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2008 Florida Community Association Law Update

The following is a synopsis of the changes to the laws pertaining to community associations. The changes are effective July 1, 2008 or October 1, 2008 as noted. You should read the actual statutes and discuss them with your association legal counsel before making decisions based on the new laws.

CONDOMINIUM ASSOCIATIONS

§718.111(1). Directors. Directors who abstain from voting are presumed to have taken no position on the issue, and requires officers, directors and agents to utilize the care of an ordinary prudent person in similar circumstances. A breach of duty includes a violation of criminal law, a transaction deriving an improper personal benefit, reckless acts or omissions in bad faith with malicious purpose, or exhibiting wanton and willful disregard for human rights, safety or property. (EFFECTIVE DATE 10/01/08)

§718.111(11). Insurance. The value of condominium hazard insurance shall be determined by an independent insurance appraisal which shall occur once every 36 months. Self-insurance and pooled funds are authorized within a narrow preview. Failure of condominium developer appointed members during developer control to obtain adequate insurance is a breach of their duty unless they have made their best efforts to do so. Deductibles are expressly permitted to be determined by the condominium association's board of directors if deductibles are consistent with industry standards and prevailing community practices, and may be based upon available funds including reserve accounts. The notice of a meeting at which deductibles are established shall include the proposed deductible amount, available funds and assessment authority together with estimating potential assessments to pay the deductible. Condominium associations controlled by unit owners must also utilize their best efforts to obtain insurance. An exception for the requirement of condominium association insurance coverage applies only if units are in individual free standing buildings. Unit owners are required to have insurance. Individual condominium unit owner insurance coverage must include special assessment coverage of no less than \$2,000.00 per occurrence, and shall include all improvements or additions benefitting that unit owner which do not benefit all owners. The condominium association may require owners to provide proof of insurance, and upon an owner's failure to provide proof of insurance, purchase insurance on behalf of the owner which expense shall be an assessment against the unit. Condominium reconstruction work normally shall be undertaken by a condominium association; however, upon the condominium association's prior written consent a unit owner may undertake work subject to the owner obtaining proper approvals. The condominium association is to be an additional insured on all unit owner casualty policies. Multi condominiums may obtain a single policy upon a proper vote and recorded instrument. Subject to the condominium unit owners opting out by a unit owner vote to amend the declaration, the portion of casualty repair expense not paid by insurance (i.e the deductible) shall be a common expense of the condominium association, except for damage caused by a unit owner's intentional conduct, neglect or failure to comply with restrictions. If a condominium unit owner undertakes

repairs and the condominium association obtains insurance proceeds, then the condominium association shall reimburse the unit owner without a waiver of rights of subrogation. Notwithstanding the foregoing, if a condominium unit owner does not timely report an insured loss, then the condominium association does not need to pay for the loss. The condominium association's duty to reconstruct and repair is only for improvements originally completed by the condominium developer and reasonable replacements which are standard to the units. (EFFECTIVE DATE 07/01/08)

§718.111(12).

Records. Provides a civil penalty for a person who intentionally defaces or destroys association accounting records or knowingly or intentionally fails to create or maintain association accounting records. Official records must be kept for at least seven years within the county that the condominium is located or within forty-five miles of the condominium, except for timeshare condominiums. Alternatively, an association may offer access to records electronically. Personal identification information, such as social security, drivers license and credit card numbers are not to be disclosed. The Division of Land Sales is empowered to adopt rules for records and accounting procedures, including addressing reserve status and special assessments. (EFFECTIVE DATE 10/01/08)

Waiving Year End Financial Report. Reduced levels of financial reporting may be waived or reduced no more than three consecutive years which mandates associations with over \$400,000.00 of revenues to have an audit at least once every four years. (EFFECTIVE DATE 10/01/08)

§718.112(2)(b). Voting. Prohibits an association from exercising voting interests allocated to a unit owned by the association. (EFFECTIVE DATE 10/01/08)

§718.112(2)(c). Directors' Meetings. Requires the board of directors to address an item of business presented by a petition of 20% of an association's voting interest within 60 days of the receipt of a petition. Meetings considering a regular or a special assessment shall specifically state not only that assessments will be considered and the nature of the assessment, but also the estimated cost and description of the purposes of the special assessment. (EFFECTIVE DATE 10/01/08)

§718.112(2)(d).

Members' Meetings. Annual meetings must be held at the location specified in by-laws, or if silent, then within 45 miles of the condominium property except for time shares. (EFFECTIVE DATE 10/01/08)

Term Limits. Members must serve annual terms unless the by-laws permit staggered terms of no more than two years which are approved by a majority of the Association's voting interests. (EFFECTIVE DATE 10/01/08)

Co-Owners Serving on Board. In condominiums of more than ten units, co-owners of a unit may not serve as association directors. (EFFECTIVE DATE 10/01/08)

Director Disqualification. An officer or director suspended or removed from office or who is delinquent in the payment of a fee or assessment is not eligible to serve on the board. Those also prohibited from serving as officers and directors are those have been convicted of an offense in another jurisdiction, including another country that would be considered a felony if committed in Florida. Restoration of civil rights does not grant an owner a right to serve on a board unless the restoration has been effective for at least five years.

Nominees for director shall certify in writing that the nominee has read and understands to the best of his or her ability the governing documents, the Condominium Act and State of Florida administrative rules. (EFFECTIVE DATE 10/01/08)

§718.112(2)(f). Budget/Waiving Reserves. A proposed budget must include estimated revenues as well as expenses. Proxies to be used for a vote to waive or reduce reserves must contain a conspicuous notice that waiving, reducing or utilizing reserves for other purposes may result in special assessments. (EFFECTIVE DATE 10/01/08)

§718.112(2)(n). Delinquency. An officer or director more than ninety days delinquent in the payment of a regular assessment is removed from office. (EFFECTIVE DATE 10/01/08)

§718.112(2)(o). Crime. An officer or director charged with felony theft or an embezzlement involving the association's funds or property shall be removed from office and is not eligible to return to office until the charges are resolved. If the person is innocent, then the position shall be restored. (EFFECTIVE DATE 10/01/08)

§718.1124. Receiver. If a unit owner seeks to have a receiver appointed for a condominium association, then a notice in the form required by the Act must be provided to all unit owners. (EFFECTIVE DATE 07/01/08)

§718.113(2). Hurricanes. Upon a majority vote, the association may install other hurricane protection that is compliant with code. An association is prohibited from failing to approve installation or replacement of hurricane shutters if the request conforms with board approved specifications. (EFFECTIVE DATE 10/01/08)

§718.113(6). Inspections. Any condominium building greater than three stories in height shall have an inspection report every five years from October 1, 2008. The report requirement may be waived by a majority of the interest present at a meeting before the deadline. (EFFECTIVE DATE 10/01/08)

§718.113(6). Authority. The board of directors may without unit owner approval install on common elements or association property energy efficient devices. (EFFECTIVE 07/01/08)

§718.113(7). Religious Matters. An association may not refuse a reasonable request by an owner to attach on a door, mantle or frame of a religious object not exceeding dimensions of 3 x 6 x 1.5 inches. (EFFECTIVE DATE 10/01/08)

§718.115. Hurricanes. Clarification of hurricane shutter and protection policies. (EFFECTIVE DATE 10/01/08)

§718.115(1)(a). Common Expenses. Amended to allow items or services, such as fire safety equipment, water and sewer, to be condominium association common expenses unless otherwise provided in the declaration of condominium. (EFFECTIVE DATE 07/01/08)

§718.116. Estoppel Fees. Amended to allow a fee to a condominium association for an estoppel letter certificate, requiring the fee to be established by a writing such as a resolution or management agreement. The fee shall be included in the certificate and shall be refundable if a closing does not occur within thirty days after the schedule date. (EFFECTIVE DATE 07/01/08)

§718.117. Termination. Amended to clarify that a condominium termination distribution to lienholders, such as mortgage holders, shall not exceed the unit owner's share of termination proceeds. (EFFECTIVE DATE 07/01/08)

§718.117(7)(a). Condominium Receiver Notice. A condominium association receiver shall provide notice of appointment to unit owners. (EFFECTIVE 07/01/08)

§718.121(4). Assessments. A condominium association may not lien a unit until 30 days after providing a notice of intent to lien sent certified mail return receipt requested and first class mail to an owner to last know address in Association records, and first class mail if outside the United States. (EFFECTIVE DATE 07/01/08)

§718.1224. SLAPP. Strategic lawsuits against public participation, a provision already found in the Homeowners' Association Act, is incorporated into the Condominium Act. (EFFECTIVE DATE 10/01/08)

§718.1265. Emergencies. When necessary to protect the health, safety and welfare of the association during a time of emergency, significant emergency powers are extended to boards of directors, including: Conduct meetings with notices as may be practicable, cancel and reschedule meetings; Name assistant officers; Relocate offices; Enter into agreements with counties and municipalities for debris removal; Implement a disaster plan including shutting elevators, electricity, air conditioners and utilities; Determine portions of the condominium to be unavailable for entry as well as require evacuation; Contract for debris removal including in units for preventing spread of fungus; Contract on behalf of unit owners for efforts to prevent further damage to the condominium; Levy special assessment without a vote of owners; Borrow money and pledge assets as collateral to fund emergency repairs. (EFFECTIVE DATE 10/01/08)

§718.301. Turnover. Turnover of an association shall occur when a developer files a petition seeking protection in bankruptcy or when a receiver is appointed by a circuit court and not discharged within thirty days after appointment. Developers also must provide a report by an architect or engineer analyzing common element features. (EFFECTIVE DATE 10/01/08)

§718.3025. Agreements. Management agreements must disclose financial or ownership interests with a board member or any other party providing maintenance or management services. A condominium association's by-laws cannot exempt an association from competitive bidding processes. If officers or directors are financially interested in contracting matters, disclosures are a requirement and a super majority two-thirds directors approval is required, allowing for members to cancel such a contract. (EFFECTIVE DATE 10/01/08)

§718.303. Fining. Fining committee members cannot be board members or persons residing in a board member's household. (EFFECTIVE DATE 10/01/08)

§718.501. Suspensions. If the Division of Land Sales determines that a condominium developer violated a State rule, then the Division may suspend that developer's right to file new prospectus. The Division may petition for the appointment of a conservator for a condominium association to take action as required by a court. The Division may also seek restitution to a condominium association and issue notices to show cause and levy penalties for failure to abide by the orders. (EFFECTIVE DATE 07/01/08)

§718.501. Division. The Division of Land Sales has the power to investigate complaints against associations under developer control; however, after turnover the Division has jurisdiction only to investigate complaints

related to financial elections and access to association record issues. Developers who fail to pay fines on a timely basis may have their filings barred. The Division may order the removal of an officer or director when there is a willful and knowing violation of the Act or rules. If the Division has proof that an owner has requested access to official records and after ten days of a second request the Association refused to provide the records, then the Division shall issue a subpoena regarding protection. The Division is required to undertake education efforts. Directors, officers, employees, developers, managements and firms have a duty to comply with the Division in any investigation. (EFFECTIVE DATE 10/01/08)

§718.5015 1. Council. Renames the Advisory Council in Condominiums to the Community Association Living Study Council. (EFFECTIVE DATE 10/01/08)

§718.503. Pamphlet. Seller of a condominium unit, including a developer, must provide the prospective purchaser a governance form created by the Division of Land Sales outlining owner and association's duties and obligations. (EFFECTIVE DATE 10/01/08)

HOMEOWNERS' ASSOCIATIONS

§720.304(2)(a). Flags. The types of flags that may be displayed in a homeowners' association community are expanded to include POW-MIA flags. Two flags may be flown on a parcel, one United States flag or official flag of the State of Florida and one for the armed forces or POW-MIA. A parcel owner may utilize a free standing flag pole no more than twenty feet high anywhere not interfering with intersection sight lines or easements. (EFFECTIVE 07/01/08)

§720.305(4), §720.3053 and §720.313. Receivers. Current homeowners' association receivership requirements are deleted. Replacement provisions are similar to the procedures adopted for condominium associations discussed in §718.127, above. (EFFECTIVE 07/01/08)

§720.3085. Assessment Liens. Provides that homeowners' association assessments liens are effective upon recording. If recorded after the effective date, the lien shall relate back to the date the original declaration was recorded; however, concerning the first mortgage of record as of the effective date, the lien is effective from and after recording. Requirements for the lien and a notice of contest of lien are provided. A homeowners' association may foreclose a lien as a mortgage and/or to seek money damages for which the association is entitled to recover reasonable attorneys' fees. Owners remaining in possession after a foreclosure judgment may be required to pay rent and an association is entitled to purchase a foreclosed parcel. The liability of a first mortgagee, or its successor or assign as a subsequent holder of the first mortgage, for homeowners' association assessments coming due before the mortgagee's acquisition of title is limited to the lesser of twelve months of regular and special assessments or 1% of the original mortgage debt. A homeowners' association may record a claim of lien forty-five days after depositing a notice in the mail to the owner. Qualifying offer procedures are clarified. (EFFECTIVE 07/01/08)

§720.30851. Estoppel - HOA. Created to limit homeowners' associations right to charge for estoppel certificates in the same manner as condominium associations referenced in §718.116 above. Board must now adopt written policy establishing amount of estoppel fee or it must be listed in management contract. (EFFECTIVE DATE 07/01/08)

COOPERATIVES

§719.108, Cooperative Collections. Cooperative associations are to provide members the same thirty day notice before proceeding with a lien as apply to condominium associations as stated concerning §718.121, above. (EFFECTIVE 07/01/08)

§719.1124 and §719.127. Cooperative Receivers. The appointment and notice of an appointment of a cooperative association receiver follows procedures similar to those adopted for condominium associations discussed in §718.127, above. (EFFECTIVE 07/01/08)

TIMESHARES

§721.83(3) doubling the fee to foreclose each unit week in a multiple time share estate foreclosure action from \$5.00 to \$10.00. (EFFECTIVE 07/01/08)

MOBILE HOME HOA'S

§723.075(3). Voting. Mobile home park voting rights are allocated in certain mobile home park lots. (EFFECTIVE 07/01/08)

MANAGERS

§468.41. Management Firm. Defines a "Community Association Management Firm." (EFFECTIVE DATE 10/01/08)

§468.43 Regulatory Counsel. Re-organizes the Regulatory Counsel of Community Association Managers to include authority for continuing education. (EFFECTIVE DATE 10/01/08)

§468.43. Management. As of January 1, 2009, all Florida community associations responsible for management of more than ten units/parcels or with a budget of \$100,000.00 or more, paying a manager must utilize a licensed community association manager or management firm. (EFFECTIVE DATE 10/01/08)

§468.463. Management Discipline. Consolidates manager disciplinary proceedings, requiring investigations within ninety days after receipt of a complaint. (EFFECTIVE DATE 10/01/08)

BUILDING CODE STANDARDS.

§ 163.04(2) Covenants. Amended to provide that declarations of condominium cannot forbid or otherwise control alterations within the boundaries of a condominium unit concerning installation of solar collectors or other energy devices. (EFFECTIVE 07/01/08)

FIRE SAFETY.

§633.027. Light frame truss-type construction, if in a commercial, industrial or three unit or more residential structure, must post State Fire Marshall approved signage. (EFFECTIVE 07/01/08)

REAL ESTATE TRANSFERS.

§689.21. Transfer Fees. Created to prohibit transfer fee covenants which seek to impose a lien upon real property for a payment to be made to the lien holder each time the property transfers, with exceptions for the initial grantor/grantee transaction, brokerage commissions, lender charges, rent, options to purchase, monies due to governmental authorities, community association charges, payments for non-profit or charitable organizations, and club memberships. (EFFECTIVE 07/01/08)



The information contained herein is not intended as legal advice which is applicable to specific situations and is based upon legal criteria which are subject to change. Please contact attorneys Richard D. DeBoest II or Susan McLaughlin at (239) 333-2992 should you have any questions.

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