

OUTLINE OF 2008 COMMUNITY ASSOCIATION LEGISLATION

By: Joseph E. Adams

HOUSE BILL 995 (Effective October 1, 2008)

- Section 1: • Amends F.S. 468.431 to regulate “Community Association Management Firms.”
- Section 2: • Amends F.S. 468.4315 regarding composition and functions of Regulatory Council of Community Association Managers.
- Section 3: • Amends F.S. 468.432 regarding licensure and Community Association Management Firms.
- Section 4: • Amends F.S. 468.433 regarding manager licensing.
- Section 5: • Amends F.S. 468.436 regarding manager discipline.
- Section 6: • Amends F.S. 718.111(1)(b) to permit director abstention in voting absent conflict of interest.
- Adds F.S. 718.111(1)(d) to create standards of director conduct.
 - Amends F.S. 718.111(12)(a)11 to create civil penalty for any person who knowingly or intentionally fails to create or destroys accounting records.
 - Amends F.S. 718.111(12)(a)11 to expand 1 year requirement for keeping of bids to 7 years.
 - Amends F.S. 718.111(12)(a)12 to provide that ballots and election materials need only be kept for a 1 year, despite general requirement to maintain association official records for 7 years.
 - Amends F.S. 718.111(12)(a)16 by adding developer’s turnover inspection report as an enumerated official record.
 - Amends F.S. 718.111(12)(b) to require that condominium records generally be kept for 7 years and must be made available for unit owner inspection in County where condominium is located, or within 45 miles of the condominium.

- Amends F.S. 718.111(12)(b) to permit associations to satisfy records access requested by making records available through computer or internet format.
- Adds F.S. 718.111(12)(c)4 to exempt “social security numbers, driver’s license numbers, credit card numbers, and any other personal identifying information of any person” from ambit of official records.
- Amends F.S. 718.111(13) to require Division’s financial rules to set forth reserve analysis standards.
- Amends F.S. 718.111(13) to permit financial reporting waiver vote to be taken prior to commencement of fiscal year for which waiver vote is taken.
- Amends F.S. 718.111(13) to require pre-turnover audits or reviews to be paid for by developer.
- Amends F.S. 718.111(13) to prohibit waiver of financial reporting requirements for more than 3 consecutive years.

Section 7:

- Amends F.S. 718.112((b)(2) to prohibit voting of association-owned units.
- Amends F.S. 718.112(2)(c) to permit 20% of voting interests to petition for the call of a special board meeting within 60 days or have item of business taken up at regular board meeting within 60 days.
- Amends F.S. 718.112(2)(c) to require pre-assessment notice for special assessments to include estimated cost, description and breakdown of proposed special assessment.
- Amends F.S. 718.112(2)(d) to require bylaws to specify location of annual meeting, and in the event that the bylaws do not so specify, to hold the meeting within 45 miles of the condominium.
- Amends F.S. 718.112(2)(d) to default to one year board terms with an exception for two year staggered terms if approved by a majority of the voting interests.
- Amends F.S. 718.112(2)(d) to state that if no person runs for vacant board seat, the board members whose term expired is automatically appointed.

- Prohibits co-owners of a unit from serving on the board simultaneously, except for condominiums of ten units or less.
- Amends F.S. 718.112(2)(d) to provide that a director who is suspended or removed by the Division, or who is delinquent in the payment of any fee or assessment, is not eligible for board membership.
- Amends F.S. 718.112(2)(d) to disqualify persons convicted of a felony in Florida or convicted of an offense in another jurisdiction that would be considered a felony in Florida from board service, unless felon civil rights have been restored for a period of no less than five years.
- Amends F.S. 718.112(2)(d)3 to require the association’s first notice of election package to include a “certification form”, to be prepared by the Division, attesting that candidate has read and understands, to the best of their ability, the governing documents of the association and the provisions of F.S. 718 and applicable administrative rules.
- Amends F.S. 718.112(2)(d)3 to require that when candidate returns candidacy intent form, the signed certification must be included.
- Amends F.S. 718.112(2)(d) to prohibit associations governing more than 10 units to opt out of statutory election process and limited proxy voting.
- Amends F.S. 718.112(2)(f)1 to require annual budget show estimated revenues.
- Amends F.S. 718.112(2)(f)4 to require that proxy questions relating to waiving or reducing reserve funds must contain boldface disclaimer regarding potential special assessment.
- Adds F.S. 718.112(2)(n) to provide that a director or officer more than 90 days delinquent in the payment of regular assessments shall be deemed to have abandoned their office.
- Adds F.S. 718.112(2)(2)(o) to provide that an officer or director charged with a felony theft or embezzlement offense shall be removed from office until the charges are resolved.

- Section 8:
- Amends F.S. 718.1124(1) through (5) regarding required form of notice of unit owner intent to apply for receivership when vacancies on board of directors cannot be filled by association.

- Section 9:
- Amends F.S. 718.113(2)(a) to state that approval provisions regarding material alterations and substantial additions applies to pre-existing condominiums.
 - Amends F.S. 718.113(5) regarding hurricane shutters, by adding “hurricane protection” to items that can be installed after approval of a majority of voting interests. Changes law regarding maintenance of hurricane shutters approved by majority vote. Permits board to install hurricane protection for elements maintained by association. Requires majority unit owner vote for installation of hurricane protection on elements maintained by unit owners.
 - Adds F.S. 718.113(6) to require that any condominium building greater than three stories in height must, at least every 5 years, obtain a physical inspection report from an architect or engineer. Provides for waiver of requirement by vote of majority of the voting interests present at a meeting during the five-year period.
 - Adds F.S. 718.113(7) to state that an association may not refuse a unit owner’s request for attachment of a religious object on the unit’s door. Establishes size criteria.
- Section 10:
- Amends F.S. 718.115(1)(e) regarding votes to install hurricane protection and cost allocation.
- Section 11:
- Amends F.S. 718.117(7)(a) regarding receivers appointed after a natural disaster.
- Section 12:
- Amends F.S. 718.121(4) to provide that no lien may be filed against a condominium unit unless a 30 days notice of intent to lien has been sent by certified mail, return receipt requested, and by first class mail to the owner at his or her last known address. Provides alternative methods for service and foreign delivery.
- Section 13:
- Adds F.S. 718.1224 to prohibit Strategic Lawsuits Against Public Participation (“SLAPP”) suits.
- Section 14:
- Amends F.S. 718.1255(3)(b) to eliminate legislative finding that courts are overcrowded with condominium disputes.

- Section 15: • Adds F.S. 718.1265 , providing various “emergency powers to boards including authority to:
- Waive meeting notice requirements.
 - Cancel and reschedule association meetings.
 - Name special officers.
 - Relocate office.
 - Enter into agreements with government units.
 - Implement disaster plans.
 - Declare condominium property unavailable for entry or occupancy.
 - Require evacuation of the condominium property.
 - Determine when property can be re-inhabited.
 - Mitigate further damage by disposing of damaged property.
 - Contract on behalf of unit owners for various services such as dry-out.
 - Levy special assessments without a vote of the unit owners, regardless of any documentary provision to the contrary.
 - Borrow money.
- Section 16: • Adds F.S. 718.127 requiring receiver appointed for operation of condominium association to give unit owners written notice of appointment.
- Section 17: • Adds F.S. 718.301(e) and (f) to state that transition of control is triggered if developer files bankruptcy petition or seeks appointment of receiver.
- Adds 718.301(4)(p) to require developer to deliver report from engineer or architect attesting to required maintenance, useful life, and replacement costs of various physical components.
- Section 18: • Adds F.S. 718.3025(1)(f) to require association contracts to disclose financial or ownership interest of board members or any party providing maintenance or management services.
- Section 19: • Amends F.S. 718.3026 to prohibit associations of more than 10 units to opt out of competitive bidding requirements.
- Adds F.S. 718.3026(3)(a) through (d) to create standards regarding contracts in which directors or officers have financial interest.
- Section 20: • Amends F.S. 718.303(3) to state that fining committee cannot consist of board members nor persons residing in a board member’s household.

- Section 21:
- Amends F.S. 718.501(1) to limit Division’s investigation jurisdiction in post-turnover setting to complaints related to financial issues, elections, and unit owner access to association records.
 - Amends F.S. 718.501(1)(d)2 to provide jurisdiction to the Division over developer-designated directors, and community association managers.
 - Adds F.S. 718.501(1)(d)3 to permit Division to petition circuit court if developer does not pay restitution ordered.
 - Amends F.S. 718.501(1)(d)4 to authorize Division to order removal of board member or officer for knowing violation of F.S. 718, Division Rules, or a final order of the Division.
 - Adds F.S. 718.501(1)(d)5 to authorize Division to subpoena official records of association where unit owner has been denied access.
 - Amends F.S. 718.501(1)(g) to require Division to establish procedures notifying developers in the pre-turnover phase when Division is considering issuing a declaratory statement.
 - Amends F.S. 718.501(1)(j) regarding Division educational training and seminars.
 - Adds F.S. 718.501(1)(n) to create an ongoing duty by association directors, officers, employees, developers, and managers to reasonably cooperate with the Division in investigations. Requires Division to refer to local law enforcement authorities evidence of alteration, destruction, concealment, or removal of association records.
- Section 22:
- Adds F.S. 718.501(2) to expand duties of Ombudsman to assist with resolution of disputes between unit owners and the association or between unit owners, when not within Division jurisdiction to otherwise resolve.
- Section 23:
- Amends F.S. 718.501(5) changing name of Advisory Council to Community Association Living Study Council, and expanding jurisdiction to all community associations, such as homeowners’ associations.
- Section 24:
- Amends F.S. 718.503(2)(a) to require the Division to prepare a “governance form”, summarizing the highlights of condominium ownership rights and responsibilities, which will have to be given to prospective purchasers.

HOUSE BILL 601: PROVISIONS APPLICABLE TO COMMUNITY ASSOCIATIONS (Effective October 1, 2008)

- Section 1: • Amends F.S. 718.111(1)(b) to state that a director who abstains from voting shall be presumed “to have taken no position” on the matter.
- Section 2: • Provides that in the event of conflicts in amendments to F.S. 718.111 between HB 995 and HB 601, HB 601 controls.
- Section 3: • Rewrites F.S. 718.111(11), the insurance section of the Condominium Act, in its entirety. Provides for the following:
- The law applies to every condominium existing in the State of Florida regardless of the date of creation of the condominium.
 - Adequate hazard insurance shall be “based upon” the replacement cost of the property to be insured as determined by an independent insurance appraisal. Full insurable value shall be determined at least once every 36 months.
 - Associations may pursue self insurance funds through compliance with F.S. 624.460-468.
 - 3 or more associations may pool insurance coverage provided sufficient coverage exists for 250 year windstorm event.
 - Developer-controlled and unit owner-controlled associations must use “best efforts” to obtain adequate insurance.
 - Adequate insurance may take deductibles into account, and board may determine deductible.
 - Deductibles must be consistent with industry standards and prevailing practice for similar communities. Deductibles may be based upon available funds, including reserve accounts and “pre-determined assessment authority.”
 - The board must establish insurance deductibles at an open board meeting, with notice sent to each unit owner and posted conspicuously on the condominium property at least 14 days in advance. The notice must state the proposed deductible and the available funds and assessment authority

relied upon by the board and estimate any potential assessment against each unit.

- The declaration may provide for unit owner insurance of free-standing structures.
- Every hazard policy issued or renewed on or after January 1, 2009 shall provide primary coverage for:
 - ❖ All portions of the condominium property as originally installed or replacements of like kind and quality.
 - ❖ All alterations or additions made to the condominium property or association property pursuant to F.S. 718.113(2).
- Association coverage excludes personal property within units or common elements, floor, wall and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments including curtains, drapes, blinds, hardware and similar window treatments or replacements thereof.
- All HO-6 policies issued or renewed on or after January 1, 2009 must contain a provision that coverage is excess to the association's coverage.. HO-6 policies must include "special assessment coverage" of no less than \$2,000.00 per occurrence.
- "Improvements or additions to the condominium property that benefit fewer than all owners" shall be insured by the unit owner or owners having the use thereof or may be insured by the association at the cost and expense of the unit owners having the use thereof.
- Associations must require owners to provide evidence of HO-6 insurance and may "force-place" HO-6 insurance with a right of lien, if the owner fails to do so.
- Generally requires the association to undertake all reconstruction work after casualty, although association may give unit owner permission to do so in limited circumstances.
- Provides that unit owners are responsible for the cost of reconstruction of any portions of the condominium property which the unit owner is

required to insure. If the association undertakes such work, the association may charge the unit owner with right of lien.

- Provides that association must be an additional named loss payee on HO-6 policies.
- Permits multicondominium associations, by majority vote of the collective members of the condominiums operated by the association, to operate as a single condominium for insurance matters, including allocation of deductibles. Evidence of election must be through a recorded amendment to the declaration.
- Restates previous law on fidelity bonding.
- Restates previous law regarding ability of association to amend declaration of condominium to conform insurance requirements, without regard to mortgage approval requirements in declaration.
- For the first time, provides statutory guidance on allocation of post-casualty costs. In general, if any portion of the condominium property which is insured by the association is damaged, shortfalls (including deductibles and uninsured losses) are an expense of the association, as a common expense. This rule is subject to the following exceptions:
 - ❖ Unit owner is responsible for uninsured repair costs if occasioned by negligence, intentional conduct, or failure to comply with terms of declaration or rules and regulations.
 - ❖ Unit owner is responsible for financial shortfalls affiliated with items unit owner is obligated to insure.
 - ❖ Association is not obligated to pay reconstruction costs if unit owner fails to report damage in a timely fashion, resulting in compromising insurance claim.
 - ❖ An association may, upon approval of a majority of the total voting interests in the association, opt out of these post-casualty repair allocations and provide otherwise in the declaration of condominium.

- ❖ Multi-condominium associations that do not operate on a consolidated operation may opt out with approval of a majority of the total voting interests in a particular condominium.
- ❖ Associations opting out of statutory default post-casualty cost allocations must record a notice in the public records.
- ❖ Provides that association is not obligated to pay reconstruction or repair expenses to improvements installed by a current or former owner or by the developer, if the improvement benefits only the unit for which it was installed and is not part of standards improvements installed on all units.

- Section 4: • Amends F.S. 718.115(1)(a) to provide that unless the manner of payment or allocation of expenses is otherwise addressed in the Declaration, services required by law (including fire safety equipment or water and sewer system where a master meter serves the condominium) is a common expense.
- Section 5: • Amends F.S. 718.116(8) to provide that a unit owner may designate a third party to request estoppel information.
- Amends 718.116(8)(c) to state that fee charged for estoppel letters must be included in the estoppel certificate.
- Adds 718.116(8)(d) to provide that the authority to charge a fee for estoppel certificates shall be established by a written resolution adopted by the board or authorized in a management agreement. If transaction does not close, the person who pays estoppel fee is entitled to refunds, and it then becomes the obligation of the unit owner.
- Section 6: • Amends F.S. 718.117(17)(c)3 to provide that distribution to lienholders in termination of condominium may not exceed a unit owner's share of proceeds.
- Section 7: • Adds F.S. 720.30851 to provide that within 15 days after receipt of a written request, a parcel owner in an HOA is entitled to an estoppel certificate. Authority to charge for the certificate must be established by a written resolution adopted by the board or contained in a management contract. If the transaction does not close within 30 days, the person who pays the estoppel fee is entitled to a refund, and it becomes the obligation of the parcel owner.

- Section 8: • Changes name of Division of Florida Land Sales, Condominiums, and Mobile Homes to “Division of Florida Condominiums, Timeshares, and Mobile Homes.”

SENATE BILL 464 (Effective July 1, 2008)

- Section 1: • Adds F.S. 689.28 regarding prohibition against “transfer fee covenants”. The law provides as follows:
- Legislative findings that “transfer fee covenants” impair marketability and transferability of real property by constituting an unreasonable restraint on alienation.
 - Defines “transfer fee” as a fee or charge required by a transfer fee covenant payable on the transfer of real property.
 - Exempts the following:
 - ❖ Consideration paid in connection with transfer.
 - ❖ Brokers’ commission.
 - ❖ Enumerated lender fees.
 - ❖ Rents due.
 - ❖ Consideration payable to option holders.
 - ❖ Taxes fees, charges assessments, fines and other governmental impositions.
 - ❖ “Any fee, charge, assessment, fine, or other amount payable to a homeowners’, condominium, cooperative, mobile home, or property owners’ association pursuant to a declaration of covenant or applicable law to such association, including but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent.”
 - ❖ Any fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering four or more parcels in a community as defined in F.S. 720.301, and payable to a

nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activity benefiting the community that is subject to the declaration or covenant.

- ❖ Any fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member.

HOUSE BILL 1105 (Effective July 1, 2008)

- Section 1: • Amends F.S. 718.1124(1) through (5) regarding procedures to be followed when unit owner intends to apply for receivership when association cannot fill vacancies on board of directors.
- Section 2: • Amends F.S. 718.117(7)(a) to provide that if a receiver is appointed after a natural disaster, the receiver must give written notice to the unit owners.
- Section 3: • Adds F.S. 718.121 to provide that no lien may be filed against a condominium unit unless a 30 day notice of intent to lien has been sent by certified mail, return receipt requested, and by first class mail to the owner at his or her last known address. Provides alternate methods of service and foreign delivery.
- Section 4: • Adds F.S. 718.127 regarding requirement that receiver provide written notice to unit owner.
- Section 5: • Amends F.S. 719.108(4) to provide that no lien may be filed by a cooperative association against a cooperative parcel unless 30 days notice of intent to lien has been sent by certified mail or by personal service (no alternative delivery methods for foreign cooperative parcel owners, as with the condominium law).
- Section 6: • Adds F.S. 719.1124 regarding appointment of receiver for cooperative associations when association cannot fill vacancies on board.
- Section 7: • Adds F.S. 719.127 regarding requirement that receiver provides notice of receivership to cooperative unit owners.
- Section 8: • Amends F.S. 720.305 to remove language regarding appointment of receiver when vacancies on HOA board cannot be filled.

- Section 9: • Adds F.S. 720.305(3) to provide new section on appointment of receiver when HOA cannot fill vacancies on board.
- Section 10: • Adds F.S. 720.313 to require receiver to provide notice to HOA parcel owners of appointment of receivership.

HOUSE BILL 7135: PROVISIONS APPLICABLE TO COMMUNITY ASSOCIATIONS (Effective July 1, 2008)

- Section 3: • Amends F.S. 163.04(2) to prohibit a deed restriction, covenant, declaration, or similar binding agreement from prohibiting solar collectors or other energy devices within the boundaries of a condominium unit.

SENATE BILL 1378 (Effective July 1, 2008)

- Section 1: • Amends F.S. 720.304(2)(a) and creates new F.S. 720.304(2)(b) and (c) regarding flags. This Bill affects the following changes relative to flying flags in communities operated by homeowners' associations:
- Removes limitations on flying flags to Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day.
 - Permits flying POW-MIA flags.
 - Permits any homeowner to erect a free-standing flagpole no more than 20 feet high on any portion of the homeowner's real property, regardless of any covenant to the contrary. The flagpole cannot obstruct site lines at intersections and cannot be erected within or upon an easement.
 - The law applies to all community development districts and homeowners associations regardless of the authority to impose liens.
- Section 2: • Adds F.S. 723.075(3) regarding mobile home homeowners associations. Provides that if a portion of the park contains concrete block homes occupying lots under 99 year leases, those homeowners may be part of the association and may serve on the board of directors based on the percentage of lots containing concrete block homes to the total number of mobile home lots in the park.

SENATE BILL 1986 (Effective July 1, 2008)

- Section 1:
- Creates F.S. 720.3085 to provide that HOA liens relate back to date of original declaration. Provides that as to first mortgages of record, the lien is effective from and after date of recording the lien.
 - Provides required information to be contained on HOA claim of lien.
 - Provides for notice of contest of lien.
 - Provides for association foreclosure of lien and recovery of attorney's fees.
 - Provides that if parcel owner remains in possession after foreclosure judgment, the court may require the parcel owner to pay rent. Also permits the attachment of rentals, if the parcel is rented or leased during the pendency of the foreclosure action, by a receiver.
 - Authorizes association to purchase parcel at foreclosure sale and hold, lease, mortgage, or convey the parcel.
 - Changes foreclosing mortgagee liability to regular or special assessments that accrued or became due during the 12 months immediately preceding the acquisition of title or 1 percent of the original mortgage debt, whichever is less.
 - Mortgagee's assessment liability is limited to cases where mortgagee names association as a defendant to mortgage foreclosure lawsuits.
 - Provides that required 45 days notice of intent to lien letter is effective following the date the notice is deposited in the mail.
 - Authorizes association to recover interest, late charges, costs, and attorney's fees in lien foreclosure action.
 - Suspends time limitations if parcel is subject to foreclosure action or for sale to another party, or if parcel owner is a debtor in bankruptcy proceeding.
 - Modifies time-lines and procedures regarding serving "qualifying offers."

SENATE BILL 2016: PROVISIONS APPLICABLE TO COMMUNITY ASSOCIATIONS (Effective July 1, 2008)

- Section 1:
- Amends F.S. 509.013 regarding definition of “public lodging establishment.” Adds definitions of “transient public lodging establishment” and “non-transient public lodging establishment.” Transient public lodging establishments include units, groups of units, dwellings, buildings, or groups of buildings within a single complex of buildings which are rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. Non-transient public lodging establishments include units, groups of units, dwellings, buildings, or groups of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.
- Section 2:
- Obligates Division to notify local fire safety authority or State Fire Marshall of any regularly observable violation of a rule adopted under Chapter 633 which relates to public lodging establishments.
 - Preempts inspection of public lodging establishments to the state.