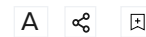


TRENDING



SOUTH FLORIDA



“Running amok”: Florida lawmakers fall short with HOA, condo law

Theft of association funds, election fraud and brazen bullying continues, residents and suits say



(Photo-illustration by Kevin Rebong/The Real Deal)

By Lidia Dinkova & Katherine Kallergis

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At the bayfront Mirador condo complex in Miami Beach, the master association board allegedly violated state laws for years, misappropriating funds and failing to maintain financial records.

On the mainland, at the Star Lakes complex in north Miami-Dade County, owners suspected fund misappropriation after the board imposed \$3 million in special assessments for repairs but finished little to no work, according to residents' lawsuits.

And at Captiva Lakes Villas in south Miami-Dade, no board elections were held for at least the past three years, according to some unit owners who blame the association president, who has held the position for six years.

These properties are not anomalies. For decades, residents in Florida communities governed by associations have claimed that their boards and property managers created authoritarian-like regimes. There have been allegations of inflated assessments, election fraud, opaque records, property disrepair and misappropriation of funds.

Things came to a head last year when investigators alleged a massive scheme at the Hammocks, one of the largest homeowners associations in Florida. The former board diverted funds, litigated investigators' subpoenas, sued police officers who poked around and bullied residents who spoke out, court filings say. One couple told *The Real Deal* they sold their Hammocks home after a barrage of threatening letters falsely claiming overdue fees.

In response to the Hammocks case, Florida lawmakers took up legislation that would have created substantive protections for these communities.

The laws passed this year. But by the time trade groups for property managers, contractors and other interests were done lobbying, the legislation lacked much bite.

"The final versions of these bills are clearly watered down from the House and Senate versions that were floated originally," said Steve Silverman, an attorney with the firm Kluger Kaplan who litigates associations' fraud cases. "[It's] fair to look at what was passed and shrug your shoulders and say, 'Where is the beef?'"

It is unclear how widespread fraud is in Florida, where roughly half the population lives in communities governed by associations, according to data from Rocket Mortgage. More than 1,800 complaints have been filed with the state this year from condo owners. Another 91 from residents in homeowners associations were closed between July 2022 and June 2023.

Many more homeowners don't submit complaints.

Owners are also wary of the cost of suing associations that have attorneys bankrolled by residents' dues. Still, some disputes do play out in court.

Mostly, disputes are argued on complexes' grounds. Residents turn up at associations' main offices to demand records, question the validity of elections or probe contractors' inferior work.

Board members, who are volunteers, counter that they don't have it easy. After the state mandated stricter building standards and insurance premiums skyrocketed, boards were left with few choices but to impose hefty assessments.

Ana Danton, a Hammocks resident who sued the HOA and is now helping others fight their boards, isn't convinced.



"There's a lot of things going on right now that the bill would have stopped immediately," she said, referring to the legislation that Florida almost passed. "I see the people suffering."

Self-policing, self-dealing

Two sets of state statutes govern associations in Florida: the Homeowners Associations statute and the Condo Act.

The Condo Act allows for criminal penalties against board members who accept kickbacks and gives a state agency oversight over a range of association issues.

The HOA law is weaker. The statute opens with a clause stating that it is “not in the best interest” for the state to regulate these associations. The state only has jurisdiction over election and recall complaints at HOAs.

“They can self-govern. So that’s a problem,” said real estate attorney Josh Migdal. “Someone else needs to be the gatekeeper who provides sound judgment to protect an association from running amok.”

“There’s a lot of things going on right now that the bill would have stopped immediately.”

ANA DANTON, HAMMOCKS RESIDENT

The [Hammocks case](#) and others show the problems of self-governance. At Mirador, two condo associations were forced to sue the master association last year. A court-appointed receiver tapped for the master association found in her initial investigation that its board had failed to maintain a budget and other financial records, allowed the mismanagement of funds and failed to perform required maintenance and repairs, among other issues, according to court records. A judge is expected to rule on the master association’s motion for summary judgment in the coming months.

At the Hammocks, board members hired bogus contractors who did few to no repairs on the property and then diverted invoice payments, mainly to former association President Marglli Gallego and her husband, Jose Antonio Gonzalez, according to an arrest affidavit.

Close to \$4 million was misappropriated, according to a status report the association receiver filed with the court in October.

The authorities arrested Gallego, Gonzalez and three other ex-board members in November 2022. The five have pleaded not guilty.

Gonzalez's attorney denied the allegations. "While the outrage of the homeowners is certainly understandable, we believe it is misplaced as related to Mr. Gonzalez," Jude Faccidomo said in a statement.

This past spring, Miami-Dade State Attorney Katherine Fernandez Rundle and state Rep. Juan Carlos Porras, whose district includes the Hammocks, announced bills to protect homeowners.

A month later, co-sponsor Sen. Ana Maria Rodriguez presented the bill to the Regulated Industries Committee.

It had been watered down. The new version scrapped any changes to the Condo Act and lacked the provisions that targeted homeowners' priorities.

Clauses taken out included a requirement for associations to designate a record-keeper, who would be named on associations' websites; clauses to criminalize various types of wrongdoing; and a ban on board members using association funds to defend a civil or criminal suit.

Porras and Rodriguez didn't respond to requests for comment.

Also thrown out: a clause that would curb HOAs' power to put a lien on and foreclose on a home. The Condo Act has no such provision.

That is exactly the type of protection that would have helped Jesus Rodriguez, a unit owner at the [Star Lakes condo complex](#). After the association won a \$10,000 foreclosure judgment over unpaid fees, the 75-year-old took out a loan to keep his home.

"I am still paying for it," Rodriguez said.



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Bureaucratic boondoggle

The state's Division of Florida Condominiums, Timeshares and Mobile Homes takes up condo association complaints. Complaints tend to be handled fast, and the agency resolved 97 percent of the cases it investigated in fiscal year 2022-23, but it can only investigate claims over elections, operating budgets and reserves, budget and other financial meeting notices, access to records and structural reserve studies.

Owners feel the limits.

In September, Maritza Santa Cruz, who owns a unit at Star Lakes, complained to the state about a board plan to borrow up to \$10 million on top of the \$3 million from two assessments levied in 2020 and last year.

"I cannot express how deeply disturbing this is to the [elderly] homeowners, including myself, who do not have this kind of money available to pay [and] are at risk of losing our hard-earned property for retirement," Santa Cruz wrote in the complaint.

Star Lakes board President Francis Jacob, elected this year, and association attorney Beshoy Rizk, retained in July, said in separate interviews with *TRD* that the funds are for overdue repairs, as more than half of the buildings are past the date for legally mandated recertification. The board has to comply to avoid a forced evacuation over safety concerns, Rizk said.


TRD reached out to many of the board members who served when the \$3 million in assessments was imposed. They didn't respond to requests for comment.

Ten days after Santa Cruz filed her complaint, the state agency said her allegations were outside its jurisdiction and closed the case. In a call with a division representative, Santa Cruz pleaded for reconsideration.

The representative "basically said, 'You know, the laws are not made to protect the owners. They are to protect the board.'" Santa Cruz said, paraphrasing her memory of the call.



“[We] are at risk of losing our hard-earned property for retirement.”



MARITZA SANTA CRUZ, STAR LAKES RESIDENT

Many of the bill's changes occurred at the Senate's Regulated Industries Committee following meetings between a lobbyist for a property managers' group and the chair of the committee, as well as co-sponsor Rodriguez, according to a [South Florida Sun Sentinel investigation](#).

The lobbyist, Mark Anderson, sent a thank-you note to the committee's staff director and attorney after the committee approved that version of the bill.

"Just wanted to take a minute to personally thank you both for your work on the Substitute Amendment to [the homeowners bill] over the last 48 hours," he wrote in an email obtained by the Sun Sentinel. "It wasn't and isn't lost on me how much you guys do."

Legislators scrapped a provision that would require the state agency to review complaints within 72 hours of receipt and get law enforcement involved if criminal conduct was alleged.

"I think the idea of involving law enforcement [was that] maybe there's a tendency ... to treat these issues as civil matters when sometimes they give rise to real criminal issues, like in the case of the Hammocks," said attorney Jonathan Goldstein.

What's in a law?

Lawmakers did add provisions to expose board members and HOA managers to monetary damages for soliciting or receiving kickbacks.

It might not make a difference, said attorney David Haber.

"You can pass whatever laws you want," he said, adding that the state condo division is overburdened. "If you don't have enough people enforcing them, it doesn't help."



The condo agency should be spun off into a separate, sufficiently funded department so it can thoroughly investigate cases, Haber said.

A representative of the state agency said that more than 100 employees work to address complaints and provide training to board members.

The current law, however, doesn't require boards to receive the training. That leaves homeowners with one other option: lawsuits.

"Courts are sensitive and responsive to complaints about fraud and general malfeasance or misfeasance of board members," attorney Silverman said.

Gabriela Tirado of Captiva Lakes Villas wouldn't know.



allegations, a letter with her name was tacked on to the clubhouse at Captiva Lakes calling her claims "brutal," "very personal" and "defamatory."

Tirado said it felt like they were saying: "You did this, and now this is the punishment. Everybody will know your name and what you did to us." The letter is still there.

Another resident, Francisco Cardona, received a letter from management last month claiming that residents have raised issues about his "choice of bathing

suit” at the Captiva Lakes Villas pool and about his “habit of walking naked wearing bathing attire in the hallways,” according to a copy of the letter obtained by *TRD*.

Cardona vehemently denied the accusations. The letter came on Sept. 20, he said, after he spoke out about the board to a local TV news channel in a segment [posted to its website on Aug. 1.](#)

Board President Olivia Rodriguez, who didn't respond to a request for comment, said in a [letter to residents](#) in late October that it's a “small group of owners” who are raising issues, with some behind on their assessments and others having criminal records. This “dissident group” has engaged in “militant and extreme opposition” to required repairs, which she says are supported by a majority of owners. The association has addressed the most serious deferred repairs, including roof replacement, balconies, electrical boxes and gutters, Rodriguez said in the letter.

In an emailed response to *TRD*'s request for comment, Captiva Lakes Villas property manager Alexis Acosta, of Gold Property Management, said the association has independent annual external audits done, published along with other financial records on the association's website and provided to residents who request the documents. “The CPA rendered an Unqualified Opinion to the last audit, which is the highest opinion of a CPA,” Acosta wrote. “This fact may be sufficient to satisfy your curiosity on the grave allegations outlined by you. ... We believe that this approach ensures a high level of credibility and accountability.”

Tirado sought legal help several times, but was discouraged by retainer fees ranging from \$5,000 to \$10,000.

“[A lawsuit] can go on and on and on, and who knows when that will be finished,” she said. “Attorneys say the law is so weak.”

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