

2008 SESSION –SUMMARY OF RELEVANT LEGISLATION

The following legislation is not listed in any particular order of importance, but deals with subject matter that was monitored by the industry. Each set of changes to existing law is explained as arising from the bill that passed.

So, for example, the Division of Florida Land Sales was eliminated as an entity and the new state agency name was changed to the "Division of Florida Condominiums, Timeshares and Mobile Homes." That bill also dealt with mold contracting and exempted mobile home dealers. It also provided an exemption from the general contractors statute for the seller of a modular home, a change that allows direct contracting with the property owner for the purchase of a home and improvement of the real property. That change makes legal what was once illegal, and made legal a frequently used marketing and sales tool. The other impact is that the law allows for sales tax to be paid on the purchase price of the home, not the selling price as the home is sold as real property to the owner of the land. Since all of these matters are in one bill, they are set forth under that bill number. In the last part of this memorandum, the actual language used is set forth.

<p>DBPR; Mold; Contracting Chapter 2008-240, Laws of Florida (CS/CS/HB 601) Effective July 1, 2008 except as otherwise provided.</p>

The name of the DBPR Division that regulates manufactured housing communities has changed to: Division of Florida Condominiums, Timeshares, and Mobile Homes.

Bill provides an exemption for persons or businesses acting within the scope of their license (including mobile home dealer licenses under Chapter 320, Florida Statutes) are exempt from the requirements of licensure for mold-related services unless they hold themselves out for hire to the public as a certified or registered mold assessor or remediator or words to that effect.

The definition of "contracting" under section 489.105, Florida Statutes, is revised to exempt an individual or business entity that offers to sell or sells manufactured or factory-built building that will be completed on site on property on which either party to a contract has any legal or equitable interest. This definition solves a major problem with the contracting statute that prohibited a manufacturer or dealer from contracting to improve real property. This exemption also allows the dealer or manufacturer to sell the home without charging sales tax if the home is going to be installed on the property as part of the contract for sale.

<p>Landlord-Tenant 2008-131, Laws of Florida (HB 1489) Effective June 10, 2008</p>

This new law revises Chapter 83, Florida Statutes, the Landlord-Tenant Act, and authorizes an "early termination fee" for breach of a lease by the tenant who vacates a dwelling before the end of the rental agreement term. This fee would not include unpaid rent and other accrued charges, charges for damages, or charges associated with any settlement.

The bill provides a choice of remedies by the tenant upon breach or early termination of the lease. The tenant may elect an early termination fee if that amount does not exceed 2 months' rent. This option only applies if the tenant has signed a separate addendum to the rental agreement indicating acceptance of the liquidated damages or early termination fee. The new law specifies language for the addendum.

Public Swimming Pools**CS/CS/HB 679 - This bill was vetoed by the Governor.**

This legislation was vetoed by the Governor on June 30, 2008. This legislation would have exempted pools serving 32 parcels governed by a homeowners' association which are not operated as a public lodging establishment from supervision under Chapter 514, Florida Statutes, Public Swimming and Bathing Facilities, except as to water quality.

This legislation was vetoed by the Governor on June 30, 2008. This legislation would have exempted pools serving 32 parcels governed by a homeowners' association and whose recorded documents prohibit the rental/sublease of the units for less than 60 days from supervision under Chapter 514, Florida Statutes, Public Swimming and Bathing Facilities, after receiving initial operating permit.

Public Swimming Pools - Drains**CS/CS/HB 909 - This bill died in committee.**

This legislation would have mandated that each public swimming pool and public spa having a single main drain other than an unblockable drain must be equipped with one or more of the specified anti-entrapment devices (safety vacuum release system, suction-limited vent system, gravity drainage system with collector tank, automatic pump shut-off system, device that disables the drain). A violation of the new law would have constituted a misdemeanor of the second degree. The legislation would have required a lockable cover for a hot tub.

Clotheslines and other Energy Devices**2008-191, Laws of Florida (CS/HB 697)****Effective July 1, 2008.**

The new law revises section 163.04(2), Florida Statutes, an existing law that encourages the use of solar collectors, clotheslines, or other energy devices based on renewable resources within communities. **The new law revises certain existing language, possibly resulting in a broader application of this law. It is unclear whether this law applies to mobile home communities; arguably, it could apply to mobile home communities. FMHA's general counsel is researching the legislative process to determine the intent of these changes. There were two bills that adopted the same language, but legislative intent appears different for that amendment.**

The new law revises section 553.36, Florida Statutes, regarding construction standards for manufactured buildings, to add the terms "modular building" and "factory-built building" to the definition of "manufactured building" so that the three terms have the same definition and description. The definition does not apply to mobile homes. This amendment resolves an interpretation problem by the Department of Revenue over whether a factory built building had to be complete upon construction or could be fabricated from sections at the site of erection or construction.

The new law revises section 553.37, Florida Statutes, regarding construction or modification of manufactured buildings. The new law requires that the Florida Building Commission adopt minimum inspection criteria and that the Department of Community Affairs adopt rules to govern approval of third-party plan review and inspection agencies and those who perform them. The new law requires that every manufactured building, after the effective of the Florida Building Code, must bear a "manufacturer's data plate" before installation, except as to a custom or one-of-a-kind manufactured building. It is no longer required that manufacturers have only one inspection agency and only one plan review agency responsible for inspection. The Department

of Community Affairs must develop an insignia to be affixed to all newly constructed buildings prior to leaving the plant and the Department may charge a fee for issuing such insignias.

The new law revises section 553.415, Florida Statutes, regarding factory-built school buildings, to require a new insignia that must be affixed to new factory-built school buildings and certain existing factory-built school buildings.

The new revises section 553.74, Florida Statutes, regarding the Florida Building Commission, such that the chair of the commission will no longer serve at the pleasure of the Governor but will serve for 4 years along with all other appointments.

Light-frame Truss-type Construction
2008-192, Laws of Florida (HB 727)
Effective July 1, 2008.

The owner of any multi-unit residential structure that is of light-frame truss-type construction must install special signage approved by the Fire Marshal to advise fire and emergency operations personnel concerning the light-frame truss-type construction. This will apply to certain modular construction, including duplex or quadruplex units.

Display of Flags
2008-45, Laws of Florida (SB 1378)
Effective July 1, 2008

Homeowners Associations law has gone through a remarkable transition since Chapter 720 was adopted. S. 720.304 – Removes the limitation of flying an armed forces flag ONLY on certain holidays and adds the “POW-MIA flag” as an additional authorized flag, regardless of any covenants, restriction, bylaws, rules, or requirements of the association.

Authorizes a homeowner to erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner’s real property and fly both a United States flag and an armed forces or State of Florida flag if the additional flag is no larger than the United States flag.

723.075 - Mobile home owners’ associations – if a portion of the park contains concrete block homes occupying lots under 99-year leases, those homeowners may be part of the association and may serve on the board of directors of the association based on the percentage of lots containing concrete block homes to the total number of mobile home lots in the park.

Ad Valorem Property Taxes
Chapter 2008-197, Laws of Florida (CS for HB 909)
Effective September 1, 2008

The new law revises section 193.011, Florida Statutes, regarding factors to consider in deriving just valuation. One of the factors, highest and best use, is revised to require that the appraiser take into consideration the legally permissible use of the property and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use.

The new law revises section 194.011, Florida Statutes, regarding assessment notices and objections, to require that the Department of Develop a uniform policies and procedures manual to be used by value adjustment board, magistrates and taxpayers in proceedings.

The new revises section 194.015, Florida Statutes, regarding the value adjustment board, adding two citizen members to the board who are not members or employees of any taxing

authority and do not represent any property owner in any review of property taxes. Any quorum of the board must include one citizen member. The board must appoint private counsel to represent the board such private attorney may not represent the property appraiser, tax collector, any taxing authority, or any property owner for any pending review of property taxes.

A new "intent" section is added by the new law. The new section states that it is the Legislature's intent that no taxpayer shall have the burden of proving that the appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment and that any case law published since 1997 that applies the "every-reasonable-hypothesis" burden of proof is rejected.

County Court Proceedings Chapter 2008-111, Laws of Florida (HB 1790) Effective July 1, 2008
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This statutory change will make the eviction and collection process significantly more expensive in Florida.

The new law revises section 34.041, Florida Statutes, regarding filing fees for any civil action, suit or proceeding in county court. The filing fee for claims of more than \$500 but no more than \$2500 have been changed from \$150 to \$170. The filing fee for claims of more than \$2500 have been changed from \$250 to \$295. The filing fee for a removal of tenant action has been changed from \$75 to \$265.

The new law also provides that any party who files a pleading in county court for affirmative relief by cross-claim, counterclaim, or third-party complaint, or who files a notice of cross – appeal or notice of joinder or motion to intervene, shall pay a filing fee of \$295 if the relief sought by such is more than \$2500. In addition, the clerk of the court will now collect a service charge of \$10 for issuing a summons – the fee shall be assessed against the party seeking to have the summons issued.

EXCERPTS

DBPR; Mold; Contracting Chapter 2008-240, Laws of Florida (CS/CS for HB 601) Effective July 1, 2008 unless otherwise provided.

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Section 8. Paragraphs (d) and (j) of subsection (2) of section 20.165, Florida Statutes, are amended to read:

20.165 Department of Business and Professional Regulation.--There is created a Department of Business and Professional Regulation.

(2) The following divisions of the Department of Business and Professional Regulation are established:

(d) Division of Florida ~~Land Sales~~, Condominiums, Timeshares, and Mobile Homes.

* * *

Section 24. Effective July 1, 2010, paragraph (d) of subsection (1) and paragraph (d) of subsection (2) of section 468.841, Florida Statutes, are amended to read:

468.841 Exemptions.—

(1) The following persons are not required to comply with any provisions of this part relating to mold assessment:

* * *

(d) Persons or business organizations acting within the scope of the respective licenses required under chapter 471, part I of chapter 481, chapter 482, ~~or~~ chapter 489, or part XV of this chapter, are acting on behalf of an insurer under part VI of chapter 626, or are persons in the manufactured housing industry who are licensed under chapter 320, except when any such persons or business organizations hold themselves out for hire to the public as a “certified mold assessor remediator,” “registered mold assessor remediator,” “licensed mold assessor remediator,” “mold assessor remediator,” “professional mold assessor remediator,” or any combination thereof stating or implying licensure under this part.

(2) The following persons are not required to comply with any provisions of this part relating to mold remediation:

(d) Persons or business organizations that are acting within the scope of the respective licenses required under chapter 471, part I of chapter 481, chapter 482, ~~or~~ chapter 489, or part XV of this chapter, are acting on behalf of an insurer under part VI of chapter 626, or are persons in the manufactured housing industry who are licensed under chapter 320, except when any such persons or business organizations hold themselves out for hire to the public as a “certified mold remediator assessor,” “registered mold remediator assessor,” “licensed mold remediator assessor,” “mold remediator assessor,” “professional mold remediator assessor,” or any combination thereof stating or implying licensure under this part.

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Section 30. Subsection (6) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(6) “Contracting” means, except as exempted in this part, engaging in business as a contractor and includes, but is not limited to, performance of any of the acts as set forth in subsection (3) which define types of contractors. The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.

However, the term “contracting” shall not extend to an individual, partnership, corporation, trust, or other legal entity that offers to sell or sells completed residences on property on which the individual or business entity has any legal or equitable interest, or to the individual or business entity that offers to sell or sells manufactured or factory-built buildings that will be completed on site on property on which either party to a contract has any legal or equitable interest, if the services of a qualified contractor certified or registered pursuant to the requirements of this chapter have been or will be retained for the purpose of constructing or completing such residences.

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Section 76. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2008.

**Landlord-Tenant
Chapter 2008-131, Laws of Florida
(HB 1489) Effective June 10, 2008**

Section 1. Subsection (7) of section 83.43, Florida 20 Statutes, is amended, and subsection (17) is added to that 21 section, to read:

83.43 Definitions.--As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(7) "Rental agreement" means any written agreement, including amendments or addenda, or oral agreement if for a less duration of less than 1 year, providing for use and occupancy of premises.

(17) "Early termination fee" means any charge, fee, or forfeiture that is provided for in a written rental agreement and is assessed to a tenant when a tenant elects to terminate the rental agreement, as provided in the agreement, and vacates a dwelling unit before the end of the rental agreement. An early termination fee does not include:

(a) Unpaid rent and other accrued charges through the end of the month in which the landlord retakes possession of the dwelling unit.

(b) Charges for damages to the dwelling unit.

(c) Charges associated with a rental agreement settlement, release, buy-out, or accord and satisfaction agreement.

Section 2. Section 83.595, Florida Statutes, is amended to read:

83.595 Choice of remedies upon breach or early termination by tenant.--

(4) If the tenant breaches the rental agreement lease for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(1)(a) ~~Treat the rental agreement lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; or~~

(2)(b) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rent ~~rental~~ stipulated to be paid under the rental lease agreement and what, in good faith, the landlord is able to recover from a reletting. If the landlord retakes possession, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rent received by the landlord as a result of the reletting must be deducted from the balance of rent due from the tenant. For purposes of this subsection, the term "good faith in attempting to relet the premises" means that the landlord uses at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to rent other similar rental units but does not require the landlord to give a preference in renting the premises over other vacant dwelling units that the landlord owns or has the

responsibility to rent; or

(3)(e) Stand by and do nothing, holding the lessee liable for the rent as it comes due; or-

(4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months'

rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days' notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by

signing a separate addendum to the rental agreement containing a provision in substantially the following form:

[] I agree, as provided in the rental agreement, to pay \$ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement, and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

[] I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

(a) In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

(b) This subsection does not apply if the breach is failure to give notice as provided in s. 83.575.

~~(2) If the landlord retakes possession of the dwelling unit for the account of the tenant, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rentals received by the landlord as a result of the reletting shall be deducted from the balance of rent due from the tenant.~~

~~For purposes of this section, "good faith in attempting to relet the premises" means that the landlord shall use at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to lease other similar rental units but does not require the landlord to give a preference in leasing the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent.~~

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 10, 2008.

**Clotheslines and other Energy Devices
Chapter 2008-191, Laws of Florida
(CS/HB 697) Effective July 1, 2008**

Section 1. Subsection (2) of section 163.04, Florida Statutes, is amended to read:

163.04 Energy devices based on renewable resources.—

~~(2) A deed restriction, covenant, declaration, or similar binding agreement may not~~ No deed restrictions, covenants, or similar binding agreements running with the land shall prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restriction, covenant, declaration, or binding agreement restrictions, covenants, or binding agreements. A property owner may not be denied permission to install solar collectors or other energy devices ~~based on renewable resources~~ by any entity granted the power or right in any deed restriction, covenant, declaration, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings and within the boundaries of a condominium unit not exceeding three stories in height. ~~For purposes of this subsection,~~ Such entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south if provided that such determination does not impair the effective operation of the solar collectors.

* * *

Section 5. Subsection (13) of section 553.36, Florida Statutes, is amended to read:

553.36 Definitions.—The definitions contained in this section govern the construction of this part unless the context otherwise requires.

(13) “Manufactured building”, “modular building,” or “factory-built building” means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured in manufacturing facilities for installation or erection as a finished building or as part of a finished building, which shall include, but not be limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a manufacturer certified in conformance with this part. This part does not apply to mobile homes.

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Section 6. Section 553.37, Florida Statutes, is amended to read:

553.37 Rules; inspections; and insignia.—

(1) The Florida Building Commission shall adopt within the Florida Building Code requirements for construction or modification of manufactured buildings and building modules, to address:

(a) Submittal to and approval by the department of manufacturers’ drawings and specifications, including any amendments.

(b) Submittal to and approval by the department of manufacturers’ internal quality control procedures and manuals, including any amendments.

(c) Minimum inspection criteria. Procedures and qualifications for approval of third-party plan review and inspection entities and of those who perform inspections and plan reviews.

(2) The department shall adopt rules to address:

(a) Procedures and qualifications for approval of third-party plan review and inspection agencies and of those who perform inspections and plan reviews.

~~(b)(d)~~ Investigation of consumer complaints of noncompliance of manufactured buildings with the Florida Building Code and the Florida Fire Prevention Code.

~~(c)(e)~~ Issuance, cancellation, and revocation of any insignia issued by the department and procedures for auditing and accounting for disposition of them.

~~(d)(f)~~ Monitoring the manufacturers’, inspection agencies’ entities’, and plan review agencies’ entities’ compliance with this part and the Florida Building Code. Monitoring may include, but is not limited to, performing audits of plans, inspections of manufacturing facilities and observation of the manufacturing and inspection process, and onsite inspections of buildings.

~~(e)(g)~~ The performance by the department of any other functions required by this part.

~~(3)(2)~~ After the effective date of the Florida Building Code, no manufactured building, except as provided in subsection ~~(12)~~ ~~(44)~~, may be installed in this state unless it is approved and bears the insignia of approval of the department and a manufacturer’s data plate. Approvals issued by the department under the provisions of the prior part shall be deemed to comply with the requirements of this part.

* * *

~~(9)(8)~~ The department may delegate its enforcement authority to a state department having building construction responsibilities or a local government. The department may delegate its plan review and inspection authority to one or more of the following in any combination:

(a) A state department having building construction responsibilities;_;

(b) A local government;_;

(c) An approved inspection agency;_;

(d) An approved plan review agency;_;

(e) An agency of another state.

~~(9)~~ ~~If the commission delegates its inspection authority to third-party approved inspection agencies, manufacturers must have one, and only one, inspection agency responsible for inspection of a manufactured building, module, or component at all times.~~

(10) ~~The department shall develop an insignia to be affixed to all newly constructed buildings by the manufacturer or the inspection agency prior to the building leaving the plant. The department may charge a fee for issuing such insignias. Such insignias shall bear the department's name, the state seal, an identification number unique to that insignia, and such other information as the department may require by rule. If the commission delegates its inspection authority to third-party approved plan review agencies, manufacturers must have one, and only one, plan review agency responsible for review of plans of a manufactured building, module, or component at all times.~~

(11) ~~The department shall by rule develop minimum criteria for manufacturer's data that must be affixed to all newly constructed buildings by the manufacturer prior to the building leaving the plant. Custom or one-of-a-kind prototype manufactured buildings shall not be required to have state approval but must comply with all local requirements of the governmental agency having jurisdiction at the installation site.~~

(12) Custom or one-of-a-kind prototype manufactured buildings shall not be required to have state approval but must comply with all local requirements of the governmental agency having jurisdiction at the installation site.

Section 8. Subsections (11) and (12) of section 553.415, Florida Statutes, are amended to read:

553.415 Factory-built school buildings.—

(11) The department shall ~~require that an insignia bearing the department's name and state seal and a manufacturer's data plate develop a unique identification label to be affixed to all newly constructed factory-built school buildings and existing factory-built school buildings which have been brought into compliance with the standards for existing "satisfactory" buildings pursuant to chapter 5 of the Uniform Code for Public Educational Facilities, and after March 1, 2002, the Florida Building Code. The department may charge a fee for issuing such insignias labels. The manufacturer's data plate~~ Such labels, bearing the department's name and state seal, shall, at a minimum, contain:

* * *

Section 11. Subsections (1) and (2) of section 553.74, Florida Statutes, are amended to read:

* * *

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and shall be located within the Department of Community Affairs for administrative purposes. Members shall be appointed by the Governor subject to confirmation by the Senate. The commission shall be composed of 25 23 members, consisting of the following:

* * *

(n) One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

* * *

(2) All appointments shall be for terms of 4 years, ~~except that of the chair who shall serve at the pleasure of the Governor.~~ Each person who is a member of the Board of Building Codes and Standards on the effective date of this act shall serve the remainder of their term as a member of the Florida Building Commission. ~~Except for the chair, newly created positions on the Florida Building Commission shall be appointed after February 1, 1999. A vacancy shall be filled for the remainder of the unexpired term.~~ Any member who shall, during his or her term, cease to meet the qualifications for original appointment, through ceasing to be a practicing member of the profession indicated or otherwise, shall thereby forfeit membership on the commission.

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[THIS PROVISION APPLIES ONLY TO CONDOMINIUMS:]

Section 26. Subsection (6) is added to section 718.113, Florida Statutes, to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters.—

(6) Notwithstanding the provisions of this section or the governing documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient

Section 28. This act shall take effect July 1, 2008.

**Light-frame Truss-type Construction
Chapter 2008-192, Laws of Florida
(CS/HB 727) Effective July 1, 2008**

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Section 5. Section 633.027, Florida Statutes, is created to read:

633.027 Buildings with light-frame truss-type construction; notice requirements; enforcement.—

(1) The owner of any commercial or industrial structure, or any multiunit residential structure of three units or more, that uses light-frame truss-type construction shall mark the structure with a sign or symbol approved by the State Fire Marshal in a manner sufficient to warn persons conducting fire control and other emergency operations of the existence of light-frame truss-type construction in the structure.

(2) The State Fire Marshal shall adopt rules necessary to implement the provisions of this section, including, but not limited to:

(a) The dimensions and color of such sign or symbol.

(b) The time within which commercial, industrial, and multiunit residential structures that use light-frame truss-type construction shall be marked as required by this section.

(c) The location on each commercial, industrial, and multiunit residential structure that uses light-frame truss-type construction where such sign or symbol must be posted.

(3) The State Fire Marshal, and local fire officials in accordance with s. 633.121, shall enforce the provisions of this section. Any owner who fails to comply with the requirements of this section is subject to penalties as provided in s. 633.161.

Section 6. This act shall take effect July 1, 2008.

**Display of Flags
Chapter 2008-45, Laws of Florida
(CS/SB 1378) Effective July 1, 2008**

Section 1. Subsection (2) of section 720.304, Florida Statutes, is amended to read:

720.304 Right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.—

(2)(a) Any homeowner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and ~~one on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day~~ may display in a respectful manner portable, removable official flag flags, in a respectful manner, not larger than 4 1/2 feet by 6 feet, which ~~represents~~ represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard,

or a POW-MIA flag, regardless of any covenants, restrictions, bylaws, declaration rules, or requirements of the association dealing with flags or decorations.

(b) Any homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The homeowner may further display in a respectful manner from that flagpole, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, one official United States flag, not larger than 4 1/2 feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag.

(c) This subsection applies to all community development districts and homeowners' associations, regardless of whether such homeowners' associations are authorized to impose assessments that may become a lien on the parcel.

Section 2. Subsection (3) is added to section 723.075, Florida Statutes, to read:

723.075 Homeowners' associations.—

(3) Notwithstanding subsection (1), if a portion of the park contains concrete block homes occupying lots under 99-year leases, those homeowners may be part of the association and may serve on the board of directors of the association based on the percentage of lots containing concrete block homes to the total number of mobile home lots in the park.

Section 3. This act shall take effect July 1, 2008.

<p>Ad Valorem Property Taxes Chapter 2008-197, Laws of Florida (CS for HB 909) Effective September 1, 2008</p>

Section 1. Section 193.011, Florida Statutes, is amended to read:

193.011 Factors to consider in deriving just valuation.—In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

* * *

Section 3. Subsection (5) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(5)(a) The department shall by rule prescribe uniform procedures for hearings before the value adjustment board which include requiring:

1.(a) Procedures for the exchange of information and evidence by the property appraiser and the petitioner consistent with s. 194.032.; and

2.(b) That the value adjustment board hold an organizational meeting for the purpose of making these procedures available to petitioners.

(b) The department shall develop a uniform policies and procedures manual that shall be used by value adjustment boards, special magistrates, and taxpayers in proceedings before value adjustment boards. The manual shall be made available, at a minimum, on the department's website and on the existing websites of the clerks of circuit courts.

Section 4. Section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.—There is hereby created a value adjustment board for each county, which shall consist of two ~~three~~ members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairperson, and one member ~~two members~~ of the school board as elected from the membership of the school board, and two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district. A citizen member may not be a member or an employee of any taxing authority, and may not be a person who represents property owners in any administrative or judicial review of property taxes. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. Any three members shall constitute a quorum of the board, except that each quorum must include at least one member of said governing board, ~~and~~ at least one member of the school board, and at least one citizen member and no meeting of the board shall take place unless a quorum is present. Members of the board may receive such per diem compensation as is allowed by law for state employees if both bodies elect to allow such compensation. The clerk of the governing body of the county shall be the clerk of the value adjustment board. ~~The office of the county attorney may be counsel to the board unless the county attorney represents the property appraiser, in which instance~~ The board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board shall take place unless counsel to the board is present. ~~However, counsel for the property appraiser shall not be required when the county attorney represents only the board at the board hearings, even though the county attorney may represent the property appraiser in other matters or at a different time.~~ Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.

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Section 7. It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment. It is the further intent of the Legislature that any cases of law published since 1997 applying the every-reasonable-hypothesis burden of proof to uphold the property appraiser's assessment are expressly rejected to the extent that they are interpretive of legislative intent.

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Section 10. This act shall take effect September 1, 2008.

**County Court Proceedings
Chapter 2008-111, Laws of Florida (HB 1790)
Effective July 1, 2008**

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Section 11. Subsection (1) of section 34.041, Florida Statutes, is amended to read:

34.041 Filing fees.—

(1)(a) Upon the institution of any civil action, suit, or proceeding in county court, the party shall pay the following filing fee, not to exceed:

1. For all claims less than \$100 \$50.
2. For all claims of \$100 or more but not more than \$500 \$75.
3. For all claims of more than \$500 but not more than \$2,500 ~~\$170~~ ~~\$150~~.
4. For all claims of more than \$2,500 ~~\$295~~ ~~\$250~~.
5. In addition, for all proceedings of garnishment, attachment, replevin, and distress ~~\$85~~ ~~\$75~~.
6. For removal of tenant action ~~\$265~~ ~~\$75~~.

(b) The first ~~\$80~~ ~~\$50~~ of the filing fee collected under subparagraph (a)4. shall be remitted to the Department of Revenue for deposit into the General Revenue Fund. The next \$15 of the filing fee collected under subparagraph (a)4., and the first \$15 of each filing fee collected under subparagraph (a)6., shall be deposited in the state courts' Mediation and Arbitration Trust Fund. One-third of any filing fees collected by the clerk under this section in excess of the first ~~\$95~~ ~~\$50~~ collected under subparagraph (a)4. shall be remitted to the Department of Revenue for deposit into the Department of Revenue Clerks of the Court Trust Fund. An additional filing fee of \$4 shall be paid to the clerk. The clerk shall transfer \$3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall transfer 50 cents to the Department of Revenue for deposit into the Department of Financial Services' Administrative Trust Fund to fund clerk education. Postal charges incurred by the clerk of the county court in making service by mail on defendants or other parties shall be paid by the party at whose instance service is made. Except as provided herein, filing fees and service charges for performing duties of the clerk relating to the county court shall be as provided in ss. 28.24 and 28.241. Except as otherwise provided herein, all filing fees shall be retained as fee income of the office of the clerk of circuit court. Filing fees imposed by this section may not be added to any penalty imposed by chapter 316 or chapter 318.

(c) Any party other than a party described in paragraph (a) who files a pleading in an original civil action in the county court for affirmative relief by cross-claim, counterclaim, or third-party complaint, or who files a notice of cross-appeal or notice of joinder or motion to intervene as an appellant, cross-appellant, or petitioner, shall pay the clerk of court a fee of \$295 if the relief sought by the party under this paragraph exceeds \$2,500. This fee shall not apply where the cross-claim, counterclaim, or third-party complaint requires transfer of the case from county to circuit court. The clerk shall remit the fee to the Department of Revenue for deposit into the General Revenue Fund.

(d) The clerk of court shall collect a service charge of \$10 for issuing a summons. The clerk shall assess the fee against the party seeking to have the summons issued.

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Section 48. This act shall take effect July 1, 2008.