither hypocritical nor anathematic. She and Moraitis are attorneys. They know what it takes to win statewide class action suits. In short, the bankers have more.

Whether they are greasing the wheels for client lenders or trying to protect naïve associations from the legal repercussions of an aroused banking lobby with virtually unlimited resources, both law firms and Moraitis seem to have arrived at the same conclusion. If we are nice to the banks, maybe they won't kill us.

With the session winding down and Moraitis inexplicably married to the toxic language, Bogdanoff faced a dilemma. If she refused to include it in her SB 680, neither of the two dissimilar bills would eligible for a vote in both chambers. Conversely, adding the language to synchronize the bills would push Bogdanoff into a controversy she had thus far carefully avoided. She took a deep breath and added the language that synchronized the bills. It proved futile. On the last day of the session, the Senate refused to vote on the legislation.

While the law firms and Moraitis seemed stunned, association officials who warned them not to risk splitting support for the Omnibus Association bill were simply disappointed. In the session's final days, the State Supreme Court rejected newly drawn district maps that, as usual, favored incumbents. Absent this electoral advantage, lawmakers fearful for their political survival found themselves walking on eggshells. Overnight, every bill was measured by the number of voters it would alienate. Jittery legislators were not about to risk their future on a controversial bill fitted with a poison pill that set its supporters at one another's throats. Since voting for or against the bill would produce unwanted enemies, they opted to let it die on the calendar.

Grasping for straws, conspiracy theorists in the law firms conjectured that Senate President Michael Haridopolos ordered the bill's death as a favor to friends in the influential Space Coast Communities Association who opposed the safe harbor language. Whether or not there is any traction to this face-saving spin, it sounds a whole lot better than admitting they screwed the pooch•

In his Senate Bill 1196, Senator Michael Bennett protects developers who sell properties afflicted with critical common element construction defects by squelching their common law exposure to implied warranties. Artiles filed his identical companion bill, HB 1013, in the Statehouse. Although their legislation concedes that homeowners should be confident that their new homes aren't riddled with defects, similar expectations for drainage systems, roads and interred utilities "goes beyond the fundamental protections that are necessary for a purchaser of a new home" and "creates uncertainty in the state's fragile real estate and construction industry." After all, you can always use bottled water for drinking and washing, build a manually maintained outhouse in the back yard and you can still walk to your house along roads that are impassible to vehicles.

Bennett and Artiles have been spinning these bills as indispensable to safeguarding future development in the State of Florida. Incredibly, they've identified implied warranties as the primary deterrent to a resurgence of new construction, not the inability to secure financing due to the housing glut and the well-publicized lack of demand. While the assertion borders on the idiotic, it resonated with lawmakers who benefitted from the building lobby's largesse, including some key vetting committee chairs.

In fact, when Artiles' HB 1013 was scheduled for a February 2nd hearing by the House Business and Consumer Affairs Subcommittee chaired by Representative Doug Holder – where anti-consumer bills buy a boatload of bad press, lobbyists got the bill re-referenced to the Judiciary Committee, its final pit stop in the Statehouse and the parent body of the Civil Justice Committee, where the bill was passed out three days earlier.

Vowing commitment to a real estate recovery, the two lawmakers believe that scamming thousands of Florida homeowners is a small price to pay for the confidence their bills would instill in developers, magically stimulating their promised housing comeback. In short, more developers would risk entering the shaky market if they weren't penalized for performing substandard or defective construction. Using Crazy Glue instead of rivets appreciably improves the bottom line. Bennett's bill doesn't only apply to HOAs. Since it was drafted to target anyone buying a home, its 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 drainage system fills the kitchen sink with sewage should have run a diagnostic on the interred utilities before buying their units. 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.

Remarking that his bill will preserve property values, Artiles cynically asserted, "The legislation is good for consumers." He added, "Florida homeowners and HOAs have a number of appropriate alternative remedies to resolve problems," referring to a bill provision that states "This section does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute."

What a kidder! Artiles is well aware that purchase contracts disclaim any and all warranties and causes of action other than those allowed by statute (ss. 718.203 and 719.203, F.S.), which currently excludes offsite defects for condos and co-ops and doesn't even exist for HOAs. Upon HB 1013 becoming law, the only legal recourse will be a private cause of action for breach of the building code under section 553.84. For selling a non-functional neighborhood drainage system and/or spontaneously collapsing roads, the developer might pay a modest fine. Conversely, the home buyer becomes liable for repairs to the undisclosed defects. It's less than clear how this will benefit consumers.

While most association advocates are unsure about Scott's intentions, he is, in fact, a wild card.

After whizzing through the 106 yeas vs. 10 nays House vote on February 23rd and the 36 yeas vs. 4 nays March 8th vote in the Senate, House Bill 1013 was enrolled and awaits a trip to the Governor's desk. If our unpredictable chief executive signs it or does nothing, it will kick off a new era of sloppy workmanship and substandard construction. Although its effective date is July 1, 2012, the legislation will apply "to all cases accruing before, pending on, or filed after that date." Upon enactment, protecting potential victims from construction defects will exclusively become the province of local building code authorities. In the absence of implied warranties, every homebuyer should automatically demand that the developer's boilerplate sales agreement be amended with a contractual warranty for off-site common area construction elements.

While most association advocates are unsure about Scott's intentions, he is, in fact, a wild card. In the past year, the Governor has quashed programs that he initially proposed and voted to enact policies that he roundly disparaged – often without offering a marginally credible explanation.

By all means, email the Governor and let him know how you feel about rewarding substandard construction in a state where hurricanes can line up like pinballs. You might remind him that a functional drainage system is as critical to a home's habitability as the indoor plumbing that's currently warrantied by statute.•

APR/MAY

SUN	MON	TUE	WED	THU	FRI	SAT
8 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166	**9**	**10** South Pacific, Broadway (Through 4/22) Broward Center Tix.: 954-462-0222	**11** Business Education Seminar War Memorial 6 to 8 p.m. ***Doing Business with Broward County & City of Fort Lauderdale*** Info.: 954-828-4347	**12** 2nd on 2nd Thursdays Block Party 200 Block SW 2nd Street 5 to 9 p.m. Info.: 954-468-1541	**13** Jazz on the Square The Village Grille Commercial Blvd. & A1A 7 p.m.	**14** Red Bull Candola Huizenga Plaza The Fort Lauderdale Bus Loop 300 SW 2nd Street 6 to 11 p.m. Info.: 954-260-6194
15 Urban Gourmet Market First Annual Yoga-fest Esplanade Park 10 a.m. to 4 p.m. Info.: 954-468-1541, X 203	**16** 17th Annual Las Olas Wine & Food Festival (Through 4/21) Tix.: 954-727-0907	**17** Fort Lauderdale City Commission Meeting City Hall, 6 p.m.	**18** BINGO Regency South Party Room 7 p.m. Info.: 954-547-4063	**19** The Hukilau (Through 4/22) Mai-Kai, Bahia Cabana, & Bahia Mar Tix.: www.thehukilau.com/2012/tickets	**20** Ladies, Let's Go Fishing Weekend Seminar (Through 4/22) I.T. Parker Community Center- Info.: 954-475-9068	**21** Riverwalk Urban Market 227 SW 2nd Ave. 8 a.m. to 1 p.m. Info.: 954-298-5607
22 Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166	**23** Earth Day at Fairchild Fairchild Tropical Gardens 9:30 to 4:30 p.m. Info.: www.fairchildgarden.org	**24** BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: 954-563-7268	**25** BINGO Regency South Elvis Costello & the Imposters Show Hard Rock Live, 7 p.m. Tix.: 954-327-7504	**26** BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. $5/person for 3 boards	**27** MMA Flight Time 9 War Memorial Auditorium 8 p.m. Info.: 954-443-6792	**28** Lauderdale Air Show Ft lauderdale Beach 12 to 4 p.m. Info.: www.lauderdaleairshow.com
29 Urban Gourmet Market Urban Gourmet Market 1201 E. Las Olas Blvd. 9 a.m. to 4 p.m. Info.: 954-462-4166	**30** Commissioner Roberts: Pre-Agenda Meeting Beach Community Center 6 p.m.	**1** Fort Lauderdale City Commission Meeting City Hall, 6 p.m.	**2** BINGO Regency South SunFest (Through 5/6) Intracoastal (along Flagler Dr from Banyan Blvd to Lakeview Ave, West Palm Beach) Info.: 561-659-5980	**3** BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. $5/person for 3 boards	**4** West Palm Beach Antiques Festival Americraft Expo Center (S FL Fairgrounds) Info.: 941-697-7475	**5** Riverwalk Urban Market 227 SW 2nd Ave. 8 a.m. to 1 p.m. Info.: 954-298-5607 Gun & Knife Show War Memorial Auditorium Info.: 954-828-5380
6 **Sunday Jazz Brunch** Riverwalk, Downtown FL 11 a.m. to 2 p.m. Info.: 954-828-5985	**7**	**8** BINGO Galt Towers Social Room (4250 Galt Ocean Drive) 7:30 p.m. Info.: 954-563-7268	**9** Business Education Seminar Carter Park (1450 W. Sunrise Blvd) 6 to 8 p.m. ***To Be or Not To Be Incorporated*** Info.: 954-828-4347	**10** BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. $5/person for 3 boards	**11** KID Couture Brunch & Fashion Show Hyatt Pierr 66 11 a.m. to 2 p.m. Info.: 954-537-7620	**12** African Violet Show & Mothers Day Brunch (Through 5/13) Flamingo Gardens 9:30 a.m. to 4:30 p.m. Info.: 954-473-2955

ADDITIONAL EVENTS

APRIL 10: Van Halen, BankAtlantic Center, Tix.: 954-835-7000
APRIL 14: Walk for KIDs, John U Lloyd State Park, 8 to 10 a.m., Info.: 954-537-7620
APRIL 14: Red Bull Candola 2012, New River, 10 a.m. to 3 p.m., Info.: 954-943-9433
APRIL 14: Hillsboro Lighthouse Tour, Sands Harbor Hotel (125 N. Riverside Drive, Pompano), 8:45 a.m. - 2:30 p.m., Info.: 954-942-2102
APRIL 16: Commissioner Roberts Pre-Agenda Meeting, Beach Community Center, 6 p.m.
APRIL 19: Art Walk Las Olas, Las Olas Blvd from Museum of Art to SE 16th Ave, 5 - 9 p.m., Info.: 954-258-8382
APRIL 20: 4th Annual Spin-A-Thon, Esplanade Park, Noon, Info.: 954-468-1541
APRIL 20 -22: Pompano Beach Seafood Festival, Corner of Atlantic Blvd. & A1A, Tix.: 954-570-7785
APRIL 20 -22: YMCA Masters National Diving Championship Meet, Ft Lauderdale Aquatic Complex, 8 a.m. to 2 p.m., Info.: 954-828-4580
MAY 11: 3rd Annual Burger Battle, Esplanade Park, 6 to 9 p.m., Info.: 954-468-1541, ext. 203
MAY 16 - 19: Pompano Beach Fishing Rodeo,Pompano Beach, Info.: 954-942-4513
MAY 17: Artwalk Las Olas, Las Olas Blvd., Info.: 954-258-8382
MAY 19 - 20: Buckler's 22nd Annual Craft Fair, Americraft Expo Center-S Florida Fairgrounds, Info.: 386-860-0020
MAY 25 - 28: Ft Lauderdale Spring Home Design & Remodeling Show, Broward County Convention Center., Info.: 305-667-9299
First Saturday of every Month: Beach Cleanup, Commercial Blvd & the Beach LBTS, 9 to 9:30 a.m., Info.: www.lbts.com
Second Saturday of every Month: Beach Sweep, 9 a.m. to 12 p.m., Info.: 954-474-1835
Wednesdays: Yoga in the Garden, Bonnett House, 8 to 9 a.m., Info.: 954-563-5393 ext. 137
Tuesdays and Thursdays: Yoga with Ali Hecht, Esplanade Park, 6:30 p.m., Info.: 954-732-0517
Mondays and Wednesdays: Cardio Mix with Josh Hecht, Esplanade Park, 6:30 p.m., Info.: 954-732-0517
Sundays: Tour-the River Ghost Tour, Stranahan House & Water Taxi, 7:30 p.m., Tix.: 954-524-4736

FOR A COMPLETE LISTING OF EVENTS, GO TO THE CALENDAR AT WWW.GALTMILE.COM

The city retained environmental engineering consultant Chen-Moore & Associates to redraw the A1A lighting plan from Harbor Drive to NE 9th Street with newly developed turtle-friendly fixtures. Already approved by FDOT, coastal cities like Riviera Beach and Delray Beach also plan to deploy the new fixtures. To replace the existing cast iron poles, rewire the lamp bases and install the new fixtures, on April 20, 2011, the city cut a deal with low-bidding electrical contractor Southeast Underground Utilities Corp. for $1,609,422.00 plus 10 percent contingencies and 7 percent engineering fees for a total of $1,883,023.74. In June, the agreement was signed off by Public Works Director Al Carbon, Finance Director Doug Wood and Assistant City Manager Phil Thornburg.

A week later, the FBI raided the company's business offices at 1700 NW 65th Avenue in Plantation. Executing a search warrant, agents seized documents related to the Broward County Traffic Engineering Division. After low-bidding a $4 million contract to better synchronize traffic signals and provide drivers with more green lights – despite a lack of progress – Southeast exploded project costs to $21 million. The county auditor singled out the former head of Broward's Traffic Engineering Division, Jihad El Eid, for complicity in the Southeast Underground Utilities scam. The county handed its collected evidence to the State, where it was passed to the FBI.

Alleging that Southeast Underground Utilities overbilled the county for $3 million (and counting) for work riddled with defects, Broward's chief trial attorney Michael Kerr sued the company on August 3, 2011. Apparently, in exchange for El Eid greasing the county cash cow, the company bought him a Ford Mustang and a Southeast official accompanied him on gambling trips. After being canned by the county in September of 2010, El Eid landed in Amarillo, Texas, where Broward's deposed traffic chief was hired by the city as a traffic engineer.

WWhile El Eid's attorney, mob lawyer Fred Haddad, has stated that the FBI has declared his client a "person of interest," El Eid's alleged indiscretions seem to be limited to bilking county taxpayers. If the contracts held by Southeast for scores of past, present and future statewide FDOT projects are also tainted by kickbacks, graft and/or rigged bids, the case would elicit the kind of media attention that regional Bureau chiefs live for. Anyway, it's comforting to know that our struggling hatchlings are in such "trustworthy hands". – [editor]

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