

Forced Access Telecommunications Bill

Florida apartment owners will be vigorously opposed to any bill such as the sample attached, based on the following factors:

PHILOSOPHICAL OPPOSITION TO PREAMBLE:

- 1. The proposed bill claims to create a competitive telecommunications environment whereas, in fact, a vigorously competitive environment already exists:**

Apartment residents currently enjoy and reap the rewards of competitive bidding by their apartment management companies by gaining valuable telecommunications services that have been selected to be competitive with other apartment communities' amenity or lifestyle packages.

- 2. The proposed legislation requires aggressive access in, on, over and across private property and private buildings by telecommunications vendors.**

This unfettered access will potentially cause private property owners to lose the ability to control access onto and through their private properties, thereby compromising security and safety procedures that are in place to protect residents of apartment communities from persons that have ill intentions.

- 3. The bill would create minimum standards for forcing access upon private property owners by potentially unwanted vendors.**

Allowing certain types of vendors and/or industries to force their way onto private properties will set a dangerous precedent for other industries and/or vendors to follow. For example, "Pepsi" vendors may try to force access onto "Coke" only properties.

- 4. As part of a "feel good" strategy, the bill purports to create a "freedom of choice" for apartment residents when, in fact, such freedom already exists – now more than ever.**

Apartment residents today now have nearly limitless choices in lifestyle amenities. Just as they may choose to live in one community or another because of the full court air conditioned basketball facility or bowling alley, they may also make that choice based on which telecommunications or VOIP services are available in a particular community. In a recent national survey, over 40% of apartment residents said their decision to live in an apartment home was based on their "lifestyle choice" – they are choosing apartment living because the property management company takes care of the lawn, fixes the toilet, paints the building, controls the access and deals with the myriad contractors (including telecommunications and VOIP) that are required to make an apartment community operate smoothly.

- 5. The bill contends that it provides some "balance" between the telecommunications vendors "rights" to force access onto ANY property and the property owners' rights to control or restrict access to their properties and buildings.**

The U.S. Constitution is very clear about private property rights. It makes no provision for the "rights" of vendors of various services to muscle their way onto private land and into private homes for the agenda of providing "choices". Again, apartment residents have more choices available than ever before in history and property owners and managers make vendor choices

that they believe make their properties most attractive to potential residents – the net result is better service, competitive rates, and enhance services – all for the benefit of the residents.

6. The proposed bill seeks approval from the legislature to create a new forced access “right” for certain vendors and/or industries to enter and use others’ private property for their own financial gain.

*This proposed new “right” is clearly and convincingly **in conflict** with historical, lawful, and constitutional private property rights.*

7. Finally, the proposed bill professes to serve an important public purpose by allowing certain vendors and/or industries to intrude onto private properties to sell and install their products and services.

The net results of this bill would destroy certain public purposes which are currently being fulfilled by apartment communities for their residents:

First, is freedom from uninvited solicitors and vendors. The bill would allow all out solicitation to apartment residents, many of whom choose apartment living to enjoy the freedom from door-to-door solicitation.

Second, is restricted access. Many apartment home residents choose apartment living because of the gated access. In a time when many apartment owners and managers are more carefully screening employees and vendors for drug and criminal backgrounds, this bill would open the gates in any number of unchecked, unscreened solicitors and workers.

Third, aesthetic quality and architectural integrity. The level of access sought by this bill would force property owners to allow frequent, if not daily, digging, drilling, wires, conduits, roof antennae, and as yet, unknown alterations to the private property and buildings.

Fourth, apartment residents may lose valuable services and incentives as a result of reducing their collective buying power. Currently, property owners are able to negotiate lower rates, free installation, dedicated community channels and other valuable services and incentives for the residents through competitive bidding and negotiation. This bill would eliminate this powerful advantage and create an “every person for themselves” mentality, in which the telecommunications vendors would gain and the consumers would ultimately lose.

SPECIFIC OPPOSITION TO TECHNICAL POINTS:

Section 2 (2) places unreasonable requirements upon landlords (or property owners) as follow:

These clauses would spell out what an owner shall do with respect to their property:

(b) grant to a telecommunications company or VOIP provider, if requested, permission to install antenna(s) on the roof of the property;

We are strongly opposed to having antennae imposed upon our rooftops

(c) assist in locating and providing access to available building riser and conduit, and the telecommunications company or VOIP provider shall have the right to construct, where necessary and at its sole cost, additional conduit facilities associated with the facilities;

We are strongly opposed to being forced to devote scarce staff time and resources to help an uninvited vendor sell their products. Considering resident turnover and the ever-growing list of telecommunications companies, there could be no limit to the intrusions on our time and resources.

(d) identify the demarcation point on the property to the telecommunications company or VOIP provider;

(e) be responsible for obtaining all necessary easements across another tenant's premises; and

People rent apartments to able to relax and enjoy their homes. We are strongly opposed to disturbing their quiet and peaceful enjoyment every few days to allow another vendor to string wires through their attic.

(f) shall disclose to potential tenants the existence of any marketing agreement.

Again, we are opposed to these impositions on the use of our private property and private business contracts.

THIS PART OF THE PROPOSED BILL SPELLS OUT WHAT AN OWNER CANNOT DO:

(3) A landlord may not:

(a) prevent or delay more than ten business days a telecommunications company or VOIP provider from constructing, installing, operating, maintaining, repairing, disconnecting, replacing or removing facilities on, in, over and across the property;

Our strong opposition to this point is based on both the loss of control of our property to vendors and the loss of control of our staff time and resources, both of which will negatively affect the smooth operations of the communities and cause undue hardship for the residents.

(b) interfere with the telecommunications company or VOIP provider installation of facilities on the property;

This clause appears to elevate vendor rights to a standard much greater than property rights.

(c) discriminate against a telecommunications company or VOIP provider installation, terms, or compensation by which a telecommunications company or VOIP provider gains access to place its facilities and provides its telecommunications services and VOIP to a tenant on the property;

This clause eliminates the competitive bidding advantage that currently brings services and financial benefits to residents. In business, we DO NOT discriminate against persons but we do select business products and services that offer a competitive advantage for the purposes of attracting and keeping residents and to keep costs that impact rents reasonable and affordable.

(d) demand an unreasonable or discriminatory payment of any kind, or in any form, from a tenant or a telecommunications company or VOIP provider for allowing the telecommunications company or VOIP provider access to the property;

Again, by eliminating the tools of negotiation, this bill will benefit the companies it serves only.

(e) discriminate against a tenant in any manner, including rental charge discrimination, based on its choice of telecommunications company or VOIP provider;

Under Federal, State and some local laws, we do not discriminate on the basis of race, color, national origin, handicap, sex, familial status or age. This proposed bill would create a new protected class called “Choice of telecommunications company or VOIP provider” – While we strongly support, encourage and instruct compliance with fair housing laws, we strongly oppose adding a protection category to serve a narrow, profit-based vendor interest.

(f) erect any indirect or direct barriers to entry that have the effect of delaying or denying a telecommunications company or VOIP provider access to the property, or denying a tenant the right to choose its service provider;

This clause would have property owners remove gates or issue access codes or keys to a potentially unlimited number of telecommunication vendors. We strongly oppose this.

(g) enter into exclusive access agreements or exclusionary agreements with any telecommunications company or VOIP provider;

Again, this clause would eliminate any potential point to negotiation by eliminating the incentive for a vendor to try to offer the best proposal.

(h) prevent a telecommunications company or VOIP provider from gaining access to the property during an emergency;

This clause grants telecom vendors a form of “police power” to respond to emergencies they have defined to range from “interruption of service” to “immediate danger to life or health”. Again, it would require the issuance of keys, access codes to any number of telecom vendor employees who may or may not be screened for criminal background, drug abuse or other indiscretions that would make them non-bondable.

(i) deny access to space previously dedicated to public service if that space is sufficient to accommodate the facilities needed for access; however, a landlord may deny access to space if the space required for installation is not reasonably sufficient to accommodate the request or where the installation would unreasonably interfere with the aesthetics of the building; or

This clause places the rights of vendors to use others' properties above the rights of the property owner to determine how they want their own property to be used and controlled.

(j) charge a fee other than the reasonable and necessary costs for the privilege of providing telecommunications service and VOIP to a tenant.

Coupled with the other stated demands in this proposed bill, “reasonable and necessary costs” may never intersect. The costs of hiring additional staff to accommodate telecom vendor demands such as unlimited access, building alteration, permits, easements, may make “necessary costs” that are not considered “reasonable” under the stated definition.

(k) demand a waiver of liability for, or indemnification from, losses, costs, damages, expenses, judgments or claims to the extent caused by the landlord's own negligence or willful misconduct.

OK, if anything else were acceptable about the bill.

(4) The telecommunications company or VOIP provider has the right to install facilities in, on, across and over the property in order provide telecommunications services and VOIP to tenant(s):

We are strongly opposed to this subordination of property rights to vendor “rights”.

(a) for a period no longer than the remaining term of the tenant's lease unless otherwise agreed to by the telecommunications company or VOIP provider and the landlord. Should the tenant's lease renew, the agreement between the telecommunications company or VOIP provider and the landlord automatically continues, without the need for renegotiation, for the term of the tenant's renewal;

This clause requires landlords to be involved in residents and vendors contracts, currently private business transactions between the resident and vendor. Again, this would be a drain on staff time and drive up the cost of operations and therefore negatively impact the affordability of rents.

(b) for a period longer than the remaining term of the tenant's lease if the telecommunications company or VOIP provider has determined it is in the best interest of the company or VOIP provider to allow its facilities to remain on the property;

1. without interference from the landlord, except as provided in this subsection; and

2. at terms, conditions, and if applicable, compensation rates which are fair, reasonable, non-discriminatory and competitively neutral.

(5) The Florida Public Service Commission (hereafter Commission) shall have exclusive jurisdiction for the purpose of resolving disputes arising between telecommunications companies or VOIP providers, tenants, and landlords concerning access to tenants for the provision of telecommunications services and VOIP in multi-tenant environments as outlined in this chapter.

(a) The following must occur before an action for access may be brought:

1. after a tenant initiates a request to a telecommunications company or VOIP provider for service, the telecommunications company or VOIP provider and the tenant shall convey the request for service to the landlord.

2. if a landlord is unresponsive to a request for access, a written request shall be submitted to the landlord.

3. if the landlord fails to respond within ten business days, if access is denied, or if reasonable and non-discriminatory terms for access cannot be agreed upon, the telecommunications company or VOIP provider and the tenant may file a petition with the Commission for review.

(b) In resolving disputes related to access, the Commission shall apply the standards described and shall resolve the disputes on an expedited basis no later than 120 days from the filing of a petition.

(c) The Commission shall have the authority to adopt rules necessary to implement the provisions of this chapter. The Commission shall have the power to impose upon any person or entity under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, the penalties and remedies prescribed in § 364.285, Fla. Statutes.

Finally, this section creates an additional unnecessary layer of bureaucratic regulation where none currently exists in the relationship between property owners and residents. It attempts provide a remedy to a problem that currently does not exist.