

Florida HB 995 – A Monumental Change for Some Florida Condominium Associations

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In 2008 the Florida Legislature passed HB 995 – effective October 1, 2008 - which amended the Florida Condominium Act (FS 718). Among the most significant changes resulting from the passage of this legislation is the requirement for all condominium associations with buildings more than 3 stories tall to be inspected by a licensed architect or engineer once every five years, at a minimum. The new law does allow an individual association the option of not performing the inspection, but the decision must be approved by a majority vote of the membership at a duly called meeting of the association.

The Board of Directors alone cannot make the decision that the association will not undertake to have an inspection performed. If an association *does* choose not to have an inspection performed, they must put the decision to a vote of the membership every five years.

The revised statute also requires the architect or engineer to include an opinion in their written report as to the current condition, remaining life expectancy and estimated replacement cost of common area components. Or to put it in simpler terms, the new law requires all associations which maintain buildings over three stories tall to have what is, in effect, a reserve study prepared by a licensed architect or engineer; unless by a majority vote of the entire membership the decision is made not to do so.

An even better approach would be to have a reserve study prepared by a qualified reserve study analyst, in conjunction with a condition assessment prepared by a licensed architect or engineer. Because many people tend to underestimate the level of skill required to prepare a truly useful reserve funding plan there is a tendency to assume that anyone can do it; most certainly architects and engineers. This is simply an erroneous assumption which is typically made by people who do not have a thorough understanding of the reserve planning process.

Even in the case where a particular architect or engineer may possess the necessary skill set to prepare a competent reserve funding plan, it is unlikely to be a cost effective approach for obtaining a reserve study if the association were to end up paying the professional fees typical of architects or engineers in order to obtain a reserve study. Whereas, a competent professional engineer or architect may command \$150 to \$200 an hour, or more; a credible reserve study provider should be able to provide the needed service for much less.

The impact of this legislation on the communities which are effected will be substantial. Not only can the cost of such an inspection (known as a property condition assessment or PCA) be significant, but the end result of having one's property subjected to such a level of scrutiny can be enlightening, to say the least. In states where the law requires associations to periodically perform capital reserve studies, board members may be more familiar with the practice of performing a PCA as part of the ongoing due diligence effort of the Board of Directors (BOD), to aid in community governance.

The implications for owners in general and the BOD in particular, are significant. From an owner's standpoint the obligation to disclose major defects to prospective buyers during the course of a sales transaction cannot be ignored. Although it may have formerly been a case of "ignorance is bliss", once a PCA has been performed and the current condition of the property is documented in the written report, it is no longer an option to simply ignore the subject of major condition defects and hope your prospective buyer doesn't notice anything which might become a deal killer.

Owners, all of whom are likely to become sellers at some point, must also be concerned with the impact of the PCA on their ability to secure mortgage financing. Either in the case of a sale, when you have located a willing buyer and the sale depends on their ability to obtain a mortgage; or in the case of an existing mortgage which an owner is trying to refinance.

In the current real estate market mortgage lenders have become much more prudent about performing their own due diligence and the condition of the properties which become collateral for the mortgages they extend is a paramount concern for the majority of these lenders. This is particularly true in the case of attached homes within common interest developments; and especially so in the case of condominiums with vertically oriented dwellings such as the mid-rise and high-rise communities prevalent throughout the State of Florida.

The implications of the new law for association boards are even more onerous. Not only must the board see to it an assessment is completed every fifth year, and the money be allocated to pay for the cost; but once the PCA has been completed the BOD must respond to any and all issues raised by the results of the report. Older properties in general, and high-rise buildings in particular, are likely to be faced with increased levels of spending for major repairs and renovation work which heretofore could have been avoided by simply deferring the needed maintenance until a future date.

Faced with a recurring five year timeline when the association's facilities will be subjected to renewed scrutiny as a result of the required inspection, it will become increasingly difficult to ignore the need for maintenance and repair funding. Responsible governance will demand the BOD maintain adequate reserve funds to pay for all maintenance and repair expenditures recommended in the PCA. In states such as Florida where the law requires replacement reserves be maintained only for specific components,

the need to conduct a formal reserve study in conjunction with the PCA will become an imperative of responsible governance.

In addition to the added responsibility and expense associated with conducting a PCA and reserve study, the added burden of overseeing major repair and restoration projects is certain to add significantly to the commitment incumbent in serving as a board member. The responsibility for designing and executing a comprehensive facilities maintenance and repair program should not be under-estimated by any association. The BOD role as a steward of the community, and their legal obligation to protect and enhance the value of every owner's investment will take on a new meaning in the context of this new legislation.

These responsibilities should not be taken lightly, and are not a burden which the BOD should attempt to pass off to their manager or management company. In fact, the responsibility to engage in long range planning for the purposes of maintaining property values and the quality of life within the community are the single most important duty of the BOD; and perhaps are the *one* duty which should not be delegated or subordinated to a manager or anyone else. Effective decision-making and results oriented governance require those making the decisions to be well informed about the issues, and knowledgeable with regard to solutions which will serve the interests of the community.

Absentee governance resulting from the delegation of duties to others is not a good approach to successfully achieving long term goals and objectives. Managers, committee members, consultants and advisors will come and go over the lifespan of every association. The role these individuals play in the association's operations over the long term, while vastly important in many respects, must be viewed as dynamic and temporary when taking the long view.

The role of the BOD on the other hand, is not temporary, rather it is static; meaning that it never goes away and it never changes. The board's responsibility as the governing council remains the same. As new members take over active board positions from retiring members, they inherit the decisions, obligations, responsibilities and liabilities of their predecessors. Good governance is governance which allows this process of transition and change to occur with minimal interruption and discord among the board and within the community. To effect such high quality community governance the BOD should approach their duties seriously with the goal being to achieve long lasting community stability and the highest quality of life possible for community members.

One of the best ways to achieve this type of long standing stability is to have a sound long range plan for managing and executing major maintenance and repair projects within the community. Nothing is more disruptive for most communities than the unwelcome news that a major repair or restoration project is needed and the association has no money to pay for the project.

In the current real estate market such news can easily render the homes within the community less appealing to prospective buyers, under the best of circumstances; and

under the worst case scenario such news can have a devastating impact on the community's market value. The best way to avoid this potential catastrophe is to plan ahead and implement the plan. As stated previously, this is likely to be the single most important duty the BOD will ever undertake over the life of the association.

The 2008 legislation requiring condition assessments will, in time, have a very favorable impact on the Florida market. In many respects this legislation will make it easier for associations, their boards and managers, to manage their long range planning efforts. By making this a mandatory requirement for the associations which are targeted by the law, it will level the playing field and force all effected communities to play by the same set of rules.

If you happen to live in a community which has recently completed their five year assessment; and has made the wise decision to obtain a credible reserve study from a qualified professional; with the result being, you are now being informed there will be an increase in the association dues to fund the association's reserve account, you may rest assured that this decision is based on sound advice from qualified experts.

You can also be assured the owners down the street who proudly proclaim their assessments to be the lowest on the block will soon be facing their own reality check; or in the absence of compliance on their part, they will have to face the ultimate arbiter of truth in the form of the marketplace.

As the market adapts to these changes in statute it is certain to become the case that associations which cannot document the condition of their facilities via current inspection reports, or their financial condition via a credible reserve study, will find the property values in their communities to be less than their counterparts who have chosen to comply with the new law and utilize the opportunity to improve the way they govern their association.

To summarize, the future of many Florida condominium associations will be changing as a result of HB 995. Well governed communities will be distinguished from their poorly run counterparts by having taken the necessary steps to comply with the law; with the resulting condition assessment accompanied by a professionally prepared reserve study, the combination of which will result in a fiscally responsible long range financial plan by which the association will manage their capital improvement and replacement program.

Such communities will enjoy a market advantage by being perceived (and rightfully so) as better governed, better managed, and better prepared to remain viable and sustainable well into the future. This will make mortgage money easier to come by and more affordable, in addition to offering a better quality of life for the owners who choose to make these communities their home.

For more information about obtaining a property condition assessment and a reserve study for your association please contact Larry Vanderhoof, Assessment Coordinator for Capital Reserve Consultants, LLC. Mr. Vanderhoof may be reached at: 727-329-8463.