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A Professional Association



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The Board's Bulletin

2017 COMMUNITY ASSOCIATION LEGISLATIVE UPDATE

CHAPTER 2017-188 LAWS OF FLORIDA, [HB 1237] (eff. 7/1/2017).

§ 718.111(1)(a): Kickbacks and Criminal Penalties. The Condominium Act has long prohibited an officer, director or manager from soliciting, offering to accept or accepting any thing or service of value for which consideration has not been provided for his or her own benefit or that of the person's immediate family from any person providing or proposing to provide goods or services to the Association. The new law adds "kickbacks" to the list and provides that if the officer, director or manager knowingly solicits, offers to accept or accepts any thing or service of value or kickback is subject to a criminal penalty as provided in paragraph (d) of the statute. However, the paragraph does not prohibit an officer, director or manager from accepting services or items in connection with trade fairs or education programs.

The new law now provides that the following acts are crimes: forgery of a ballot envelope or voting certificate used in a condo election, theft or embezzlement of funds, and destruction of or refusal to allow inspection or copying of an official records in furtherance of any crime.

An officer or director charged with a crime referenced in this paragraph must be removed from office and the vacancy shall be filled until the end of the period of suspension or the end of the person's term of office, whichever occurs first. If a criminal charge is pending, the director or officer may not be appointed or elected to a position as a director or officer of ANY association and may not have access to the official records of any association, except pursuant to court order. If the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of their term of office.

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§ 718.111(3): Conflict of Interests: An association may not hire an attorney who represents the management company of the association.

Except for a timeshare condominium, a director, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

The official records of the association now include bids for materials, equipment, or services.

A renter of a unit has a right to inspect and copy the association's bylaws and rules.

By July 1, 2018, an association with 150 or more units which does not manage timeshare units shall post digital copies of the documents specified below on its website.

The association's website must be: (I) An independent website or web portal wholly owned and operated by the association; or (II) A website or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association's activities and on which required notices, records, and documents may be posted by the association.

The association's website must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.

A current copy of the following documents must be posted in digital format on the association's website:

- a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
- b. The recorded bylaws of the association and each amendment to the bylaws.
- c. The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.
- d. The rules of the association.
- e. Any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year.
- f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.
- g. The financial report required by subsection (13) and any proposed financial report to be considered at a meeting.
- h. The certification of each director required by s. 718.112(2)(d)4.b.

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i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2) and 718.3026(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled “Notices” which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).

The association shall ensure that the information and records described above, which are not permitted to be accessible to unit owners, are not posted on the association’s website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association’s website, the association shall ensure the information is redacted before posting the documents online.

§ 718.111(13): Financial Reporting.

The provision that allowed associations that operate fewer than 50 units, regardless of total annual revenues, to prepare only a report or cash receipts and expenditures in lieu of the financial statements required by s. 718.111(13)(a) has now been deleted.

Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner.

A unit owner may provide written notice to the division of the association’s failure to timely provide a copy of the most recent financial report. If the division determines that the association failed to timely provide a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division’s request may not waive the financial reporting requirement provided in paragraph (d). A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

§ 718.111(15): Debit Cards. An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense. The use of a such a debit card for any expense that is not a lawful obligation of the association may be prosecuted as the crime of credit card fraud.

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§ 718.112(2)(d): Director Term Limits. The statutory language that provided that if the bylaws or articles of incorporation permit terms of “not more than 2 years” has been deleted. The law now provides that directors may serve 2-year terms if permitted by the bylaws or articles of incorporation.

A director may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of 2/3 of the total voting interests of the association or unless there are not enough eligible candidates to fill vacancies on the board at the time of the vacancy. This paragraph does not apply to nonresidential or timeshare condominiums.

§ 718.112(2)(j): Recall of Directors. This new law provides that the condominium association’s board of directors is no longer authorized to certify or reject a director recall. The board is still required to call a board meeting within 5 business days of receipt of the written recall. The director is then recalled effective immediately. If the board fails to timely hold the required board meeting, the recall shall be deemed effective and the director(s) recalled shall turn over all records and property of the association within 10 full business days. The board may not file a recall arbitration petition to challenge a recall. However, a recalled director may file a petition challenging the validity of the recall. The petition must be filed within 60 days after the recall. The association and the unit owner representative shall be named as respondents. The division may not accept a recall petition if there are 60 or fewer days until the scheduled reelection of the board or when 60 or fewer days have elapsed since the election of the director(s) sought to be recalled.

§ 718.112(2)(p): Service Providers; Conflicts of Interests. An association may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to timeshare condominiums or to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.

§ 718.1255(4): Arbitration Private Arbitrators. The division is authorized to employ private certified arbitrators if they meet certain professional standards. Arbitration decisions must be rendered within 30 days after the hearing.

§ 718.3025(5): Agreements for Operation, Maintenance, or Management. A party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association which is not a timeshare condominium association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association’s foreclosure of the association’s lien for unpaid assessments or take a deed in lieu of foreclosure. If 50 percent or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association which is not a timeshare condominium association, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be cancelled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party.

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§ 718.3027: Conflicts of Interest.

(1) Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, **must disclose** to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (4):

(a) A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.

(b) A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If a director or an officer, or a relative of a director or an officer, proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this subsection, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.

(3) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, or the relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(4) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by s. 718.111(12)(g) is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

(5) As used in this section, the term “relative” means a relative within the third degree of consanguinity by blood or marriage.

§ 718.303(5): Suspension of Voting Rights of a Delinquent Unit Owner. An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than \$1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association.

§ 718.5012(5): Powers of the Ombudsman. The ombudsman now has the power to review secret ballots cast at a vote of the association.

§ 718.71: Financial Reporting. An association shall provide an annual report to the department containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the department upon written request of any association member.

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CHAPTER 2017-161 LAWS OF FLORIDA, [HB 6027] (eff. 7/1/2017).

§ 718.111(13), 719.104(4)(c)2., and 720.303(7)(b)2.: 50 Unit Small Association Exception Omitted. The laws that allowed condominium, cooperative, and homeowners associations that operate fewer than 50 units, regardless of total annual revenues to prepare only a report of cash receipts and expenditures in lieu of the financial statements otherwise required by law has now been deleted.

§ 718.111(13)(c), 719.104(4)(b)4., and 720.303(7)(b)2.: 3 Year Wavier of Financial Reporting Omitted. The laws that prohibited condominium, cooperative and homeowners associations from waiving the financial reporting requirements for more than 3 consecutive years has now been deleted.

CHAPTER 2017-93, LAWS OF FLORIDA, [SB 398] (eff. 7/1/2017).

§ 718.116(8), 719.108(6), and 720.30851: Within 10 business days after receiving a written or electronic request therefor from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(a) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the statutory form.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(f) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$150.

(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of

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moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate: 1. For 25 or fewer units, \$750. 2. For 26 to 50 units, \$1,000. 3. For 51 to 100 units, \$1,500. 4. For more than 100 units, \$2,500.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

(i) The fees specified in this subsection shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

CHAPTER 2017-122, LAWS OF FLORIDA, [SB 1520] (eff. 7/1/2017).

§ 718.117: Condominium Termination.

It is now declared to be in the best interest of the state to provide for termination of the covenants of a declaration of condominium in certain circumstances in order to:

1. Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.
2. Avoid transferring the expense of maintaining infrastructure serving the condominium property, including, but not limited to, stormwater systems and conservation areas, to the general tax bases of the state and local governments.
3. Prevent covenants from impairing the continued productive use of the property.
4. Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.
5. Provide fair treatment and just compensation for individuals and preserve property values and the local property tax base.
6. Preserve the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium.

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§ 718.117(3): Optional Termination.

The condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination meeting the requirements of this section and approved by the division. Before a residential association submits a plan to the division, the plan must be approved by at least 80 percent of the total voting interests of the condominium. However, if 5 percent (formerly 10%) or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed. If 5 percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 (formerly 18 months) months after the date of the rejection.

The protections provided by the statute to homesteaded unit owners have been expanded from only the original purchaser from the developer to any person.

Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

...

(d) The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

(e) The division shall examine the plan of termination to determine its procedural sufficiency and, within 45 days after receipt of the initial filing, the division shall notify the association by mail of any procedural deficiencies or that the filing is accepted. If the notice is not given within 45 days after the receipt of the filing, the plan of termination is presumed to be accepted. If the division determines that the conditions required by this section have been met and that the plan complies with the procedural requirements of this section, the division shall authorize the termination, and the termination may proceed pursuant to this section.

(f) Subsection (2) does not apply to optional termination pursuant to this subsection.

APPLICABILITY. This section applies to all condominiums in this state in existence on or after July 1, 2007.

The amendments made by this act to s. 718.117, Florida Statutes, are intended to clarify existing law, are remedial in nature and intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

CHAPTER 2017-122, LAWS OF FLORIDA, [SB 1520] (eff. 7/1/2017).

§ 721.05(21): “Interestholder” The term “Interestholder” is revised to clarify that the term does not include certain parties to a certain multisite timeshare plan.

§ 721.08: Escrow Accounts. This clarifies existing law by providing that certain instruments (the timeshare instrument, declaration of condominium, or other instrument establishing or governing a component site property regime) are not an encumbrance as they relate to certain vacation and timeshare plans.

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§ 721.125: Termination of Timeshare Plans. This law revises requirements for the termination of a timeshare plan by providing that the termination of a timeshare plan does not change the corporate status of an owners' association under certain circumstances and by providing that the owners' association continues to exist until certain affairs are concluded. The new law further requires the board of the owners' association to serve as the termination trustee after termination of a timeshare plan. The powers of the termination trustee are specified. The law provides that certain reasonable expenses incurred by the termination trustee relating to the performance of its duties (including fees of an attorney and other professionals) must be paid by the tenants in common of the former timeshare property. The termination trustee must now adopt certain procedures to implement the partition or sale of a former timeshare property. A voting representative must be designated under certain circumstances. Finally, the new law makes conforming provisions to changes made by the Condominium Act.

§ 721.1255: Extension of Timeshare Plans. The new provides legislative findings as to timeshares. Unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, of at least 66 percent of all eligible voting interests present in person or by proxy at a duly noticed, called, and constituted meeting of the owners' association may, at any time, extend the term of the timeshare plan. If the term of a timeshare plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan.

(b) Unless the timeshare instrument specifically provides for a lower quorum, the quorum for the owners' association meeting described in paragraph (a) is 50 percent of all eligible voting interests in the timeshare plan.

(c) The owners' association meeting held pursuant to paragraph (a) may be held at any time before the termination of the timeshare plan.

(d) The board of administration of the owners' association may determine that any voting interest that is delinquent in the payment of more than 2 years of assessments is ineligible to vote on any extension of the timeshare plan unless such delinquency is paid in full before the vote.

(e) A proxy for a vote to extend a timeshare plan pursuant to this section is valid for up to 3 years and is revocable unless the proxy states it is irrevocable.

If an extension vote or consent pursuant to this section is proposed for a component site of a multisite timeshare plan located in this state, the proposed extension is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the extension.

TOP TEN DBPR COMPLIANCE ISSUES FOR CONDOMINIUMS



1. Failure to update the Frequently Asked Questions and Answers (Q&A) Sheet every 12 months.
2. Failure to adopt a hurricane shutter rule.
3. Failure to adopt a rule designating a specific place for posting meeting notices.
4. Failure to have document authority to levy or collect late fees, transfer fees or security deposits.
5. Failure to obtain competitive bids on contracts that exceed 5% of the association's annual budget.
6. Failure to disclose beginning and ending dates in the proposed annual budget.
7. Failure to propose full reserve funding in the proposed annual budget.
8. Failure to record a vote or abstention in the minutes for each director present at a board meeting.
9. Failure to provide a director candidate a receipt upon hand delivery of a written notice of intent to be a director candidate.
10. Failure to maintain a complete set of recorded condominium documents and certified copy of Articles of Incorporation.

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