

March 17, 2011

Legislative proposal would kill association's regulatory overseer

Paola Iuspa-Abbott

A bill seeking to dismantle the state regulator that oversees condo and community associations could expose unit owners to unlicensed managers and unscrupulous board directors and developers, critics say.

The Division of Florida Condominiums, Timeshares and Mobile Homes within the Department of Business and Professional Regulation investigates allegations of wrongdoing and resolves association disputes, especially related to elections.

Opponents say that if the agency is eliminated, unit owners would have to resort to lawsuits to resolve disputes, a costly option for often cash-strapped associations and property owners.

"Take away the division and no one is handling these election disputes other than the courts," said attorney Donna Berger, executive director of the Fort Lauderdale-based Community Advocacy Network, a lobbying group for community associations in Florida.

The division investigates property managers and boards of directors for alleged financial wrongdoing and mishandling of documents.

"In that regard, it is a very consumer unfriendly bill," said Berger, a partner with Katzman Garfinkel & Berger in Fort Lauderdale.

The division provides a low cost remedy to both condominium associations and owners seeking legal guidance and dispute resolution on vital issues, said North Bay Village attorney Ben Solomon, with the Association Law Group.

"Without the division, there would be much less scrutiny on issues like violations by developers and associations," he said. "It would also undoubtedly result in more litigation in an already overwhelmed judicial system."

The bill would also end the licensing of community association managers, who are in charge of billions of dollars in association dues across the state, Berger said.

Nearly 55 percent of Floridians live in about 55,000 communities governed by an association, said Hollywood attorney **Dennis Eisinger**, with **Eisinger Brown Lewis Frankel & Chalet**.



"The impact would be devastating," said Eisinger, who teaches community association law at the University of Florida. "We would have anarchy if you take away that regulatory body. Our court system simply cannot take care of it all. That's one of the reasons for [the division's] arbitration role."

A high level official with the DBPR who declined to be identified said eliminating the division would be like removing "the police from the streets."

The bill would also eliminate the Office of the Condominium Ombudsman, which educates people on condo laws and fields complaints from property owners.

Bill Raphan, who heads the ombudsman's Broward office, declined to comment.

The bill is working its way through several committees in the Florida House.

Rather than being sponsored by a House member, the 281-page Partial Committee Bill BCAS 11-01 is being pushed by the Business and Consumer Affairs subcommittee.

The bill, which is now heading to a full House committee, still needs a Senate companion bill. None has been introduced.

The bill reflects Gov. Rick Scott's intention to streamline the permitting and licensing process. The bill also will ease oversight of auction companies, talent agencies, landscape architects, geologists, home inspection services and mold-related services, among others.

"[The community association regulations] have been lumped in with a lot of other industries that might very well benefit from deregulation," Berger said. "But community associations aren't for-profit businesses that need less government intervention in order to be able to compete and market their products."

The bill infuriated Fort Lauderdale condo owner Ronald Bibace, who e-mailed the 15 subcommittee members on Tuesday urging them to oppose changes to laws governing community and condo associations or eliminating the DBPR division.

Bibace said he understands Scott wants to downsize departments to help cut the state's budget shortfall, but "it is important to remember that throwing out the baby with the bath water is not a solution," he wrote the lawmakers. "The additional costs to the state's community residents in potential mismanagement by incompetent managers would far exceed the savings to the state."

Bibace said in a phone interview the bill would remove deterrents to bad behavior by people in positions of trust. Condo and community association board members usually are volunteers with little experience running nonprofit operations so they must trust their managers.

"A lot of licensed professionals are more afraid of complaints made about them to the agency that licenses them than they are about lawsuit threats," he said. "They know it is a lot easier for an owner to file a complaint with the licensing board to look into an issue than going to court."

Berger said the bill could save the state some money in the short term but not in over the long haul.

"Moving all these fat-cat cases back into the courtroom is going to cost the state a pretty penny on the other end," she said.

Unexpected Move

For the last few years, the Legislature has worked to tighten regulation of condos and associations, citing rampant abuses by boards and managers. So, the bill came as a surprise, Eisinger said.

"It completely goes the opposite direction," he said. "I find it hard to believe that our legislators ultimately would ever approve the dismantling of that agency once they understand all the facts."

Berger is equally surprised with the drastic change.

"In the last couple of years, [lawmakers] required that not only the individual manager to be licensed but the management company be licensed as well," she said. "We also saw the creation of the Regulatory Council of Community Association Managers. So this comes as a big shock."

The 2-year-old council within the DBPR issues licenses to managers and management companies that deal with communities of more than 10 units or have a budget of more than \$100,000.

The council can fine a management company up to \$5,000 for doing business without a license. It also requires managers to report to the department if they are "convicted or found guilty of or having plead nolo contendere or guilty to a crime in any jurisdiction." A failure to do so can result in fines, suspension or license revocation.

"The Community Association Management license also helps to ensure that property managers have at least a basic understanding of the laws and regulations of the state, said Solomon, with the Association Law Group. "Without such regulation requirements, the industry standards would likely decrease significantly."

"Without the division, there would be much less scrutiny on issues like violations by developers and associations. It would also undoubtedly result in more litigation in an already overwhelmed judicial system."Ben Solomon Association Law Group**YesNo**

Paola Iuspa-Abbott can be reached at (305) 347-6657.

