

## 2010 Legislative Update

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Florida Senate Bill 1196 has been signed by the Governor and will become effective July 1, 2010. The impact on community associations will be significant based upon this new law. The following briefly outlines the Senate Bill's provisions.

### **CONDOMINIUM ASSOCIATIONS**

#### **Rental Amendments**

The restrictions on rental amendments have been limited to those amendments which prohibit unit owners from renting their units, or alter permitted lease terms or the number of rentals during a specified period. As before, these apply only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of amendment.

#### **Official Records – Owner Privacy and Employee Records**

The statute has been amended to provide that Associations are not liable for misuse of information obtained by unit owners from the official records of the Association. Additionally, personal liability for defacing, destroying or failing to maintain official records has been limited to cases where there is “*intent to harm* the Association or one or more of its members.” The statute exempts e-mail addresses, telephone numbers, emergency contact information and any unit owner contact information other than the addresses to send notices from the official records and these are not accessible to unit owners. This may have some effect on communities who publish member directories and may require a waiver to publish in the future. Electronic or computer security data, including passwords, software and operating systems is also considered protected and not accessible by the unit owners.

#### **Board Elections and Qualifications**

Under the new statute, board members are not *automatically* reappointed when no one runs for their seat; rather, they are *eligible* for re-appointment. Board member vacancies could be filled by the remaining board members for the unexpired term unless otherwise provided in the bylaws. The statute precludes “co-owners” from simultaneous board service, unless they own more than one unit or unless there are not enough owners to fill vacancies on the board.

#### **“Communication Services” a Common Expense**

Prior language which allowed bulk cable costs to be a common expense is expanded to allow costs of “Communication Services”, as defined in Chapter 202, to include telephone and internet services.

#### **Collections / Foreclosures / Enforcement**

The mortgagee “safe harbor” liability cap for condominiums has been increased from 6 months to 12 months after acquisition of title by foreclosure (or deed in lieu) but retains the 1% cap. The foreclosing condominium lender would pay the lesser of 12 months of unpaid assessments or 1% of the original mortgage debt.

Additional options regarding delinquent owners will allow the Association all of the rights of a landlord and thus, allows the Association to collect rent directly from a tenant. Condominium Associations may now suspend use rights for certain common facilities if the owner is more than 90 days past due. This does not allow suspension of utilities, parking, elevators or impede access to and from the unit. Under the new amendment, the Board must vote on these suspensions or fines at a duly noticed board meeting and advance notification to the unit owner is required.

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### **Insurance**

Newly created 627.714 requires all HO-6 policies issued or renewed after July 1, 2010 to include at least \$2,000 in property loss assessment coverage with a deductible of \$250 per property loss. The statute now clearly states that personal property (cabinets, countertops, wall coverings, etc.) located within the unit are the responsibility of the unit owner to insure and also eliminates the requirement to name the Association as additional named insured.

The Association policy "Replacement Cost" must be determined at least once every 36 months and all references to "hazard" insurance and "casualty" insurance have been changed to "property" insurance. The requirement for owners to provide proof of insurance and the Association's right to "force place" insurance has been eliminated. Lastly, the statute also eliminates the requirement that the board meeting where deductibles are set be preceded by a special notice. The 14 days mailed and posted notice of the board meeting is still required.

### **Termination of Condominium**

Termination because of "economic waste" is permissible when the cost of construction or repairs exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs. The amendment provides that termination does not bar the filing of a new declaration of condominium or an amended and restated declaration of condominium.

### **Financial Reporting Requirements**

Associations that operate fewer than 75 units, regardless of the Association's annual revenues, shall prepare a report of cash receipts and expenditures instead of financial statements (currently applicable to Condominium Associations of fewer than 50 units).

### **Turnover**

Turnover is now triggered when a receiver is appointed for the developer and not discharged within 30 days, *unless the court determines that such turnover would be detrimental to the Association or its members.*

### **New Bulk Buyer Law: "The Distressed Condominium Relief Act"**

This act defines the terms "bulk buyer" and "bulk assignee" as well as defines and clarifies obligations of bulk buyers and bulk assignees with respect to warranties, post-transition audits, converter reserves, transfer of control, disclosures to buyers and related issues. This will only apply to purchases (or other acquisition of title) that take place before the law 'sunset' on July 1, 2012.

## **FIRE SYSTEMS AND RETROFIT AMENDMENTS**

### **Fire Alarm Systems**

Buildings less than four (4) stories with exterior means of egress and exterior corridors will not have to install a manual fire alarm system (per Section 9.6, Life Safety Code in the Florida Fire Prevention Code).

### **Fire Sprinkler Retrofit**

Full "opt-out" will be permitted with affirmative vote of two-thirds of the entire membership. This amendment will only permit reconsideration of opt-out vote once every three years at a special meeting called by a petition of 10% of the voting interests. It also extends deadlines for Associations that don't opt out to the end of 2019.

### **Elevators**

This amendment allows for a five-year delay to retrofit with a special access key for elevators in condominiums and cooperatives, unless the elevator is replaced or requires major modification.

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## **HOMEOWNERS ASSOCIATIONS**

### **Flagpoles**

The law has been clarified to provide that flagpoles and displays are subject to all building codes, zoning setbacks and governmental regulations, including noise and lighting ordinances as well as setback and location criteria contained in the governing documents.

### **Official Records – Owner Privacy and Employee Records**

The amendments discussed above for Condominium Associations are also applicable to Homeowners Associations. Homeowner Associations may now charge personnel fees at an hourly rate for employee time related to providing copies of official records.

### **Budgets and Reserves**

Clarifying language has been added to the budget disclosure notifying owners of vote necessary to mandate reserves, and provides similar disclosure to be placed in the annual financial report. Also, clarifications of reserve requirements to distinguish “statutory” and “voluntary” reserves have been added.

### **Board of Directors**

A new amendment has been added that prohibits salary or compensation for performing services as director, officer or committee except in certain situations (for example, reimbursement for out-of-pocket expenses, if authorized by the governing documents or by vote of the membership in advance). The statute was also amended to provide for filling of vacancies by vote of remaining directors unless otherwise provided in the bylaws. In an alternative to statutory procedure, the Board may hold an election to fill the vacancy. The vacancy is filled for the remainder of the unexpired term for the seat being filled, unless otherwise provided in the bylaws.

### **Collections / Foreclosures**

The statute has been amended to provide for fining and suspension of use rights if the member is delinquent more than 90 days. The statute previously authorized such action if permitted by governing documents. This amendment appears on one hand to expand association powers by granting authority to suspend use rights even if not contained in the governing documents, but also creates some ambiguity as to whether fining or suspension of use rights are only authorized in the instance of a 90 day delinquency.

Additionally, the Association is granted all of the rights of a landlord to collect rent directly from a tenant and evict a tenant that fails to comply. Fines for nonpayment of assessments of less than \$1,000 may not become a lien on the parcel.

### **Voting for Directors by Secret Ballot**

The statute adopts ‘condo-like’ double envelope procedure if the governing documents permit elections by secret ballot.

### **Acquisition of Recreational Leaseholds or Other Property/Property Use Rights**

This amendment allows the Association to enter agreements to acquire leaseholds, memberships or other possessory or use rights in lands and facilities. It must be fully described in the declaration or if the action is not taken within 12 months of recording. The declaration must authorize said action as a material alteration/substantial improvement or at least 75% of the members must vote in favor of the action.

### **Special Assessments by Developer (before turnover)**

Pre-transition, developer controlled associations may not levy special assessments without the approval of a majority vote of non-developer interests. A vote must take place at a duly called meeting at which a quorum has been attained.

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The actual text of the legislation can be found at [www.flsenate.gov](http://www.flsenate.gov). For additional information about this legislation or other community association matters, contact one of the following Roetzel & Andress attorneys.

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