

2022 Pre-Legislative Session Issues

Priorities

Construction Defects

Over the past several legislative sessions, FHBA has attempted to pass modifications to the State’s “Right to Cure” statute – Chapter 558. Last year’s legislation received hearings in both Chambers. Passing Senate Judiciary 9-1, and the House Criminal Justice Subcommittee and Regulatory Reform Committee, 10-8 and 9-8. FHBA is in the process of meeting with other interested parties in order to craft an industry consensus approach. Subjects to consider:

- Defining material violation (Ch. 553).
- Requiring those who take a cause of action to cite the specific building code alleged to have been violated.
- Requiring a notice of claim to be made under oath.
- Requiring that the claim state a specific location of the alleged defect.
- Providing that the claimant provides the contractor with property maintenance records; and
- Providing that if a claimant does not allow a contractor/home builder an opportunity to inspect the defect in the current statutory timeframe, then the claim for damages is rejected.
- Requiring claimant to exhaust warranty options prior to seeking recourse under Ch. 558.
- Requiring specific detail surrounding defect and some visible proof of issue.
- Requiring claimant to attest that they have personal knowledge of the alleged defect.
- Requiring notice to mortgagee/assignee of any 558 claim that resulted in a monetary settlement, the nature of the defect, the outcome of the claim, whether the defect was repaired, etc.
- Reducing statute of repose from 10 years to 7 years.
- Repealing Chapter 558.

Allowing Third Party Providers to Inspect Septic Tanks

Third Party Providers are successfully and safely utilized for all types of inspections. However, private providers are currently not allowed for Onsite Sewage Treatment and Disposal Systems (OSTDS). Modeling after the current third-party provider statute, the following provisions would apply:

- Approval of owner to use third-party provider.
- Reduced local government fees.
- Third Party Provider must be a master septic tank contractor or employee of one.
- A professional engineer who passed OSTDS Accelerate Certification, or an employee of a professional engineer who is OSTDS Accelerated Certified.
- The Department must be noticed in advance that a third-party provider is being used; and
- Department may audit third-party providers, up to four times per month.

Florida Building Code Timing

Implementation of the 7th Edition (2020) Florida Building Code was nearly disastrous as the energy software was not ready for industry testing until early November (*effective date of the code: December 31, 2020*). Fortunately, the energy updates were minimal, and the software did not require a major re-write. The Florida Fire Prevention Code also necessitated a last-minute change, prior to its publishing. The lesson: the six-month delay between final adoption and the implementation should not begin until all “pieces and parts” of the code are finalized. Matters which should be finalized prior to the six-month delay and a singular effective date:

- *Florida Building Code; Florida Fire Prevention Code; Energy Conservation Code Software; and any items as determined by the Florida Building Commission*

At the request of multiple building commissioners, the effective date should not be centered around the first of the year. When the code is effective around the first of the year, permit delays are exacerbated due to the flood of applications prior to the Holidays.

Issues to Watch

404 Assumption

- Issues related to the State’s assumption of the 404 program (Section 404, Clean Water Act). Which regulates the discharge of dredged or fill material into waters of the U.S.
- Background: On December 22, 2020, the U.S. Environmental Protection Agency (EPA) published their approval of Florida’s State 404 Program in the Federal Register, and the Florida Department of Environmental Protection (DEP) began administering the State 404 Program on that date.

Refund Permit Fees

Prorate and return to the builder. RE: Situations were a building pulled a permit and then realized they could not move forward with the project. Many jurisdictions have ordinances that state they cannot refund fees.

Florida Fire Prevention Code

- Ensure that written plans approved by the Fire Marshall cannot be reversed.
- Enhanced radio signal mandates for all high-rises.
 - Radio signal amplifiers already costing high-rise condos and commercial properties hundreds of thousands of dollars.
 - Address radio signal strength minimum requirements (two-way radio communication enhancement systems and alternatives.)
- Ensure fire districts comply with set timeframes for the purposes of the plan review process.
- The law currently has no punishment for districts that purposely delay.
- If districts are unable to meet expected timelines, they would lose the ability to conduct further reviews and the process would not fall to the local jurisdiction that issued the permit.

Construction Fraud

- Several groups continue to seek some statutory changes to address construction fraud. Once we have proposals in hand, we can then evaluate for an FHBA position.

Multi-Family | Condominiums

Considering the recent tragedy in Miami, a litany of legislation and additional regulation will be proposed during the 2022 Legislative Session. FHBA is encouraging those seeking additional rules and regulations to allow the forensic studies to be completed first and then develop solutions based upon the findings of those reports. Issues which could be forthcoming:

- Mandatory reserves for condominium associations.
- Moving from 40-year re-certification inspections to 20-years.
- Code enhancements and/or mandates on waterfront properties.
- Ensuring those licensed to build high-rises have the requisite experience, i.e., eliminate self-attestation.

- Ensure that settlements for construction defects are used to repair alleged defects.

Clarification of HB 735, Preemption of Local Occupational Licensing

- Seeking regulatory or legislative opportunities to clarify provisions of HB 735, i.e., interior remodeling through the CILB – declaratory statements.
- HB 735 (2021) expressly preempt the licensing of occupations to the State of Florida. The new statute specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the CILB.

Property Rights & Comprehensive Plan Clarification through the Department of Economic Opportunity (DEO)