

COMMUNITY ASSOCIATION LAW ALERT

7/1/13

2013 Statutory Revisions to Condominium, Homeowners' Association and Cooperative Acts

Three bills have recently been signed into law by the Florida Governor that may be of particular interest to condominium, homeowners' and cooperative associations. House Bill 73 becomes effective on July 1, 2013, and revises the Condominium, Homeowners' Association and Cooperative Acts. House Bill 7119 becomes effective on July 1, 2013, and revises the Homeowners' Association Act and Chapter 468 regarding community association managers. Senate Bill 120 became effective on June 6, 2013, and revises the Condominium Act (Chapter 718).

HOUSE BILL 73 – RELATING TO RESIDENTIAL PROPERTIES (EFFECTIVE JULY 1, 2013)

Phase II Firefighters' Service

Phase II Firefighters' Service upgrades on an elevator are postponed until the elevator is replaced or requires major modification.

Insurance

HB 73 revises Section 718.111 to clarify that a condominium association's obligation to repair items it insures is limited to "insurable events."

Official Records

HB 73 revises Section 718.111, Section 720.303 and Section 719.104 to require that associations permit a member or his or her authorized representative to use a portable device to make an electronic copy of official records in lieu of providing the member a copy of the official record and prohibits the association from charging for use of a portable device. HB 73 also revises Section 718.111 and Section 720.303 to permit a condominium association and homeowners' association to print and distribute to owners a directory containing the name, unit address and telephone number of each owner. However, an owner may exclude his or her telephone number from the directory by directing such written request to the association.

In addition, Section 720.303 was revised to provide that personnel records of management company employees are not accessible for inspection and copying by owners. However, owners in a homeowners' association can inspect and copy written employment agreements with a management company and any budgetary or financial records that indicate compensation paid to a management company employee.

Financial Reporting

HB 73 revises Section 718.111 and Section 720.303 with respect to financial reporting requirements. The financial thresholds for a compiled financial statement are now at least \$150,000 in total annual revenue, but less than \$300,000 (previously \$100,000/\$200,000). The reviewed financial statement requirement is now at least \$300,000 in total annual revenue, but less than \$500,000 (previously \$200,000/\$400,000). The audited financial statement requirement now applies to an association with total annual revenue of \$500,000 or more (previously \$400,000). An association with total annual revenue of less than \$150,000 can prepare a report of cash receipts and expenditures (previously \$100,000). An association that operates fewer than 50 units can prepare a cash receipts/expenditures report, regardless of total annual revenue (previously 75 units for condominium associations).

Elections/Candidate Certification/Recall

HB 73 revises Section 718.112 to permit staggered terms for directors if such provision is contained in the articles of incorporation (in addition to the bylaws). The prohibition on the use of a proxy in the election of directors is no longer applicable to a timeshare condominium association.

Any challenge to the election process in a condominium or homeowners' association must be commenced within 60 days after the election results are announced. In a condominium association, a director's written certification or educational certificate must be kept as part of the association's official records for five years after the election, or the duration of the director's uninterrupted tenure, whichever is longer.

A director in a condominium or homeowners' association who has been recalled may file a petition with the Division of Florida Condominiums challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The Division may not accept any recall petition when there are 60 or fewer days until the scheduled reelection of the director the members seek to recall, or when 60 or fewer days have elapsed since the election of the director sought to be recalled.

Hurricane Shutters

Code-compliant doors and other types of hurricane protection are now treated the same as hurricane shutters, windows and impact glass for purposes of Sections 718.113 and 718.115.

Phase Condominium

The deadline by which all phases must be added to a condominium can be extended past seven years — see discussion in Senate Bill 120 below.

Revisions Specific to Cooperatives

Section 719.104 has been substantially revised with respect to official records to make it consistent with Section 718.111. Section 719.1055 was also revised to make it easier for a cooperative association to amend cooperative documents with or without the consent of mortgage holders. Section 719.106 was amended to permit the board and committees to meet to discuss personnel matters without owners present. Nevertheless, a notice of the meeting must be posted. Essentially, the notice must state the purpose of the private meeting, but inform the members that they are not invited!

Section 719.106 was also amended to require that an election challenge be commenced within 60 days after the election results are announced. Also, within 90 days after being elected or appointed to the board, each new director must certify in writing that he or she has read the cooperative documents, will work to uphold such documents and policies to the best of his or her ability, and will faithfully discharge his or her fiduciary responsibility. The newly elected or appointed director may, in the alternative, provide the association with a certificate of satisfactory completion of an education class administered by a Division approved education provider, within one year before or 90 days after the date of the election or appointment. A director's written certification or educational certificate must be kept as part of the association's official records for five years after the election, or the duration of the director's uninterrupted tenure, whichever is longer.

Section 719.106 was also amended in the same manner as Section 718.112 with respect to recalls of directors.

Revisions Specific to Homeowners' Associations

Section 720.306 now provides for an easier process for a homeowners' association to obtain mortgagee consent for amendments to governing documents. Section 720.306 was amended to delete the requirement that a member submit a written request in order to speak at any members' meeting.

HOUSE BILL 7119 – REVISIONS APPLICABLE TO HOMEOWNERS' ASSOCIATIONS ONLY EXCEPT FOR DISCIPLINARY ACTION AGAINST COMMUNITY ASSOCIATION MANAGERS (EFFECTIVE JULY 1, 2013)

Disciplinary Actions

Disciplinary action can be taken against community association managers (CAMs) who violate any provision of Chapters 718, 719 or 720 when performing community association management service pursuant to a contract with a community association, as defined in Section 468.431(1).

Official Records

Official records, which may be maintained online or in an electronic format, must be maintained in the state for at least seven years and made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located. A homeowners' association must allow a member to use a portable device to make an electronic copy of the official records and cannot charge the member who uses a portable device. A homeowners' association may impose fees to cover the costs required for personnel to retrieve copies of records provided that:

- time spent retrieving and copying records exceeds one-half hour, and
- personnel costs do not exceed \$20 per hour.

A homeowners' association may not impose fees to cover personnel costs for records requests that result in the copying of 25 or fewer pages. A homeowners' association may charge up to \$0.25 per page for copies made on the homeowners' association's photocopier or, if the association does not have a photocopier available where the records are kept, the homeowners' association may charge the actual cost of copying as supported by the invoice of an outside duplicating service.

New Reporting Requirement

The community association manager or management company (or association if there is no manager/management company) must report specific information by November 22, 2013, to the Division of Florida Condominiums, Timeshares, and Mobile Homes. The required information includes the association's legal name, federal employer identification number, mailing and physical addresses, total number of parcels and total amount of revenues and expenses from the homeowners' association's annual budget. Developer controlled homeowners' associations must also include the developer's legal name, mailing address and total number of parcels owned by the developer as of the reporting date. An online registration system for these reporting requirements will be set up by October 1, 2013. The Division must prepare and present an annual report of such information to the Governor and Florida Legislature by December 1, 2013, and every subsequent year.

Requirements For New Directors

Within 90 days of being elected or appointed to the board, each director must certify in writing to the secretary of the homeowners' association that he or she has read certain documents, rules and policies, will uphold the policies to the best of his ability, and will faithfully discharge his or her fiduciary duties to the members. There is an alternative option provided in the statute for an educational certification.

Association Contracts/Transactions With Directors/Ethical Guidance

The statute sets forth requirements that a homeowners' association must comply with if it enters into a contract or transaction with any of its directors (or an entity in which a director is also a director or officer or is financially interested) or an entity that is not an affiliated homeowners' association.

An officer, director or manager is prohibited from soliciting, offering to accept, or accepting any good or service of value for which consideration has not been provided for his or her benefit from anyone providing or proposing to provide goods or services to the homeowners' association. However, an officer, director or manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs.

An officer or director is removed from office and a member shall not be appointed or elected to a position if he or she is charged with a felony theft or embezzlement offense involving the homeowners' association's funds or property. The statute contains provisions regarding the board's ability to fill the position and reinstatement of the officer or director.

The homeowners' association must maintain insurance or a fidelity bond for all persons who control or disburse funds of the homeowners' association (which automatically includes the president, secretary and treasurer). The statute contains particular requirements regarding the policy or bond and an option for the voting interests to waive this requirement.

Amendments

The homeowners' association must provide copies of any amendment to the governing documents to the members within 30 days of recording.

Election Processes

The homeowners' association is not required to allow nominations for candidates at the meeting if the election process allows nomination of candidates in advance. An election is not required unless more candidates are nominated than vacancies exist.

Transition of Control of Board of Directors

New "trigger" events have been added that allow homeowners' association members, other than the developer, to elect at least a majority of the board of directors of the homeowners' association.

Members other than the developer are entitled to elect at least one member of the board of directors of the homeowners' association if 50 percent of the parcels in all phases of the community which will ultimately be operated by the homeowners' association have been conveyed to members (i.e., other than the developer).

Payment of Unpaid Assessments

Owners are jointly and severally liable with previous owners for unpaid assessments. This has historically included homeowners' associations that acquire title through foreclosure. The statute has been amended to specifically exclude homeowners' associations that acquire title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The liability for unpaid assessments of the owner subsequent to the homeowners' association is limited to any unpaid assessments that accrued before the homeowners' association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

SENATE BILL 120 – CHANGES TO CONDOMINIUM ACT REGARDING PHASING AND TURNOVER (EFFECTIVE JUNE 6, 2013)

If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues relating to the preparation of the association's financial reports and reserve funding, from the date of the incorporation of the association through the end of the second fiscal year after the earlier of either:

- the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to Section 718.104(4)(e), or
- the fiscal year in which an instrument that transfers title to a unit in the condominium that is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded.

Subsequently, only the non-developer owners may vote on such issues.

Subsequent to the recording of the declaration of condominium, agreements acquiring leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months of the earlier of either of the two conditions listed in the bulleted items above constitute a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into such agreements except upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in Section 718.113.

Within seven years of the earlier of either of the two conditions listed in the bulleted items above, all phases must be added to the condominium unless the unit owners vote to approve an amendment extending the seven-year period (to not more than 10 years) pursuant to the process and requirements in the statute. The unit owner vote may not occur until the last three years of the seven-year period.

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