

COMMUNITY ASSOCIATION LAW ALERT

5/31/18

Summary of 2018 Community Association Legislation

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This year, the Florida Legislature approved one main bill affecting condominium, cooperative, and homeowners' associations. House Bill 841, effective July 1, 2018, clarified many areas of the prior year's legislative action. House Bill 617, effective October 1, 2018, amends the Marketable Record Title Act as to property owner associations. House Bills 529, 631 and 875 and Senate Bill 566 do not amend any of the association statutes, but do have an impact on issues that affect condominium, cooperative and homeowners' associations or their owners. These last four bills are effective **July 1, 2018**.

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HOUSE BILL 617

Section 712.05, Florida Statutes was amended to allow property owners' associations to preserve the community covenants or restrictions by recording an amendment to the covenants or restrictions in addition to the other preservation methods. House Bill 617 also provides for procedures in Chapter 712 to revitalize covenants in communities without a mandatory association and clarifies in Part III of Chapter 720 that the revitalization process included there can be used by all types of communities and property associations and is not limited to residential communities.

HOUSE BILL 841**Condominium and Cooperative Association Official Records**

Section 718.111(12)(b), Florida Statutes was amended to require the following documents be permanently maintained from the inception of the condominium association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).
2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.
4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.
5. A copy of the current rules of the association.
6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

Section 718.111(12)(g)1., Florida Statutes, extends the time for condominium associations to post digital copies of the official records (as specified in 718.111(12)(g)2.) on its website from July 1, 2018 to January 1, 2019.

Section 718.111(12)(b) and 719.104(2)(b), Florida Statutes, were amended to require the condominium association or cooperative to make the official records available to a unit owner within ten working days after receipt of the written request by the Board or its designee (as the Homeowners' Association Act already provides).

Condominium Association Financial Reporting

Section 718.111(13), Florida Statutes was amended last year to require a condominium association to respond to a notice from the Division of Condominiums to provide a copy of the condominium association's most recent financial report to a requesting owner within 5 business days of receipt of the notice. Failure to timely provide the report precluded the condominium association from waiving its financial reporting requirement. House Bill 841 clarified that the waiver restriction only applies to the fiscal year in which the unit owner's request was made and the following fiscal year.

Condominium, Cooperative and Homeowners' Association Meeting Notices

Section 718.112(2)(c)1. and (d)3. and 719.106(1)(c) and (1)(d), Florida Statutes, provides that condominium and cooperative associations may adopt, by rule, a procedure for providing additional notice of Board and members meetings by conspicuously posting the meeting notice and the agenda on a website serving the condominium or cooperative for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the property. Any rule adopted has to include a requirement that the condominium or cooperative association send an electronic notice in the same manner as notice for a meeting of the members, including a link to the website where the notice is posted, to owners whose e-mail addresses are included in the official records.

Section 720.303(2)(c), Florida Statutes provides that a homeowners' association may provide notice of Board, committee, and member meetings electronically to those who have provided either an e-mail address or facsimile number and have consented to receive electronic notice.

Condominium and Cooperative Association Electronic Notice

Section 718.112(2)(d)6. and 719.106(1)(d)3., Florida Statutes, provides that a unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails sent to members on behalf of the condominium or cooperative association in the course of giving electronic notice.

Condominium Association Director Term Limits

Section 718.112(2)(d)2., Florida Statutes, was revised to provide that Board members may serve terms longer than 1 year if permitted by the Bylaws or Articles of Incorporation. It was also amended to remove the reference to 2-year terms when referring to term limits. That is, a Board member may not serve more than 8 consecutive years regardless of the length of Director terms, unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

Condominium Association Director Recall

Section 718.112(2)(j), Florida Statutes, was amended to clarify that a Board member shall be recalled effective immediately upon the conclusion of the Board meeting that must be held within 5 business days after (i) the adjournment of the unit owner recall meeting or (ii) receipt of the written agreement to recall, provided that the recall is facially valid.

If the Board fails to meet or determines at the meeting that the recall is not facially valid, the unit owner representative may file a recall petition challenging the Board's failure to act or challenging the Boards' determination on facial validity. In addition, a recalled Board member may file a petition challenging the facial validity of the recall agreement or ballots. The arbitrator may award prevailing party attorneys' fees and costs.

Condominium Association Director Conflict of Interest

Section 718.3027(2), Florida Statutes was revised to incorporate the disclosure requirements set forth in 718.3026(3), Florida Statutes, (which has been deleted). The section requires the association to comply with the requirements of Section 617.0832, Florida Statutes, and any disclosures must be entered into the written minutes of the meeting. Further, approval of the contract or other transaction requires an affirmative vote of

two-thirds of all other directors present. Then at the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction may be canceled by a majority vote of the members present. If the contract is canceled, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Condominium Association Material Alterations

Section 718.113(2), Florida Statutes was amended to require that approval by the membership must occur before the material alteration or substantial additions are commenced.

Condominium Association Electric Vehicles

Section 718.113(8), Florida Statutes now provides that neither the Board or the declaration of condominium or restrictive covenant may prohibit or be enforced to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limit common element parking area. The installation must follow the provisions set forth in the statute, including installing the charging station at the expense of the unit owner.

Condominium and Cooperative Association Compliance Committee

Sections 718.303(3)(b) and 719.303(3)(b), Florida Statutes were revised to require that condominium and cooperative association fining committees to act and be composed in the same manner as homeowners' association compliance committees. The committee must be composed of at least three members appointed by the Board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director or employee. Further, if the committee does not approve the proposed fine or suspension by majority vote, then fine or suspension may not be imposed.

Condominium, Cooperative and Homeowners' Association Fines

Sections 718.303(3)(b), 719.303(3)(b) and 720.305(2)(b), Florida Statutes were modified to establish that the fine payment is due 5 days after the date of the committee meeting at which the fine was approved. Condominium and cooperative associations must now provide written notice of the fine or suspension by mail or hand delivery to the unit owner, and if applicable, to any tenant, licensee, or invitee of the unit owner, as homeowners' associations have been required to do for some time.

Cooperative Association Board Member Eligibility

Section 719.106(1)(a)(1), Florida Statutes was amended to provide that the Board shall consist of not fewer than three members in cooperatives with five or fewer units that are not-for-profit corporations. Additionally, similar to residential condominium associations, in a residential cooperative association of more than ten units, co-owners of a unit may not serve as members of the Board at the same time unless the co-owners own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

Cooperative Association Board Member Financial Delinquency

Section 719.106(1)(m), Florida Statutes was added to provide that a director or officer more than 90 days delinquent in the payment of any monetary obligation due to the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Cooperative Association Communication Services

Section 719.107(1)(b), Florida Statutes allows cooperative associations to enter into bulk contracts for communications services as defined in chapter 202, information services or Internet services, and the costs shall be a common expense.

Cooperative and Homeowners' Association Board E-mail

Section 719.106(1)(c) and 720.303(2)(a), Florida Statutes, was amended, as the Condominium Act recently was, to provide that members of the Board may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

Homeowners' Association Amendments

Section 720.306(1)(e), Florida Statutes requires that a proposal to amend the governing documents must contain the full text of the provision to be amended and may not be revised or amended by reference solely to the title or number. Proposed new language must be underlined and proposed deleted language must be stricken. If the proposed change is so extensive that underlining and striking through language would hinder, rather than assist, the understanding of the proposed amendment, a notation must be inserted immediately preceding the proposed amendment in substantially the following form: "Substantial rewording. See governing documents for current text." An amendment to a governing document is effective when recorded in the public records of the county in which the community is located.

Homeowners' Association Elections

Section 720.306(9)(a), Florida Statutes was amended to add that if an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to the statute or the bylaws, write-in nominations are not permitted and such qualified candidates shall commence service on the Board of directors, regardless of whether a quorum is attained at the annual meeting.

Homeowners' Association Application of Payments

Section 720.3085(3)(b), Florida Statutes was amended as the Condominium and Cooperative Acts previously were to provide that the order in which payments are to be applied pursuant to the statute controls over any accord and satisfaction or restrictive endorsement.

HOUSE BILL 529

The Florida Fire Protection Code (Section 633.202, Florida Statutes) had been revised to specify the size of recycling containers that are permitted in rental apartment complexes. It also requires certain containers be allowed in exit corridors and authorizes approval of alternative containers.

SENATE BILL 566

Section 82.045, Florida Statutes was amended to establish the criteria for “transient occupancy” of residential real property and provides that transient occupancy is not extended by the presence of personal belongings of a former transient occupant. The statute was also revised to require the party entitled to possession of a dwelling to allow a former transient occupant to recover personal belongings at reasonable times and under reasonable conditions and specifies a reasonable time to recover personal belongings.

HOUSE BILL 631

Chapter 82, Florida Statutes was amended to authorize persons with a superior right to possession to ejectment and provides for a cause of action to regain possession from another person who obtained possession of real property by forcible entry, unlawful entry, or unlawful detainer; no pre-suit notice or demand is required. The statute was also amended to redefine the terms “unlawful entry” and “forcible entry.”

HOUSE BILL 875

Section 95.11(3), Florida Statutes was amended to clarify the statute of limitations on construction defect claims. The statute is revised to provide that counterclaims, cross-claims and third party claims may be brought up to 1 year after the pleading to which the claim relates is served, even if those claims would be time barred. Further, the statute was amended to provide that once a Certificate of Occupancy or Certificate of Completion has been issued for the property, the correction of defects or punch list work will not extend the time within which an action must be commenced.

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