



ROSS EARLE BONAN & ENSOR, P.A.

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REB LAW REVIEW

ROSS EARLE BONAN & ENSOR, P.A. NEWS

INSIDE THIS ISSUE:

NEWS 1

LEGISLATIVE
UPDATE:

ALL COMMUNITY 2
ASSOCIATIONS

CONDOMINIUM 3
ASSOCIATIONS

HOMEOWNERS 4
ASSOCIATIONS

The Ross Earle Bonan & Ensor family is growing and welcomes three new associate attorneys.

Samantha Simpson was admitted to the Florida Bar and joined the firm as an associate attorney in September 2018. She was formerly a legal assistant at the firm (2013-2015) before heading off to attend Stetson College of Law. It is wonderful to have her back and we all look forward to her upcoming wedding in November to her fiancé, Andrew.

Katie Mendoza, formerly law clerk to 4th District Court of Appeals Judge Martha Warner, joined the firm in July 2019. She brings a vast amount of legal expertise from her clerkship. Katie resides in Tequesta along with her husband, Erik.

Lauren Carroll is our newest member of the Florida Bar, being sworn in on September 27, 2019. Lauren is a native Martin County resident and the daughter of Keith and Lauren Carroll. Lauren is busy planning her wedding next spring to her fiancé, Phillip.

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Legislation Effecting All Community Associations

County Court Jurisdiction

Florida Statute §34.01 has been amended to increase the jurisdictional limit for actions at law filed in County Court. For actions at law filed on or before December 31, 2019, County Court will have jurisdiction of actions in which the matter in controversy does not exceed the sum of \$15,000. For actions at law filed on or after January 1, 2020, County Court will have jurisdiction of actions in which the matter in controversy does not exceed the sum of \$30,000. For actions at law filed on or after January 1, 2023, County Court will have jurisdiction of actions in which the matter in controversy does not exceed the sum of \$50,000.

Tree Removal

House Bill #1159 created Florida Statute § 163.045, which provides:

- 1. A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property.*
- 2. A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.*
- 3. This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.*

This statute provides relief to residential property owners with trees that present a danger to persons or property. Local governments often try to prevent the removal of the trees despite the risk they pose. This statute prohibits local governments from preventing removal as long as the owner obtains documentation from an arborist stating that the tree presents a danger to persons or property. The arborist must be certified by the International Society of Arboriculture or a Florida licensed landscape architect. The statute also prohibits local governments from requiring notice, application, approval, a permit, fees, or mitigation before the tree is removed. Local governments cannot require the replanting of another tree either.

While it appears, this statute would apply to community associations, many local governments throughout Florida are taking a contrary position. These local governments feel that community associations do not fall within the scope of the statute because the common areas are not “residential property”. This position is being contested, but it will likely be a while before a court renders a decision interpreting the statute. In the meantime, we recommend you consult with legal counsel before removing any trees from common areas without obtaining approval of the local government.

Census Takers in Gated Communities:

The 2020 Census is quickly approaching! Historically, gated communities are considered by the Census Bureau to be “hard to count” populations. Title 13 of the United States Code has several provisions regarding the penalties for not answering the census and refusal by owners, proprietors, etc. to assist census employees. 13 U.S.C. § 221 provides for a fine of not more than \$100 when a person over the age of 18 refuses or willfully neglects to answer the census when requested by the Secretary or any other authorized officer or employee of the Department of Commerce. If they willfully provide a false answer, they can be fined up to \$500.

13 U.S.C. § 223 provides for a fine of not more than \$500 if an owner, proprietor, manager, superintendent, or agent of any hotel, apartment house, boarding or lodging house, tenement, or other building refuses or willfully neglects, when requested by the Secretary or an officer or employee of the Department of Commerce to furnish names of the occupants of the premises or give free ingress and egress to the representative to permit collection of statistics with respect to any census.

The Census Bureau provides that the census taker must present an ID badge that has their photograph, a Department of Commerce watermark and an expiration date and that they may be carrying a Census Bureau phone or laptop as well as a bag with a Census Bureau logo. There is also an 800-number that can be called where they can speak with a local Census Bureau representative. ((800)-923-8282)

One way that communities may be able to avoid having census takers come into the neighborhood is by encouraging residents to fill out their census online, by phone, or by mail. However, they will not receive an invitation to do so until April 1, 2020. However, it is our recommendation that it is in the best interest of the community to allow entry to census takers in order to avoid the potential consequences and disputes over their access to the community.

Legislation Effecting Condominiums

High-rise Condominiums

Florida Statute §718.112 requires condominium associations to retrofit certain high-rise buildings with either a fire sprinkler system or an engineered life safety system as specified in the Florida Fire Prevention Code, unless the unit owners have voted to forego the retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium. If the unit owners of the condominium have not voted to forego the retrofitting, the deadline for retrofitting the high-rise building with a fire sprinkler system or an engineered life safety system has been extended, by an amendment of the statute, from January 1, 2020 to January 1, 2024.

Hurricane Shutters

There were no statutory changes related to hurricane shutters in condominiums, however, the following is a summary of Florida Statute §718.113(5)(a)-(d) which provides requirements for

a residential condominium regarding shutters. Each board of a residential condominium is required to adopt hurricane shutter specifications for each building operated by the condominium. The specifications must address the color, style, and other factors that the board deems relevant. The specifications must comply with the building code.

- (a) The board may install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code compliant hurricane protection as long as the association complies with Florida Statute §718.3026 and it is approved by a majority of the voting interests of the residential condominium.
- (b) The maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection is the responsibility of the association if the declaration of condominium so provides. If the declaration of condominium states that the unit owner should be responsible, then the declaration of condominium controls.
- (c) The board is allowed to operate the items mentioned above without the permission of the unit owners only if it is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair, and maintenance of the items are not a material alteration to the common elements or association property within the meaning of the statute.
- (d) If approval is required by the documents, the board may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a unit owner conforming to the specifications adopted by the board.

Legislation Effecting Homeowners' Associations

MRTA- Preservation of HOA Covenants and Restrictions

There were no statutory changes related to the preservation of HOA covenants, however, as a reminder, each HOA needs to take action when needed to preserve its covenants. Florida Statute §712.05(2) provides that a homeowners' association may preserve and protect a community covenant or restriction by issuing a summary notice in the form provided in Florida Statute §720.3032(2) before the 30-year anniversary of the original recording of the covenant or restriction. The notice must be recorded in the official records of the county where the community is located, and a copy provided along with the notice for the next member's meeting.

Florida Statute §720.303(2)(e) requires consideration of a MRTA preservation at the first board meeting following the annual meeting of the members. At that meeting, the board should consider the desirability of filing notice to preserve the covenants. Based on its unusual language, the provision seems to require this "consideration" occur (and be recorded in the minutes) every year, regardless of whether the association has an imminent need for preservation or has already preserved its covenants.

HOA Rental Restrictions

The Florida Condominium Act limits the ability of a condominium association to amend its documents to impose new rental restrictions. The statute states that “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.”

There is currently not a similar restriction in the Florida Homeowners Association Act. However, we have been advised that a similar restriction is likely to be proposed during the 2020 legislative session. Therefore, we strongly urge all homeowners associations that are considering amending their Governing Documents to impose such rental restrictions to do so prior to July 1, 2020.