SPACE COAST CONDOMINIUMS ASSOCIATION, INC.
(CONDOMINIUMS • COOPERATIVES • HOMEOWNERS' ASSOCIATIONS • TIME SHARES)
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We are an organization that provides educational and support services to condominium, homeowners, cooperative, and timeshare owners associations located primarily in Brevard County. Currently we have 273 member associations representing 20,099 residential units.

Two massive bills are currently before the Florida legislature, HB 1397 and it Senate companion, SB 2302. These bills impact the many thousands of condominium, cooperative, home owners, and mobile home park associations throughout the state; incidentally a group that collectively represents more than half of this state's voters. While there are some good provisions in the bills there are so many others that are deeply flawed that we urge you to vote against it should it come before a committee upon which you serve or come to the floor.

The thousands of community association boards of administration throughout the state are mini-democracies. Because of their own agendas some want to remove local control and micromanage from the big government level while trying to paint these democratic bodies as hot beds of evil. That is simply not the case. These bills represent that kind of intrusive approach.

We apologize for the length of this letter, but these bills are huge and their bad provisions are extremely dangerous. The remainder of this letter describes just some of the provisions of these bills that we feel are deeply flawed. Because it is the most recent expression of these bills available to us as this letter is written, references are to the Committee Substitute (CS) of HB 1397 voted out of the House Civil Justice & Courts Policy Committee and filed on Wednesday, April 01, 2009.

1. Section 1 of the CS gives the Division of Florida Condominiums, Timeshares, and Mobile Homes complete, unfettered access — with no due process safeguards — to the premises, books and records of associations regulated by the Division, as well as to the books and records of any community association manager or management firm.

   Apart from possible constitutional issues, this provision just invites abuse. In the 1990s the Division's predecessor, the Bureau of Condominiums, used any complaint as an opportunity to rummage through all the records to find every conceivable violation and then fined the association whatever the traffic would bear. The Bureau was punitive and did little to educate and help associations learn to manage properly. As a result associations were reluctant to call on the Bureau for help. It took years to change the Bureau, now the Division, to educate and

work to help associations understand and apply the applicable laws. We would hate to see a return to the previous approach, especially as community association legislation becomes bigger and harder for laypersons who serve on local administrative boards to understand with every passing year.

2. Still worse, section 1 of the CS would also set up a new, armed police force within the division with the full powers of other Florida law enforcement officers and authority to enforce **all** of the laws of the state of Florida, not just laws applicable to community associations. This is a totally unnecessary and expensive change. The Division already has adequate civil remedies available to enforce violations of community association laws and criminal violations, which occur in a fairly small percentage of cases, can be addressed by local authorities. While the CS only asks for funding for 5 FTE for this new police force this year, it would surely grow year by year.

3. FS § 468.436 gives the Florida Department of Business and Professional Regulation authority to discipline Florida community association managers who commit various listed offenses. It also gives the Department a range of punishment options, up to, and including, revocation of license. The CS would override the Department's discretion and require revocation of license on a fifth offense, or on the third offense involving violation of the same ground for discipline.

   There is no question that bad actors should be punished and that persistent bad actors should lose their right to practice. However we are concerned about completely removing the Department's discretion. Loss of license could occur even with the stated number of purely technical and relatively minor violations. This is simply too draconian. It is better to let the Department continue to let the punishment fit the crime.

4. Another prime example of the micromanagement approach is found in sections 4, 14, and 33 of the CS. They take away from boards of administration the right to determine the time and place of their own meetings and require that owners set board meeting schedules at owners' meetings, usually held only once a year. Board meetings are needed when decisions are needed and problems are to be solved. The board needs the flexibility to call board meetings when they are needed. Managing an association is big business and represents a challenge for the directors. They should not be fettered by requirements such as this one. There are already procedures in place that require adequate advance notice to owners about when and where board meetings are to be held and if owners feel that more control is necessary they can accomplish that locally through amending the association's bylaws or recalling board members who act inappropriately. This intrusive step is unnecessary.

5. Section 4 of the CS also places a number of new restrictions on expenditures that community associations can make. These include the rather vague prohibition against any expenditure "that does not relate to the purposes for which the association is organized," a prohibition against political campaign contributions, and barring any charitable contribution to any organization "if the association does not receive a direct benefit from the organization." (So much for community support.)

   But there is something far, far worse. It also bars "**any** expenditure in order to retain a person or firm for the purposes of lobbying." This is so broadly written that it could well cut off the voices of all Florida community associations that attempt to inform our legislature of their views about good and bad legislation and dry up funding for association advocacy and educational groups like Space Coast Condominiums Association, Florida Legislative Alliance, Community Association Leadership Lobby, the Community Advocacy Network, the Alliance of Delray, and others. It would even bar such innocuous groups as Property Owners Associations which have individual condominiums as their members and who represent them regarding local government issues. We believe that it is also clearly unconstitutional, attempting to stifle freedom of speech and citizens' rights to address their government. There is little doubt that such a provision, if passed, would lead to massive litigation.

6. Changes were made to FS 718.112(12)(2)(d) last year to limit staggered board member terms to 2 years. This, in effect, required that associations with different, or no, staggered terms in their documents go to the considerable expense of amending their documents if they wanted staggered terms. Even associations that already had two-year terms in their documents had to get the vote of members to follow them! Staggered terms are very important because they help to assure that at least some of the members of administrative boards have experience in the very difficult job of managing a community association under Florida's extremely complex community association law.

   Many associations whose annual meetings have occurred since have already gone through all those procedure and have some members now elected to serve two-year terms in compliance with last year's legislative changes. Under § 5 of the CS, ALL terms would expire at the first annual meeting after July 1, 2009, and associations would have to set up procedures to restart their 2-year staggered term provisions yet again. This is a totally unnecessary and unwarranted intrusion into an area that is just now regaining some stability because of changes made last year.

7. Florida community associations face extremely difficult situations following hurricanes and other disasters. Association representatives must often act very quickly to get things done to protect lives, secure the property, prevent further damage, and attempt to restore essential services. It may be weeks before board

members scattered by evacuations can return and before anything like normal communications can be established. An important change last year was to add FS 718.1265 to give associations the emergency powers to cut through red tape and do what they need to do to get these things done to stabilize things in an emergency.

Under section 9 of the CS, unless 20% or more of units are uninhabitable the emergency powers will last only during the term of the Governor's executive order declaring the state of emergency. The Governor's declaration of an emergency can, and often does, expire in a matter of hours. This is simply not adequate to get done what must be done to protect property and lives.

8. Section 12 of the CS makes a number of changes to § 718.50151, which establishes the Community Association Study Council (which would be a replacement for the current "Community Association Living Study Council"). This body makes recommendations to the legislature about condominium, home owners, and cooperative community law. The CS would bar the appointment of lobbyists to the council, BUT ONLY LOBBYISTS REPRESENTING COMMUNITY ASSOCIATIONS. This is clearly one of several appalling attempts in this bill to silence the voices of community associations — the voices of those who know the most about association management and the struggles their local administrative bodies face everyday.

Again we thank you for your attention and urge you to vote against these unfortunate bills.

Very truly yours,

Roger Kesselbach

Roger Kesselbach, President

Space Coast Condominiums, Inc.