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Condo Associations Take Note: Lawmakers Move to Criminalize Unethical Behavior

Samantha Joseph, Daily Business Review

The Florida legislature appears to have moved on calls from a grand jury to criminalize unethical behavior of condo board members and give unit owners greater access to association financial records.

The effort drew bipartisan support, and the House and Senate passed a bill originating out of South Florida by sponsors Rep. Jose Felix Diaz, R-Miami; Sen. Rene Garcia, R-Hialeah; and Sen. Jose Javier Rodriguez, D-Miami.

The proposed law heads to Gov. Rick Scott and would take effect July 1 if approved. It would impose criminal penalties for kickbacks to condo board members, voting fraud, theft of association funds and destruction or withholding of official records. The law would also require associations to remove any officers charged with a crime, deny those members access to financial records, but reinstate them if they're found not guilty.

It provides the groundwork for prosecutors to pursue credit card fraud charges against members who misuse association debit cards, prevents board members or representatives of management companies to purchase units foreclosed for unpaid assessments, prohibits contracts with service providers that create a conflict of interest, bars associations from hiring attorneys that also represent their properties' management companies and requires boards to keep official records open for member inspection, among other changes.

The proposed law would also bring changes for the state's Division of Condominiums. Among other changes it would authorize, rather than require, the division to hire full-time attorneys to conduct arbitration hearings and change the rules about its contracting with arbitrators.

But the pending legislation raised alarms for some, like Gelfand & Arpe senior partner Michael Gelfand, a homeowners' association mediator who chaired the Florida Bar's Real Property, Probate and Trust Law section.

"Go to jail! Do not pass go!" Gelfand wrote in a newsletter dispatch about the bill. "Unbelievable, but still true. The legislature, exceeding all expectations as to how to discourage good individuals from serving as directors and making it more difficult to attract volunteer directors, adopted House Bill 1237 to expand the criminal code to include many more areas of the Condominium Act."

Gelfand fears the push toward criminalization would make it difficult for the nonprofits to attract unit owners willing to take on the unpaid job of helping association business to

pay taxes, collect member dues, handle common area maintenance and perform other duties.

Noting the proposal's "new and many surprising requirements," Gelfand predicted it was a precursor to more changes.

"While this bill only impacts condominium associations governed by Florida Statutes Chapter 718, beware that the Cooperative Act and the Homeowners' Association Act frequently are amended after a year to duplicate Condominium Act amendments," he wrote.

Other attorneys joined criticism of the grand jury report that preceded the legislative push, arguing the jury extrapolated about an entire industry based on egregious behavior at fewer than five associations.

"The report recommends changing the law only with respect to condo associations," Pathman Lewis partner and head of litigation John A. Moore wrote in a commentary published March 22 in the Daily Business Review. "Inherent in their reasoning is that board members always have devious motives."

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