

Hanson's Landing Association, Inc.

Updated Legislative Report
April 17, 2010

By: Barb Kidd, VP (If you read this and have questions – please call me – it is a lot of info!)

On Wednesday, April 14th the Treasure Coast Condominium Ass'n featured Kenneth Direktor, Esq. of Becker & Poliakoff as speaker giving a "Legislative Update" from the current 2010 session in Tallahassee. Mr. Direktor reported that the only piece of legislation surviving and still in committee and under consideration with respect to revising or addressing current legislation/issues of concern to condominium owners was Senate Bill 1196. All of the more aggressive bills introduced earlier this year seeking to seriously address the inequities in the current foreclosure crisis which end up leaving current owners to pick up the tab for "units under water" – were killed early on owing to threats issued by banks that if the legislators moved to encumber them in any way – they would move their mortgage business out of the State of Florida. Banks are also a primary source of financing of election campaigns here in Florida – the legislators instantly capitulated to this threat. See Mr. Direktor's recommendations at the end of this informational paper.

Features of SB1196 that are of interest or concern to Hanson's Landing owners will be outlined in this paper. However, another item of interest came up from a member of TCCA following the announcement of the new board of directors of this organization – citing that several of the members of that board were bankers/businesspeople – raising the question "are these representatives then capable of being objective in looking after our interests" – "isn't there a conflict of interest in their service to this group?" Good question! Where business/banks have hundreds of lobbyists – we have very few. TCCA is one of the larger lobbying organizations for condominium owners' interests – if their objectivity is also corrupted – what chance do we have to be heard at all? That was one of the messages clearly delivered by Mr. Direktor – although he defended TCCA as having other advocates such as Jane Cornett who had just been elected – as well as others who have no corporate interest in their representation, Mr. Direktor advised the audience that condo owners need to be extremely proactive in lobbying our legislators. Legislators hear infrequently from us – so there is no pressure to ever do the "right thing" on our behalf.

This Senate bill is 102 pages long and is a potpourri of changes to several statutes covering issues such as elevator code requirements, to the primary 718 condominium statute, and on to 719, 720, and more – which address mostly bulk ownership interests (developer, realty, investment, etc.). Attached is currently what is being reviewed in committee that pertain to Hanson's Landing.

SB 1196:

INSURANCE: Section 627.714, Florida Statutes, is created to read:

Residential condominium unit owner coverage; loss assessment coverage required.-

- (1) For policies issued or renewed on or after July 1, 2010, coverage under a unit owner's residential property policy must include at least \$2,000 in property loss assessment coverage for all assessments made as a result of the same direct loss to the property, regardless of the number of assessments, owned by all members of the association collectively if such loss is of the type of loss covered by the unit owner's residential property insurance policy, to which a deductible of no more than \$250 per direct property loss applies. If a deductible was or will be applied to other property

loss sustained by the unit owner resulting from the same direct loss to the property, no deductible applies to the loss assessment coverage.

- (2) The maximum amount of any unit owner's loss assessment coverage that can be assessed for any loss shall be an amount equal to that unit owner's loss assessment coverage limit in effect one day before the date of the occurrence. Any changes to the limits of a unit owner's coverage for loss assessments made on or after the day before the date of the occurrence are not applicable to such loss.
- (3) Regardless of the number of assessments, an insurer providing loss assessment coverage to a unit owner is not required to pay more than an amount equal to that owner's loss assessment coverage limit as a result of the same direct loss to property.
- (4) Every individual unit owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property.

Florida Fire Prevention Code - 633.0215:

(13) A condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from the requirements to install a manual fire alarm system under S.9.6 of the Life Safety Code adopted in the Florida Fire Prevention Code.

Note: addition of this paragraph releases us from an early statute requiring all condominium buildings to retrofit their buildings and install fire alarm system by a certain date now extended to 2019.

SB 1196 (continued)

718.110 Section 8

(13) Amended to read: An amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

Note: Hanson's Landing leasing policy was spelled out originally in our Articles and amended in 1991 to current policy - this would not apply to our owners now - but only if we were to try to vote to change them again. The silly thing here is say we did want to do that and 65-75% of our owners agreed we needed a new policy - the 25-35% that voted "NO" to the change - wouldn't have to abide by it - only those who voted "YES" and also those purchasing their units after the amendment was adopted. Mr. Direktor said this was the brainchild of Senate President King - who by the way doesn't live in a condo.

(14) New: Except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the declaration as provided therein or as required under paragraph (1) (a), and shall not be considered an amendment pursuant to subsection (4). This is a clarification of existing law.

Note: This change could impact setting aside any of the common element for a use that excludes in some way all of the owners having equal access - e.g. kayak rack (legal clarification needed here - does that portion of the common element (land/property) become a limited common element?)

718.111 The Association.- There are many changes to this section involving wording and related intent. This paper will summarize rather than copy out entire sections.

(11) Insurance:

(a) Adequate property (previously read hazard) insurance (word change throughout section)

Must (not shall) changed throughout section.

The replacement cost must (previously - full insurable value shall) be determined every

36 months.

(c) Policies may include deductibles as determined by the board

3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board in the manner set forth in s. 718.112 (2) (e). Following removed: *such meeting shall be open to all unit owners and "the notice of such meeting must state the proposed d and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any. The meeting d in t paragraph may be held in conjunction with a meeting to consi the proposed budget or an amendment thereto."*

(f) 3. The coverage (referring to the Association's policy) must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components or replacements or any of the foregoing (new- "which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.")

(g) A condominium unit owner's policy must conform to the requirements of s. 627.714.

Aside from what was moved to 627.714 the following provisions were removed entirely: "An insurance policy issued to an individual unit owner providing such coverage does not provide rights of subrogation against the condominium association operating the condominium in which such individual's unit is located.

1. *All improvements or additions to the condominium property that benefit fewer than all unit owners shall be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having the use thereof.*
2. *The association shall require each owner to provide a currently effective policy of hazard and liability insurance upon request, but not more than once per year. Upon the failure of an owner to provide a certificate of insurance issued by an insurer approved to write such insurance in the state within 30 days after the date on which a written request is delivered to the association may purchase a policy of insurance on behalf of an owner. The cost of such a policy, together with reconstruction costs incurred by the association but which are the responsibility of the unit owner, may be collected in the manner provided for the collection of assessments in s 718.116."*

(12) OFFICIAL RECORDS.-

7. Provides that "electronic mailing addresses and telephone numbers must be removed from association records if consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices. (again, only change is from using "shall" to "must".)

11. ...Any person who knowingly or intentionally defaces or destroys accounting records required to be created and maintained by this chapter during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s.718.501 (1) (d)....(goes on to specify what accounting records must be maintained - just wording changes)

16. (b) The official records “The Association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter. (Sentence added to paragraph)

(c)the following records are not accessible to unit owners: (items added)

3. Personnel records of association employees, including, but not limited to, disciplinary, payroll, health, and insurance records.

5. Social security numbers, driver’s license numbers, credit card numbers, e-mail addresses, telephone numbers, emergency contact information, any addresses of a unit owners other than as provided to fulfill the association’s notice requirements, and other personal identifying information of any person, excluding the person’s name, unit designation, mailing address, and property address.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allows manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association. (Interesting addition - needs interpretation)

(13) FINANCIAL REPORTING (note the new wording excludes those association’s pooling reserves)

...The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. (and totally removes the following: *“uniform accounting principles and standards for stating the disclosure of at least a summary of the reserves, including information as to whether such reserves are being fun at a level sufficient to prevent the need for a special assessment and, if not, the amount of assessments necessary to bring the reserves up to the level necessary to avoid a special assessment. The person preparing the financial reports shall be entitled to rely on an inspection report prepared for or provi to the association to meet the fiscal and fiduciary standards of t chapter.”*

718.112 BYLAWS.-

(2) REQUIRED PROVISIONS.

(d) Unit owner meetings.-... “If the number of board members whose terms have expired exceeds the number of eligible members showing interest in or demonstrating an intention to run for the vacant positions each board member whose term has expired is eligible for reappointment to the board of administration and need not stand for reelection. (change=eliminating “shall be automatically reappointed.”) ... “co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.”

3. a. At least days before a scheduled election, the association shall mail, deliver, or electronically transmit, whether by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election (removing...along with a certification form provided by the division attesting that he or she has read and understood to the best of his or her ability, the governing documents of the association and the provisions of this chapter and any applicable rules.) However, in its place they are inserting the next new section b.

(b). Within 90 days after being elected or appointed to the board, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any action. (Intent: - give prospective/newly elected directors 90 days to read all of the materials - as Mr. Direktor commented "big deal!")

(l). Certificate of Compliance.- (section deals with fire alarm system mandate in condominiums) Bill's changes just been revised by chair of committee - Basically provides that an Association can vote to not retrofit buildings with fire alarm systems by having a vote of its members at a duly called meeting before December 31, 2016 or else initiate application for a building permit for such a required installation with local government to comply by December 31, 2019.

(n). *Director or officer delinquent* - A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law. (formerly was written to just cite "regular assessments".)

(o). *Director or officer offenses*. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of suspension or the end of the director's term of office, whichever occurs first.

718.116 Assessment; liability; lien and priority; interest; collection.-

(b)1. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

2. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the

association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service or process.....

(The significant change here is for the bank foreclosing being mandated to pay 12, rather than the current 6 months of monthly assessments/or - not changed - one percent of the first mortgage - whichever amount is smaller).

(11). (New section). If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay the future monetary obligations related to the condominium unit to the association, and the tenant must make such payment. The demand is continuing in nature and, upon demand, the tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association. The association shall, upon request, provide the tenant with written receipts for payments made. A tenant who acts in good faith in response to a written demand from an association is immune from any claim from the unit owner.

(a) If the tenant prepaid rent to the unit owner before receiving the demand from the association and provides written evidence of paying the rent to the association within 14 days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the association to be credited against the monetary obligations of the unit owner to the association.

(b) The tenant is not liable for increases in the amount of the monetary obligations de unless the tenant was notified in writing of the increase at least 10 days before the date the rent is due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the unit owner in the amount of monies paid to the association under t his section.

(c) The association may issue notices under s.83.56 and may sue for eviction under ss.8359-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no duties under s. 83.51.

(d) The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.

(e) A court may supersede t he effect of this subsection by appointing a receiver.

718.303 Obligations of owners and occupants; remedies

(3) If a unit owner is delinquent for more than 90 days in paying a monetary obligation due to the association, the association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid. This subsection does not apply to limited common elements intended to be used only by that unit, common elements that must be used t o access the unit, utility services provided to the unit, parking spaces, or elevators..... However, the fine may not in the aggregate exceed \$1,000. A fine may not be levied and a suspension may not be imposed unless the association first provides at least 14 days' written notice

(4)The notice and hearing requirements of subsection (3) do not apply to the imposition of suspensions or fines against a nit owner or a unit's occupant, licensee, or invitee because of failing to pay any amounts due the association. If such a fine or suspension is imposed, the association must levy the fine or impose a reasonable suspension at a properly noticed board meeting, and after the imposition

of such fine or suspension, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

(5) An association may also suspend the voting rights of a member due to nonpayment or any monetary obligation due to the association which is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue the association.

The last approximately 45 pages of the bill related to amending the law for bulk purchases (usually where condominiums under construction have not been purchased – and investors are looking to scoop them up but don't want the obligations charged to the developer – this bill offers them such relief. It also amends/creates the laws relative to cooperatives.

At the TCAA meeting, Ken Direktor made several recommendations for condominium boards of directors relative to protecting the association and its owners from the problems it now faces with the foreclosure procedures all favoring the lending institutions:

1. Change your documents to require owners to put a 20% down payment and subsequently limit loan to value ratio to 80%. He claims banks will not then give a 90% or better loan against the property. (This insures there is equity value in the property to access in a foreclosure)...Note: but it doesn't account for what happens when the market implodes as it did in 2008.
2. Fining authority should be in documents (if not already there) and employed when called for against disregard for rules and regulations.
3. Lobby legislators that change from 6 to 12 months or 1% of the first mortgage, whichever is smaller provision – is not good enough – the 1% should be a higher percentage.
4. Exercise option to rent unit that has been abandoned (if not currently rented) and collect rent against delinquent assessments.
5. Exercise right to actually foreclose on the property - especially in light of bank foot dragging.
6. Should change bylaws to specify exact number of board members – as statute says if it is not defined – the actual number will be 5. (Hanson's Landing falls into this category).
7. Recommended that Association mandate hurricane shutters – citing that 718.113 revised the mandate for association's having to then maintain them.
8. Owners should lobby legislators against bill being considered in Tallahassee to move to non-judicial foreclosures. Mr. Direktor said if this passes it will further damage owner interests.