DBPR COURSE TITLE: 2016 COMMUNITY ASSOCIATION LEGAL UPDATE

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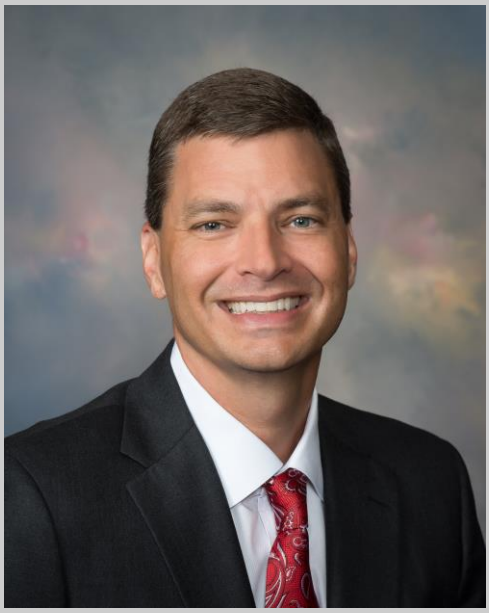

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2016 COMMUNITY ASSOCIATION LEGAL UPDATE

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2016 COMMUNITY ASSOCIATION LEGAL UPDATE

The 2015 Legislative session was once again an active one for community associations. The Florida Legislature adopted four major community association bills and several other related bills that will affect community association officers, directors and managers.

The following is a brief summary of the new laws. The following is only summary in nature and it is recommended that you download and read the new laws before taking action. The text of the new laws may be downloaded free of charge via the internet at: *http://laws.flrules.org/2015*.

Please remember that Chapter 718 applies to condominium associations, Chapter 719 applies to cooperative associations, Chapter 720 applies to homeowner associations and Chapter 721 applies to timeshare condominiums.

CHAPTER 2015-69 LAWS OF FLORIDA [CS/CS SB 1094] (eff. July 1, 2015).

§ 163.3178: Coastal Management.
This new law specifies the requirements for the coastal management element required for a local government comprehensive plan.

§ 472.0366: Elevation Certificates.
Defines "**Division**" to mean the Division of Emergency Management and "**Elevation Certificate**" to mean the certificate used to demonstrate the elevation of property which has been developed by FEMA pursuant to federal floodplain management regulation and which is completed by a surveyor and mapper. Beginning January 1, 2017, a surveyor and mapper shall submit to the Division a copy of each unaltered Elevation Certificate (owner's name may be redacted) that he completes.

§ 627.715: Flood Insurance.
Flexible flood insurance is now authorized and must cover losses from the peril of flood and may also include coverage for water intrusion originating from outside the structure which is not otherwise covered by the definition of flood. Flexible flood insurance coverage requirements are specified. The new law deletes a provision that prohibited supplemental flood insurance from including excess coverage over any other insurance covering the peril of flood. Flood coverage deductibles and policy limits must be prominently noted on the policy declarations page or face page. The Office may not require an insurer to provide a credit to affected insureds if a rate is excessive or unfairly discriminatory. The application for flood insurance must notify the owner that if NFIP insurance is discontinued and then reinstated, the full rate for flood insurance may apply. An insurer offering flood insurance may obtain a certification that the flood insurance policy provides equal or greater flood covered offered by the NFIP. An insurer or agent who knowingly misrepresents that a flood policy, contractor or endorsement is certified under this section commits an unfair or deceptive act.

CHAPTER 2015-90 LAWS OF FLORIDA [CS/CS HB 307] (eff. July 1, 2015).

This new law revises multiple sections of Florida law that apply to mobile homes. The revised laws that pertain to community association managers are summarized as follows:

§ 723.003: Definitions.
The Legislature has now provided definitions for the following terms: (3) "Electronic Transmission", (4) "Homeowners Association", (5) "Homeowners' Committee", (7) "Mediation", (9) Mobile home lot", (15) "Offering Circular" and renumbered subsequent sections.

(3) **"Electronic transmission"** means a form of communication, not directly involving the physical transmission or transfer of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in a comprehensible and legible paper form by the recipient through an automated process, such as a printer or

copy machine. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via e-mail between computers. Electronic transmission does not include oral communication by telephone.

(4) **"Homeowners' association"** means a corporation for profit or not for profit, which is formed and operates in compliance with ss. 723.075-723.079; or, in a subdivision the homeowners' association authorized in the subdivision documents in which all home owners must be members as a condition of ownership.

(5) **"Homeowners' committee"** means a committee, not to exceed five persons in number, designated by a majority of the affected homeowners in a mobile home park or a subdivision; or, if a homeowners' association has been formed, designated by the board of directors of the association. The homeowners' committee is designated for the purpose of meeting with the park owner or park developer to discuss lot rental increases, reduction in services or utilities, or changes in rules and regulations and any other matter authorized by the homeowners' association, or the majority of the affected home owners, and who are authorized to enter into a binding agreement with the park owner or subdivision developer, or a binding mediation agreement, on behalf of the association, its members, and all other mobile home owners in the mobile home park.

(7)(a) **"Mediation"** means a process whereby a mediator appointed by the Division of Florida Condominiums, Timeshares, and Mobile Homes, or mutually selected by the parties, acts to encourage and facilitate the resolution of a dispute. It is an informal and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement.

(9) **"Mobile home lot"** means a lot described by a park owner pursuant to the requirements of s 723.012, or in a disclosure statement pursuant to s. 723.013, as a lot intended for the placement of a mobile home.

(15) **"Offering circular"** has the same meaning as the term "prospectus" as it is used in this chapter.

§ 723.006: Powers and Duties of division.
(12) The division shall approve training and educational programs for board members of mobile home owners' associations formed and operated pursuant to s. 723.075(1) and mobile home owners. The training may, at the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state.

(13) The division may review and approve educational curriculums and training programs for board members and mobile home owners to be offered by providers and shall maintain a current list of approved programs and providers, and make such lists available to board members in a reasonable and cost-effective manner. The cost of such programs shall be borne by the providers of the programs. The division shall establish a fee structure for the approved training programs sufficient to recover any cost incurred by the division in operating this program.

(14) Required education curriculum information for board member and mobile home owner training shall include: (a) The provider of the training programs, which shall include the following information regarding its training and educational programs: 1. A price list, if any, for the programs and copies of all materials. 2. The physical location where programs will be available, if not web based. 3. Dates when programs will be offered. 4. The curriculum of the program to be offered. (b) The programs shall provide information about statutory and regulatory matters relating to the board of directors of the homeowners' association and their responsibilities to the association and to the mobile home owners in the mobile home park. (c) Programs and materials may not contain editorial comments. (d) The division has the right to approve and require changes to such education and training programs.

§ 723.023: Mobile Home Owner's General Obligations.
A mobile home owner shall at all times:
(1) Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile

home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.
(2) Keep the mobile home lot which he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.

(3) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules ~~therewith~~ and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

§ 723.037: Lot Rental Increases.
(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The home owner's right to the 90-day notice may not be waived or precluded by a home owner, or the homeowners' committee, in an agreement with the park owner.

(4)(a) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the park owner shall meet, at a mutually convenient time and place no later than 60 days before the effective date of the change ~~within 30 days after receipt by the homeowners of the notice of change~~, to discuss the reasons for the increase in lot rental amount, reduction in services or utilities, or change in rules and regulations. The negotiating committee shall make a written request for a meeting with the park owner or subdivision developer to discuss those matters addressed in the 90-day notice, and may include in the request a listing of any other issue, with supporting documentation, that the committee intends to raise and discuss at the meeting.

§ 723.0078: Bylaws of Homeowners Associations.

(2) Substantial legislative changes were made to the Bylaws of a Chapter 723 Homeowners Association. The bylaws shall provide and, if they do not, shall be deemed to include the following provisions:
(b) 1. Unless otherwise provided in the Bylaws, 30% of the total membership is required to constitute a quorum.
2. A member may not vote by general proxy but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and any other matters for which this chapter requires or permits a vote of members, except that no proxy, limited or general, may be used in the election of board members. Notwithstanding the provisions of this section, members may vote in person at member meetings.
3. A proxy is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it.
(c) **Board of directors' and committee meetings**.—
1. Meetings of the board of directors and meetings of its committees at which a quorum is present shall be open to all members. Notwithstanding any other provision of law, the requirement that board meetings and committee meetings be open to the members does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to potential or pending litigation, where the meeting is held for the purpose of seeking or rendering legal advice, and where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notice of meetings shall be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of such assessments.
2. A board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time telephonic, electronic, or video communication counts toward a quorum, and such member may vote as if physically

present. A speaker shall be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by members present at a meeting.
3. Members of the board of directors may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.
4. The right to attend meetings of the board of directors and its committees includes the right to speak at such meetings with reference to all designated agenda items. The association may adopt reasonable written rules governing the frequency, duration, and manner of members' statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings of the board of directors and its committees. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting.
5. Except as provided in s. 723.078(2)(i), a vacancy occurring on the board of directors may be filled by the affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum; by the sole remaining director; if the vacancy is not so filled or if no director remains, by the members; or, on the application of any person, by the circuit court of the county in which the registered office of the corporation is located.
6. The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members.
7. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.
8.a. The officers and directors of the association have a fiduciary relationship to the members.
b. A director and committee member shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.
9. In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: a. One or more officers or employees of the corporation who the director reasonably believes to be reliable and competent in the matters presented; b. Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or c. A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.
10. A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subparagraph 9. unwarranted.
11. A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.
(d) **Member meetings.** This section was amended to state that all director nominations from the floor must be made at a duly noticed meeting of the members held at least 30 days before the annual meeting. Additionally, unless waived, the notice of the annual membership meeting shall be mailed, hand delivered, or electronically transmitted to each member and shall constitute notice.
(e) **Minutes of Meetings.** Minutes of all meetings of members of an association, the board of directors, and a committee must be maintained in written form and approved by the members, board, or committee, as applicable. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.
(h) **Amendment of Articles of Incorporation and Bylaws.**
1. The method by which the articles of incorporation and bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended by the board of directors and approved by a majority of members at a meeting at which a quorum is present. No bylaw shall be revised or amended by reference to its title or number only.
2. Notwithstanding any other provision of this section, if an amendment to the articles of incorporation or the bylaws is required by any action of any federal, state, or local governmental authority or agency, or any law, ordinance, or rule thereof, the board of directors may, by a majority vote of the board, at a duly noticed meeting of the board, amend the articles of incorporation or bylaws without a vote of the membership.
~~(i) The officers and directors of the association have a fiduciary relationship to the members.~~

(i) **Recall of Board Members.** The recall of board members was substantially rewritten so that it now mirrors the provisions of the Condominium Act, Chapter 718, Florida Statutes.

§ 723.0781: Alternative Resolution of Recall Disputes.
The Division is required to adopt rules of procedure to govern binding recall arbitration proceedings.
§ 723.0781: Board Member Training Programs. Within 90 days after being elected or appointed to the board, a newly elected or appointed director shall certify by an affidavit in writing to the secretary of the association that he or she has read the association's current articles of incorporation, bylaws, and the mobile home park's prospectus, rental agreement, rules, regulations, and written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum approved by the division within 1 year before or 90 days after the date of election or appointment. The educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this section. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association shall retain a director's written certification or educational certificate for inspection by the members for 5 years after the director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

§ 723.079: Powers and Duties of Chapter 723 Homeowners' Association – Official Records.
Subsection (4) of the statute has now been created to list the mandatory official records of the Homeowners' Association. The official records of the association are available for inspection and copying by a member within 10 business days after receipt of a written request submitted by certified mail, return receipt requested. The failure of the association to provide access to the records within 10 business days after receipt of such a request creates a rebuttable presumption that the association willfully failed to comply with this section. A member who is denied access to official records is entitled to the actual damages or minimum damages of $10 per calendar day up to 10 days, with the calculation to begin on the 11th business day following receipt of the written request, submitted by certified mail, return receipt requested.
(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a member to demonstrate a proper purpose for the inspection, state a reason for the inspection, or limit a member's right to inspect records to less than 1 business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds 30 minutes and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or home owners:
1. A record protected by the lawyer-client privilege as described in s. 90.502 and a record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.
2. E-mail addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a home owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, lot designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to home owners a directory containing the name, park address, and telephone number of each home owner. However, a home owner may exclude his or her telephone number from the directory by so requesting in writing to the association. The association is not liable for the disclosure of

information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by a home owner and not requested by the association.
3. A electronic security measure that is used by the association to safeguard data, including passwords.
4. The software and operating system used by the association which allows the manipulation of data, even if the home owner owns a copy of the same software used by the association. The data is part of the official records of the association.
(6) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election or removal.

CHAPTER 2015-94 LAWS OF FLORIDA [CS/CS HB 715] (eff. 7/1/2015).

§ 627.351: Citizens Property Insurance Corporation
Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25%, pursuant to a permit applied for after July 1, 2015 is not eligible for coverage by Citizens if the structure is seaward of the coastal construction control line or is within the Coastal Barrier Resources System.

CHAPTER 2015-96 LAWS OF FLORIDA [CS/CS HB 779] (eff. 6/2/2015).

§ 83.561: Termination of Rental Agreement Upon Foreclosure.

(1) If a tenant is occupying residential premises that are the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises subject to the rights of the tenant under this section.
(a) The tenant may remain in possession of the premises for 30 days following the date of the purchaser's delivery of a written 30-day notice of termination.
(b) The tenant is entitled to the protections of s. 83.67.
(c) The 30-day notice of termination must be in substantially the following form:

NOTICE TO TENANT OF TERMINATION

You are hereby notified that your rental agreement is terminated on the date of delivery of this notice, that your occupancy is terminated 30 days following the date of the delivery of this notice, and that I demand possession of the premises on …(date)…. If you do not vacate the premises by that date, I will ask the court for an order allowing me to remove you and your belongings from the premises. You are obligated to pay rent during the 30-day period for any amount that might accrue during that period. Your rent must be delivered to …(landlord's name and address)….
(d) The 30-day notice of termination shall be delivered in the same manner as provided in s. 83.56(4). (2) The purchaser at the foreclosure sale may apply to the court for a writ of possession based upon a sworn affidavit that the 30-day notice of termination was delivered to the tenant and the tenant has failed to vacate the premises at the conclusion of the 30-day period. If the court awards a writ of possession, the writ must be served on the tenant. The writ of possession shall be governed by s. 83.62.
(3) This section does not apply if: (a) The tenant is the mortgagor in the subject foreclosure or is the child, spouse, or parent of the mortgagor in the subject foreclosure. (b) The tenant's rental agreement is not the result of an arm's length transaction. (c) The tenant's rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.
(4) A purchaser at a foreclosure sale of a residential premises occupied by a tenant does not assume the obligations of a landlord, except as provided in paragraph (1)(b), unless or until the purchaser assumes an existing rental agreement with the tenant that has not ended or enters into a new rental agreement with the tenant.

CHAPTER 2015-97 LAWS OF FLORIDA [CS/CS HB 791] (eff. 7/1/2015).

§ 617.0721(2): Reproduction of Proxies. Notwithstanding any provision to the contrary in the articles of incorporation or bylaws, any copy, facsimile transmission, or other reliable reproduction of the original proxy may be substituted or

used in lieu of the original proxy for any purpose for which the original proxy could be used if the copy, facsimile transmission, or other reproduction is a complete reproduction of the entire proxy.

§ 718.111:
(11): Insurance.
In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement as determined by the maintenance provisions of the declaration or bylaws. All property insurance deductibles, ~~uninsured losses,~~ and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that: …
(12) **Official Records.**
(a) 15. 15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

§ 718.128: Electronic Voting.
§ 719.129: Electronic Voting.
§ 720.317: Electronic Voting.

The association may conduct elections and other unit owner votes through an internet-based online voting system if a **unit owner consents, in writing, to online voting** and if the following requirements are met:
(1) The association provides each unit owner with: (a) A method to authenticate the unit owner's identity to the online voting system. (b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot. (c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.
(2) The association uses an online voting system that is: (a) Able to authenticate the unit owner's identity. (b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit. (c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote. (d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner. (e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.
(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.
(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.
(5) A unit owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to subsection (4). (6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare condominium association.

§ 720.303(2)(c)1.: Notice by Electronic Transmission.
The association ~~bylaws or amended bylaws~~ may provide ~~for giving~~ notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

§ 718.116(3): Accord and Satisfaction.

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. ***If provided by the declaration or bylaws***, the association may, in addition to such interest, charge an administrative late fee of up to the greater of $25 or 5 percent of each delinquent installment for which the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law.
(5)(b) The association's claim of lien now secures administrative late fees.

§ 718.303: Fines and Other Enforcement.
(3) A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.
(b) A fine or suspension levied by the board of administration may not be imposed unless the board ~~association~~ first provides at least 14 days' written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not agree, the fine or suspension may not be imposed.
(5) An association may suspend the voting rights of a unit or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall 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, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.
(7) The suspensions permitted by paragraph (3)(a) and subsections (4) and (5) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple units owned by a member.

§ 718.707: Time Limitation for Classification of Bulk Assignee or Bulk Purchaser.
A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2018 ~~2016~~.

§ 719.104(2)(a)13.: Official Records of Cooperative Association.
13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

§ 719.108(3): Accord and Satisfaction.
Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. ***If the cooperative documents or bylaws so provide***, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing applies

notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law.

§ 719.303: Fining and Other Enforcement.

(3) ***The association may levy reasonable fines for failure of the unit owner or the unit's occupant, licensee, or invitee to comply with any provision of the cooperative documents or reasonable rules of the association.*** A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written ~~except after giving reasonable~~ notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, ~~the unit's licensee~~, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not agree with the fine or suspension, it may not be imposed.

§ 720.301: Definitions: Rules and Regulations.

(8) **"Governing documents"** means:

(a) The recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and

(b) The articles of incorporation and bylaws of the homeowners' association, and any duly adopted amendments thereto; and

(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

§ 720.3015: Short Title: The Homeowners' Association Act.

This chapter may be cited as the "Homeowners' Association Act."

§ 720.305: Fines and Other Enforcement.

(2) The association may levy reasonable fines. A fine may not exceed ~~of up to~~ $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit ~~impair the right of~~ an owner or tenant of a parcel from having ~~to have~~ vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension may not be imposed by the board of administration without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the board of administration ~~association~~ imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use

common areas and facilities until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may ~~does~~ not prohibit ~~impair the right of~~ an owner or tenant of a parcel from having ~~to have~~ vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection.
(4) An association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association that is more than 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association shall be subtracted from ~~may not be counted towards~~ the total number of voting interests in the association, which shall 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, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the governing documents. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection. The suspension ends upon full payment of all obligations currently due or overdue to the association.
(5) All suspensions imposed pursuant to subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the association must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.
(6) The suspensions permitted by paragraph (2)(a) and subsections (3) and (4) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple parcels owned by a member.

§ 720.306: Notice of Amendments; Director Qualifications.
(1)(b). The failure to timely provide notice of the recording of an amendment does not affect the validity or enforceability of the amendment.
(9)(b) (b) A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name shall not be listed on the ballot. A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the association shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law. For purposes of this paragraph, the term "any fee, fine, or other monetary obligation" means any delinquency to the association with respect to any parcel ~~for more than 90 days is not eligible for board membership~~. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, may not seek election to the board and is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a person was ineligible to seek election to the board or that a member of the board is ineligible for board membership.

CHAPTER 2015-131 LAWS OF FLORIDA [CS HB 71] (eff. 7/1/2015).

§ 413.08(1): Rights and Responsibilities of an Individual with a Disability.

"**Individual with a disability**" means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual.

"**Major life activity**" means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"**Physical or mental impairment**" means: a. A physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; or b. A mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by

the American Psychiatric Association, such as an intellectual or developmental disability, organic brain syndrome, traumatic brain injury, posttraumatic stress disorder, or an emotional or mental illness

"**Public accommodation**" means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging establishment as defined in s. 509.013; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers covered by the Air Carrier Access Act of 1986, 49 U.S.C. s. 41705, and by regulations adopted by the United States Department of Transportation to implement such act.
"Service animal" means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks. **A service animal is not a pet.** For purposes of subsections (2), (3), and (4), the term **"service animal" is limited to a dog or miniature horse. The crime deterrent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.**

(2) An individual with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations. A public accommodation must modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. This section does not require any person, firm, business, or corporation, or any agent thereof, to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.

(3) An individual with a disability has the right to be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted to occupy.

(a) The service animal must be under the control of its handler and must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control by means of voice control, signals, or other effective means.

(b) Documentation that the service animal is trained is not a precondition for providing service to an individual accompanied by a service animal. A public accommodation may not ask about the nature or extent of an individual's disability. To determine the difference between a service animal and a pet, a public accommodation may ask if an animal is a service animal required because of a disability and what work or what tasks the animal has been trained to perform.

(4) Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with admittance to, or enjoyment of, a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of such an animal pursuant to subsection (8), commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

(9) A person who knowingly and willfully misrepresents himself, through conduct or verbal or written notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service

for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

CHAPTER 2015-135 LAWS OF FLORIDA [CS/CS/CS HB 165] (eff. 7/1/2015)

This is a law that applies to property and casualty insurance. The law requires that the CEO or CFO or chief actuary or an insurance company certify certain information. The law requires the insurer to employ in certain rate filings actuarial methods, principles, standards, models, or output ranges found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable in determining probably maximum loss levels. The law authorizes an insurer to employ a model in a rate filing until 120 days after the expiration of the commission's acceptance of that model. The law then prohibits insurers from modifying or adjusting the model after the commission finds the model to be accurate. The law exempts commercial non-residential multi-peril insurance from annual base rate filing. The law increases the amount of prior notice required with respect to the nonrenewal, cancellation, or termination of certain insurance policies and decreases the required notice with respect to other policies.

CHAPTER 2015-144 LAWS OF FLORIDA [CS/CS HB 453] (eff. 7/1/2015).

§ 721.05(34): Definitions – Timeshare Estate. The new statute slightly revises the definition of "Timeshare Estate".

§ 721.07: – Public Offering Statement.
Amendments made to a timeshare instrument for a component site are required only to be delivered to purchasers who receive an interest in a specific multisite timeshare plan in that component site.

§ 721.07(5)(gg): – Developer Compliance.
2. If a developer has, in good faith, attempted to comply with this chapter, and if, in fact, the developer has substantially complied with this chapter, nonmaterial errors or omissions are not actionable, are not violations of this chapter, and do not give rise to any purchaser cancellation right. The developer has the burden of proof for purposes of this paragraph.

§ 721.125: – Extension or Termination of Timeshare Plans.
(1) ***Unless the timeshare instrument provides otherwise***, the vote or written consent, or both, of 60 percent of all voting interests in a timeshare plan may extend or terminate the term of the timeshare plan at any time. 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. If a timeshare plan is terminated pursuant to this section, the termination has immediate effect pursuant to applicable law and the timeshare instrument as if the effective date of the termination were the original date of termination.
(2) If a termination or extension vote or consent pursuant to subsection (1) is proposed for a component site of a multisite timeshare plan located in this state, the proposed termination or 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 termination or extension.
(3) This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of the termination or extension vote or consent required by subsection (1).

§ 721.14(4): – Discharge of Managing Entity.
(4)(a) An owners' association and a manager or management firm may, in the management contract or other written document, agree to the transition procedures and related time periods to be followed in the event the manager or management firm is discharged pursuant to this section. If there is no written agreement between the parties that covers the matters set forth in paragraphs (b) and (c), the provisions of paragraphs (b) and (c) shall apply.
(b) Within 90 days after the date that the manager or management firm is notified by the owners' association of a successful termination vote pursuant to subsection (1), the terminated managing entity shall transfer to the owners' association or new manager or management firm all relevant data held by the managing entity and related to any reservation system for the timeshare plan, including, but not limited to: 1. The names, addresses, and reservation status of all accommodations. 2. The names and addresses of all purchasers of timeshare interests. 3. All outstanding confirmed

reservations and reservation requests. 4. Such other records and information as is necessary to permit the uninterrupted operation and administration of the timeshare plan. However, the information required to be transferred does not include private information of the terminated managing entity that is not directly related to operation and management of the timeshare plan.
(c) All reasonable costs incurred by the terminated managing entity in effecting the transfer of information required by this subsection shall be reimbursed to the terminated managing entity as a common expense of the timeshare plan within 10 days after the completed transfer of the data described in paragraph (b).

§ 721.52(5)&(7): – Definitions: "Non-Specific Multisite Timeshare Plan" and Specific Multisite Timeshare Plan." The definitions of "Non-Specific Multisite Timeshare Plan" and Specific Multisite Timeshare Plan are revised to exclude "containing timeshare licenses or personal property timeshare interests."

§ 721.54: – This statute is repealed.

§ 721.552: – Additions, Substitutions, or Deletions of Component Site Accommodations or Facilities. The language applicable to additions, substitutions or deletions of component site accommodations or facilities is revised.
(d)1. If the timeshare instrument provides that the developer, acting unilaterally, is the person authorized to make substitutions, the developer may not substitute ~~No more than 25 percent of the~~ available accommodations in the multisite timeshare plan in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 10 percent of the total annual use availability in the multisite timeshare plan calculated in 7-day increments.
2. If the timeshare instrument provides that the managing entity is the person authorized to make substitutions, and the managing entity is under common ownership or control with the developer, the managing entity may not substitute available accommodations in the multisite timeshare plan in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 10 percent of the total annual use availability in the multisite timeshare plan calculated in 7-day increments.
3. If the timeshare instrument provides that the managing entity is the person authorized to make substitutions, and the managing entity is under common ownership or control with the developer, the managing entity may not substitute available accommodations in the multisite timeshare plan in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 25 percent of the total annual use availability in the multisite timeshare plan calculated in 7-day increments.
4. If the person authorized to make substitutions receives, within 21 days after the date of the notice of substitution required by paragraph (e), a written objection to the proposed substitution from at least 10 percent of all purchasers in the multisite timeshare plan, a meeting of the purchasers must be conducted by the managing entity within 30 days after the end of such 21- day period. The proposed substitution is ratified unless it is rejected by a majority of purchasers voting in person or by proxy at the meeting, provided that at least 25 percent of all purchasers cast votes. This subparagraph does not apply if the timeshare instrument provides that purchasers do not have the right to consent to any proposed substitutions.
5. This paragraph does not apply if the proposed substitution is approved in advance pursuant to paragraph (f).
(e) The notification provisions of the statute are also revised.

§ 721.56: Reservations Systems.
The statutes applicable to reservations systems have been substantially rewritten to address the termination of a managing entity of a nonspecific and a specific multisite timeshare plan.

CHAPTER 2015-165 LAWS OF FLORIDA [CS/CS/CS HB 87] (eff. 10/1/2015). CONSTRUCTION DEFECT CLAIMS.

§ 558.001: Legislative Findings.
The new law recognizes that the insurer of the contractor, subcontractor, supplier, or design professional should also receive the notice of claim and that the claim should be revised through confidential settlement negotiations.

§ 558.002(4): Completion of a Building or Improvement.
The definition of "completion of a building or improvement" means the issuance of a Certificate of Occupancy, whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement or an equivalent authorization issued by the governmental body having jurisdiction.

§ 558.004: Notice of Claim and Opportunity to Repair.
(1) (b) The notice of claim must describe in reasonable detail the nature of each alleged construction defect and, if known, the damage or loss resulting from the defect. Based upon at least a visual inspection by the claimant or its agents, the notice of claim must identify the location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant has no obligation to perform destructive or other testing for purposes of this notice.
(4) Within 15 days after service of a copy of the notice of claim pursuant to subsection (3), or within 30 days after service of the copy of the notice of claim involving an association representing more than 20 parcels, the contractor, subcontractor, supplier, or design professional must serve a written response to the person who served a copy of the notice of claim. The written response must include a report, if any, of the scope of any inspection of the property and, the findings and results of the inspection. The written response must include one or more of the offers or statements specified in paragraphs (5)(a)-(e), as chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the information required for that offer or statement.

Subsection (15) of the statute is also amended to revise provisions relating to production of certain documents associated with the claim. Specifically, the documents that must be exchanged now include **"maintenance records"** and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of claim and any resulting damages. A party may assert any claim of privilege recognized under the laws of this state with respect to any of the disclosure obligations specified in this chapter.

§ 718.203: Condominium Warranties.
The term "**completion of building or improvement**" is revised to mean the issuance of a certificate of occupancy, whether temporary or otherwise, that allows for the occupancy or use of the entire building or improvement or the equivalent authorization by the governmental body having jurisdiction.

§ 720.203: HOA Warranties.
The term "**completion of building or improvement**" is revised to mean the issuance of a certificate of occupancy, whether temporary or otherwise, that allows for the occupancy or use of the entire building or improvement or the equivalent authorization by the governmental body having jurisdiction.

CHAPTER 2015-175 LAWS OF FLORIDA [CS/CS/CS HB 643] (eff. 6/16/2015). TERMINATION OF CONDOMINIUM.

§ 718.117(2): Termination of Condominiums: This new law revises optional termination of condominiums.
(3) **OPTIONAL TERMINATION.—**Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium. If ~~no more than~~ 10 percent 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.
(a) The termination of the condominium form of ownership is subject to the following conditions:
1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.
2. If 10 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 18 months after the date of the rejection.
(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 5 years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit. 3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. For an original purchaser from the developer who rejects the plan of termination and whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the fair market value for the unit owner rejecting the plan shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. 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 the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit's share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

5. 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:

a. The identity of any person or entity that owns or controls 50 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 20 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(9) **Plan of Termination.** The statute was revised to state that if the plan of termination fails to receive the required

approval, the plan shall not be recorded and a new plan of termination may not be proposed for 18 months ~~(180 days).~~
(a) and (b) Any owner desiring to reject a plan of termination must affirmatively do so in person or by proxy, or delivering a written objection to the Association before or at the meeting.
(11) **Plan of Termination; Withdrawal; Errors.**
(a) Unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess that portion of the real estate which formerly constituted the unit after termination or to use the common elements of the condominium after termination, all such rights in the unit and common elements automatically terminate on the effective date of termination. Unless the plan expressly provides otherwise, all leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination. If the plan expressly authorizes a unit owner or other person to retain exclusive right of possession for that portion of the real estate that formerly constituted the unit or to use the common elements of the condominium after termination, the plan must specify the terms and conditions of possession.
(c) Unless otherwise provided in the plan of termination, at any time before the sale of the condominium property, a plan may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.
(d) Upon the discovery of a scrivener's error in the plan of termination, the termination trustee may record an amended plan or an amendment to the plan for the purpose of correcting the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.
(12) **Allocation of Proceeds of Sale of Condominium Property.**
(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan of termination may require separate valuations for the common elements. However, in the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units. In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements being terminated.
(16) **RIGHT TO CONTEST**.—A unit owner or lienor may contest a plan of termination by initiating a petition for mandatory nonbinding arbitration pursuant to s. 718.1255 within 90 days after the date the plan is recorded. 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 have not or will not be satisfied to the extent required by subsection (3), or that the required vote to approve the plan was not obtained. (12). The arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, the arbitrator may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. *Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan.* In any such action, the prevailing party shall recover reasonable attorney attorney's fees and costs.

§ 718.1255(1): Definition of "Dispute" in Mandatory Nonbinding Arbitration.
A plan of termination pursuant to s. 718.117 is not included in the definition of a "dispute".

CHAPTER 468, PART VIII COMMUNITY ASSOCIATION MANAGEMENT

§ 468.431, Florida Statutes

(2) **"Community association management"** means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000:

controlling or disbursing funds of a community association,
preparing budgets or other financial documents for a community association,
assisting in the noticing or conduct of community association meetings,
determining the number of days required for statutory notices,
determining amounts due to the association,
collecting amounts due to the association before the filing of a civil action,
calculating the votes required for a quorum or to approve a proposition or amendment,
completing forms related to the management of a community association created by statute or by a state agency,
drafting meeting notices and agendas,
calculating and preparing certificates of assessment and estoppel certificates,
responding to requests for certificates of assessment and estoppel certificates,
negotiating monetary or performance terms of a contract subject to approval by an association,
drafting pre-arbitration demands,
coordinating or performing maintenance for real or personal property, and other related routine services involved in the operation of a community association, and complying with the association's governing documents and the requirements of law as necessary to perform such practices.

A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

§ 468.4334, Florida Statutes – Professional Practice Standards; Liability.

(1) A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.

(2)(a) A contract between a community association and a community association manager or a contract between a community association and a community association management firm may provide that the community association indemnifies and holds harmless the community association manager and the community association management firm for ordinary negligence resulting from the manager or management firm's act or omission that is the result of an instruction or direction of the community association. This paragraph does not preclude any other negotiated indemnity or hold harmless provision.

(b) Indemnification under paragraph (a) may not cover any act or omission that violates a criminal law; derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

§ 468.436, Florida Statutes -- Disciplinary proceedings.—

(1) The department shall investigate complaints and allegations of a violation of this part, chapter 455, or any rule adopted thereunder, filed against community association managers or firms and forwarded from other divisions under the Department of Business and Professional Regulation. After a complaint is received, the department shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the department shall acknowledge the complaint in writing and notify the complainant whether or not the complaint is within the jurisdiction of the department and whether or not additional information is needed by the department from the complainant. The department shall conduct an investigation and shall, within 90 days after receipt of the original complaint or of a timely request for additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the department from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this part, chapter 455, or a rule of the department has occurred. If an investigation is not completed within the time limits established in this subsection, the department shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the department

shall inform the complainant of any right to a hearing pursuant to ss. **120.569** and **120.57**.
(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:
(a) Violation of any provision of s. **455.227**(1).
(b)1. Violation of any provision of this part.
2. Violation of any lawful order or rule rendered or adopted by the department or the council.
3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.
4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.
5. Committing acts of gross misconduct or gross negligence in connection with the profession.
6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.
7. Violating any provision of chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. **468.431**(1).
(3) The council shall specify by rule the acts or omissions that constitute a violation of subsection (2).
(4) When the department finds any community association manager or firm guilty of any of the grounds set forth in subsection (2), it may enter an order imposing one or more of the following penalties:
(a) Denial of an application for licensure.
(b) Revocation or suspension of a license.
(c) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.
(d) Issuance of a reprimand.
(e) Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.
(f) Restriction of the authorized scope of practice by the community association manager.
(5) The department may reissue the license of a disciplined community association manager or firm upon certification by the department that the disciplined person or firm has complied with all of the terms and conditions set forth in the final order.

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