

Updates on Legislation That Affects Florida Community Associations

By Jennifer Nichols

Only a few bills passed this year that affect community associations. These bills pertain to:

- (1) fire sprinkler and engineered life safety systems in condominiums,
- (2) removal of dangerous trees,
- (3) vegetable gardens, and
- (4) Assignments of Benefits.

House Bill 7103 – Effective June 28, 2019

Under the Florida Fire Prevention Code, all high-rise condominiums must be protected by either (1) a complete automatic fire sprinkler system or (2) an engineered life safety system (“ELSS”). High-rise condominiums are those with buildings greater than 75 feet in height, measured from the lowest level of fire department access to the floor of the highest occupiable level.

Prior to House Bill 7103 being adopted, Section 718.112(2)(l), Florida Statutes, required all high-rise condominiums to retrofit the condominium with a fire sprinkler system or an engineered life safety system by December 31, 2019 or vote to opt out of the sprinkler retrofit option. The option to opt out of the sprinkler retrofit expired on December 31, 2016 and there was no opt-out provision for ELSS. Even those high-rise condominiums that had timely opted out of the sprinkler retrofit were still required to have an ELSS completed by December 31, 2019.

House Bill 7103 amended Section 718.112(2)(l), Florida Statutes, to extend the deadline until January 1, 2024 for high-rise condominiums to retrofit the condominium with a fire sprinkler system or an engineered life safety system. It also reinstated the option to opt-out of the requirement to install a fire sprinkler system, with the option also expiring on January 1, 2024.

House Bill 7103 also deletes the requirement in Section 718.112(2)(l), Florida Statutes, that the bylaws must include a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association’s board as evidence of compliance with the applicable fire and life safety code. Instead, language is added that an association must ensure compliance with the Florida Fire Prevention Code and the requirement for high-rise condominiums.

House Bill 7103 also amends Section 718.1085, Florida Statutes, to clarify that, for the requirement to retrofit common areas with handrails and guardrails, the term common areas means “stairwells, exposed, outdoor walkways and corridors, but does not include individual balconies.” Therefore, there is no requirement to install handrails and guardrails on individual balconies as they are not common areas.

House Bill 1159 – Effective July 1, 2019

House Bill 1159 created Section 163.045, Florida Statutes, to prohibit local governments from requiring notice, application, approval, permit, fee or mitigation for the pruning, trimming, or removal of a tree on residential property if the owner obtains documentation from a certified arborist or a Florida licensed landscape architect stating that the tree is a danger to persons or property. Further, local governments cannot require that the owner replant the tree that was pruned, trimmed or removed. The exception to the requirements of this section are mangrove trees.

This new law does not affect a community association's architectural or design guidelines or enforcement of its architectural or design criteria. For example, a community association can still require a removed tree be replaced if its governing documents have such a requirement.

Senate Bill 82 – Effective July 1, 2019

Senate Bill 82 created Section 604.71, Florida Statutes to prohibit local governments from regulating vegetable gardens on residential properties. The statute defines a vegetable garden as “a plot of ground where herbs, fruits, flowers, or vegetables are cultivated for human ingestion.” Like House Bill 1159 referenced above, this new law does not affect a community association's architectural or design guidelines or enforcement of its architectural or design criteria.

House Bill 7065 – Effective July 1, 2019

House Bill 7065 amends Section 627.7152, Florida Statutes, in an attempt to cut back on abusive practices using Assignment of Benefits. An Assignment of Benefits (“AOB”) is an agreement that transfers the insurance claims rights or benefits of the policy to a third party, typically a contractor. The AOB gives the third-party authority to file a claim, make repair decisions, and collect insurance payments without the involvement of the homeowner or the association. These AOBs have been abused by contractors by charging homeowners or associations inflated amounts and then pursuing unnecessary litigation against insurance companies to collect the inflated amounts. To prevent these actions, House Bill 7065 amends Section 627.7152 to add the following safeguards:

(1) AOB must be in writing.

(2) AOB must include a provision that allows the assignor to rescind the agreement within 14 days after executing the agreement, at least 30 days after the date work is scheduled to commence if assignee has not substantially performed, or at least 30 days after execution if the agreement does not contain a commencement date and if assignee has not begun substantial work on the property.

(3) AOB must contain a provision that requires assignee to deliver a copy of the executed AOB to the insurance company within 3 days after execution or the date when work begins, whichever earlier.

(4) AOB must contain a written, itemized per-unit cost estimate of the services to be performed.

Additional requirements regarding litigating under AOBs have been added to the statute, as well as an allowance that insurance companies can prohibit AOBs in their insurance policies.

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