

COMMUNITY ASSOCIATION LAW ALERT

6/24/15

2015 Community Association Legislation

The Florida Legislature has approved several bills affecting condominium, homeowners and cooperative associations. House Bill 643 became law on June 17th, House Bills 791 and 71 will become law on July 1st, and House Bill 87 will become law on October 1st.

House Bill 791 Community Associations

House Bill 791 revised Chapter 718 (Condominium Act), Chapter 720 (Homeowners Association Act), Chapter 719 (Cooperative Act), and Chapter 617 (Not For Profit Corporation Act).

Electronic Transmission

The Condominium, Homeowners, and Cooperative Acts were amended to permit associations to electronically transmit notices of board, committee, and owner meetings (except for owner meetings called to recall directors) to owners who consent, even if not authorized by the bylaws.

Electronic Voting

The Condominium, Homeowners, and Cooperative Acts were amended to allow associations (other than timeshare condominium and cooperative associations) to conduct elections and other owner votes through an internet-based online voting system if an owner provides written consent to online voting and other requirements are met.

The requirements for an internet-based online voting system apply to any matter that requires an owner vote.

The association must provide each owner with a method to: authenticate the owner's identity to the online voting system; transmit an electronic ballot that ensures the secrecy and integrity of each ballot; and confirm, at least 14 days before the voting deadline, that the owner's electronic device can successfully communicate with the online voting system.

The association must also use an online voting system that is able to: authenticate the owner's identity and the validity of each electronic vote; transmit a receipt from the online voting system to each owner who casts an electronic vote; for elections, to permanently separate any authentication or identifying information from the electronic election ballot (in the case of homeowners associations only if the bylaws provide for secret ballots for elections of directors); and store and keep electronic votes accessible to election officials for recount, inspection and review purposes.

An owner voting electronically pursuant to an online voting system is counted for purposes of determining a quorum. A substantive vote of the owners may not be taken on any issue other than those specifically identified in the electronic vote, when a quorum is established based on owners voting electronically via online voting system.

The board of directors must adopt a resolution that: provides that owners receive notice of the opportunity to vote through an online voting system; establishes reasonable procedures and deadlines for owners to provide written consent; and establishes reasonable procedures and deadlines for owners to opt out of online voting after giving consent. Written notice of the board meeting at which the resolution

is adopted must be sent to owners and posted for at least 14 days before the meeting. Evidence of compliance with such requirements must be made by an affidavit executed by the person providing the notice. An owner's consent to online voting is valid until the owner opts out according to the procedures in the board resolution.

Accord and Satisfaction/Administrative Late Fees

The Condominium, Homeowners, and Cooperative Acts were revised to provide that payments must be applied in the statutorily required manner (first to interest, then to any administrative late fee, costs, reasonable attorney's fees and then to the delinquent assessment), notwithstanding Section 673.3111, Florida Statutes or any purported accord and satisfaction.

The Condominium Act was also amended to permit a claim of lien to secure payment of administrative late fees.

Fines

The Condominium, Homeowners, and Cooperative Acts were amended such that the role of the fining/suspension committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. Therefore, the committee cannot modify the fine or suspension.

In a condominium or homeowners association, suspensions of use and voting rights now apply to a member, and when appropriate, the member's tenants, guests or invitees, even if the delinquency or violation that resulted in the suspension arose from less than all of the multiple units owned by the member.

If an owner's voting rights are suspended due to nonpayment of any fee, fine or other monetary obligation for more than 90 days, the voting interest for that owner is subtracted from the total number of voting interests in the association. The total voting interests in the association must then be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. The suspended voting interests may not be considered for any purpose, including for purposes of determining a quorum, elections or the number of voting interests required to approve any action.

The Cooperative Act was amended to provide that the fining/suspension committee may not consist of owners who reside in a director's household.

The Homeowners Association Act was amended to state that a suspension may not prohibit an owner's or tenant's right of vehicular and pedestrian access to the home. Formerly, the statute read, "impair." This revision clarifies that a homeowners association may require that an owner or tenant whose rights have been suspended enter the community through the visitor's entry gate.

The Homeowners Association Act was revised to permit a fine to exceed \$100.00 per violation if provided for in the governing documents.

Reproductions of Proxies

Section 617.0721 of the Not For Profit Corporation Act was amended to provide that notwithstanding any contrary provision in the articles of incorporation or bylaws, a copy, facsimile transmission or other reliable reproduction of an original proxy may be substituted or used in lieu of the original proxy for any

purpose for which the original proxy could be used. The copy, facsimile transmission or other reproduction must be a complete reproduction of the entire original proxy. This revision applies to all condominium, homeowners, and cooperative associations that are not for profit corporations.

Amendments to Homeowners Association Documents

Section 720.306 of the Homeowners Association Act was amended to provide that the failure to provide a copy or a recorded amendment to the governing documents or notice of the recording the amendment within 30 days, as applicable, does not affect the validity or enforceability of the amendment.

Eligibility for Homeowners Association Board

Section 720.306(9)(b) of the Homeowners Association Act was revised such that any person who is delinquent in payment of any monetary obligation on the day that he or she could last nominate himself or be nominated for the board may not seek election and his or her name may not be listed on the election ballot. The Homeowners Association Act no longer requires that the ineligible person be delinquent in excess of 90 days.

However, any director (i.e., one currently serving on the board) who becomes delinquent in excess of 90 days shall be deemed to have abandoned his or her seat on the board, creating a vacancy to be filled according to law.

Condominium Association Insurance

The second sentence in Section 718.111(11)(j) was amended to clarify that in the absence of an insurable event, a determination of the party (i.e., condominium association or unit owner) responsible to reconstruct, repair or replace a portion of the condominium property is determined by the maintenance provisions of the declaration of condominium or bylaws. Prior to this legislative revision, one could infer that the word "maintenance" should be read into that sentence.

Official Records

The Condominium, Homeowners, and Cooperative Acts were revised to provide that all "written" records relating to a condominium association's operations are "official records," even if not in the list of specific official records in the Condominium Act.

Developer Votes on Condominium Reserves

The Condominium Act was revised to clarify that when a developer casts votes on reserve funding prior to turnover, the developer may do so for the voting interests allocated to its units.

Bulk Assignees and Buyers

Section 718.707 of the Condominium Act was amended to extend the sunset of the "bulk assignee/buyer provisions" until July 1, 2018.

House Bill 643 Termination of Condominium

This bill amended Section 718.117 of the Condominium Act in numerous ways.

Section 718.117 was amended to provide that: an optional termination of a condominium may be approved by at least 80% of the total voting interests, unless 10% or more of the total voting interests have rejected the plan of termination; all voting interests must be permitted to vote, including those previously suspended; and if 10% or more reject a plan of termination, a subsequent plan may be not be considered for 18 months after the date the first plan is rejected.

Section 718.117 was also amended to provide subsection (2) does not apply to a “conversion” condominium (for example, an apartment complex converted to a condominium development) until 5 years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

The revisions also create conditions for a plan of termination when at least 80% of the voting interests are owned by a “bulk owner.” If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the plan of termination is recorded may lease his former unit and remain in possession for 12 months after the effective date of the termination on the same terms as similar unit types within the property are offered to the public. The unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the plan of termination is recorded.

Any former unit owner whose unit was granted homestead exemption status by the property appraiser as of the date the plan of termination was recorded must be paid a relocation payment in an amount equal to 1% of the termination proceeds allocated to the owner’s former unit. Any such relocation payment must be paid by the single entity or related entities owning at least 80% of the total voting interests.

For their respective units, all unit owners other than the bulk owner must be compensated at least 100% of the fair market value of their units. The fair market value must be at least the original purchase price paid for certain unit owners.

The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit’s share of termination proceeds under the plan.

The bill also revised Sections 718.117 and 718.1255 of the Condominium Act to require that disputes concerning a plan of termination be submitted to nonbinding arbitration before the Division of Florida Condominiums. A unit owner or lienor may only contest: the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners; that the liens of the first mortgages of unit owners other than the bulk owner has not or will not be satisfied to the extent required by the statute; or that the required vote to approve the plan was not obtained.

House Bill 71 Service Animals

This bill modifies Section 413.08, Florida Statutes, to make it consistent with the Federal and Florida Fair Housing statutes. In addition, a timeshare that is considered a transient public lodging establishment pursuant to Section 509.013, Florida Statutes, is included in the definition of a “public accommodation.”

House Bill 87. Construction Defects

House Bill 87 revised Section 718.203 of the Condominium Act, Section 719.203 of the Cooperative Act, and Chapter 558, Florida Statutes.

Sections 558.02, 718.203 and 719.203 were amended to provide that the term “completion of a building or improvement” means the issuance of a temporary certificate of occupancy, in addition to a permanent certificate of occupancy.

Section 558 (dealing with pre-suit notification and resolution of construction defect claims) was also amended to require, based upon at least a visual inspection, that the initial “notice of claim” identify the location of each alleged construction defect sufficiently to enable the developer, contractor, or design professional to locate the alleged defect without undue burden. The claimant (for example, a community association) must also, upon request, divulge to the developer, contractor, or design professional, maintenance records and other documents relating to the discovery, investigation, causation, and extent of the alleged defects identified in the notice of claim and resulting damages. However, any party may claim a privilege (for example, the attorney-client privilege) recognized under Florida law.

Please contact the following Roetzel attorneys for further information:

Ashley D. Lupo
239.649.2736 | alupo@ralaw.com

Sean M. Ellis
239.338.4245 | sellis@ralaw.com

Steven M. Falk
239.649.2718 | sfalk@ralaw.com

Jennifer A. Nichols
239.649.2724 | jnichols@ralaw.com