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The Board's Bulletin

2018 SPRING COMMUNITY ASSOCIATION LEGISLATIVE UPDATE

CHAPTER 2018-96, LAWS OF FLORIDA [HB 841] (eff. 7/1/2018)

Condominium & Cooperative Official Records — (718.111, 719.106(1)

- All electronic records relating to voting by unit owners must be maintained for 1 year from the date of the election, vote or meeting to which the document relates.
- Condominium association must now permanently (formerly 7 years) maintain the following specific documents from the inception of the Association: (1) a copy of the Articles of Incorporation, Declaration, Bylaws and Rules of the Association; (2) the minutes of meetings; (3) copy of plans, warranties, and other items provided by the developer; and (4) accounting records for the Association.
- Condominium and cooperative associations now have 10 working days (formerly 5 working days) to make the official records of the Association available for inspection and copying of a unit owner.

150 Unit or More Condominium Association Website Compliance Date

- The compliance date for an association that manages a condominium with 150 or more units to post certain documents on its website has been extended from July 1, 2018 to January 1, 2019.
- A list of all executory contracts or documents to which the Association is a party or under which the Association or the unit owners have an obligation or responsibility and, after bidding has closed, a list of bids received by the Association within the last year. Summaries of bids for material, equipment, or services which exceed $500 must be maintained on the website for 1 year. In lieu of summaries, complete copies of bids may be posted.
- The Association is required to post monthly income or expense statement on its website.

- The Association or its agents is not liable for disclosing information that is protected or restricted pursuant to this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.
- The failure of the Association to post information required hereunder is not in and of itself sufficient to invalidate any action or decision of the Board or its committees.

Condominium Financial Reporting — (718.111)

- If the Association fails to provide a copy of its most recent financial report to an owner who has submitted a written request within 5 working days, and then also fails to provide the DBPR with a copy of such report within 5 working days, then the Association may not waive the financial reporting requirement for the fiscal year in which the owner's request was made and the following fiscal year.

Board Meetings — (718.112, 719.106, 720.303)

- Condominium Associations are no longer allowed to post notice on the association property (must be posted on the condominium property).
- In addition to any of the authorized means of providing notice of a meeting of the board or members, the condo, co-op or homeowner association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Associations are still required to physically post meeting notices on the property.
- A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association.

Condominium Director Terms and Term Limits — (718.112(2)(d)2.)

- Directors may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A director may not serve more than 8 consecutive years, unless approved by 2/3 of all votes cast in the election.

Condominium Director Recall — (718.112(2)(j)

- If a recall is determined facially valid by the board, the director shall be recalled effective immediately upon conclusion of the board meeting. A recalled director must turn over to the board, within 10 business days after the vote, any and all records and property of the association in their possession.
- If the board fails to notice and hold the board meeting OR at the conclusion of the board meeting determines that the recall is not facially valid, the unit owner representative may file a petition challenging the board's failure to act or challenging the board's determination of facial validity. The petition must be filed within 60 days. The review of a petition is limited to the sufficiency of service and the facial validity of the recall agreements or ballots filed.
- A director who has been recalled 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 the respondents. The petition may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator determines the recall was invalid, the petitioning board member shall immediately be reinstated and the recall is null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator makes a finding that the petitioner's claim is frivolous.

Alterations or Additions to Condominium Property — (718.113(2))

- If the declaration does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions **BEFORE** the material alterations or substantial additions **ARE COMMENCED**. This will likely prohibit after-the-fact member approvals in these instances.

Electronic Vehicles in Condominiums — (718.113, 718.121)

The installation of an electric vehicle charging station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The board may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01, within the boundaries of his or her limited common element parking area. The installation of such charging stations are subject to the provisions of this subsection.

(b) The installation may not cause irreparable damage to the condominium property.

(c) The electricity for the electric vehicle charging station must be separately metered and payable by the unit owner installing such charging station.

(d) The unit owner who is installing an electric vehicle charging station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard and liability insurance. The association may enforce payment of such costs pursuant to s. 718.116.

(e) If the unit owner or his or her successor decides there is no longer a need for the electronic vehicle charging station, such person is responsible for the cost of removal of the electronic vehicle charging station. The association may enforce payment of such costs pursuant to s. 718.116.

(f) The association may require the unit owner to:

1. Comply with bona fide safety requirements, consistent with applicable building codes or recognized safety standards, for the protection of persons and property.
2. Comply with reasonable architectural standard adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station, provided that such standards may not prohibit the installation of such charging station or substantially increase the cost thereof.
3. Engage the services of a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station.
4. Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station within 14 days after receiving the association's approval to install such charging station.
5. Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station within 14 days after receiving the association's insurance premium invoice.

(g) The association provides an implied easement across the common elements of the condominium property to the unit owner for purposes of the installation of the electric vehicle charging station and the furnishing of electrical power, including any necessary equipment, to such charging station, subject to the requirements of this subsection.

- Labor performed on or materials furnished for the installation of an electronic vehicle charging station may not be the basis for filing a lien against the association, but such a lien may be filed against the unit owner.

Condominium Director Conflicts of Interests (718.3026, 718.3027)

- The provisions of Section 718.3026(3) regarding a contract or business transaction between the association and one or more of its directors or firms in which one or more of its directors are directors or officers or are financially interested has been deleted.
- Section 718.3027(2) concerning director conflicts of interests has been revised to provide that the association shall comply with the requirements of s. 617.0832, and the disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transac-

tion shall be brought up for a vote and may be cancelled by a majority vote of the members present. If the contract is cancelled, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Fines and Suspensions — (718.303, 719.303, 720.305)

- Condo and coop associations' fining committees must be made up of at least 3 members who are appointed by the board. Such members shall not be officers, directors, or employees of the association, or be a spouse, parent, child, brother or sister of an officer, director, or employee of the association (formerly not a director or person residing in a director's household). The same law already applies to homeowners associations.
- The fining committee must approve the fine or suspension by a majority vote, or the fine or suspension may not be imposed. The same law already applies to homeowner associations.
- If the fine or suspension is approved by the committee, the payment of the fine is due 5 days after the date of the committee meeting. The association must provide a written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner. The same law already applies to homeowner associations.

Time Limitation on Classification as Bulk Buyer or Bulk Assignee — (718.707)

- The time limit to classify a person acquiring condominium parcels as a bulk assignee or bulk buyer has been changed so that they must have been acquired on or after July 1, 2010 (formerly expired on July 1, 2018).

Cooperative Director Qualifications—Co-owners — (719.106(1)

- In a residential cooperative association of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless the co-owners own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

Email As a Means of Communication — (719.106, 720.303)

- Directors of a board of directors for homeowners' and cooperative associations are allowed to use e-mail as a means of communications [official record?]. However, a director may not cast a vote upon an association related matter via e-mail. This law already applies to condominium associations.

Board Meetings to Consider Regular or Special Assessments — (719.106(1)(c)

- Notice of any board meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments (formerly provided "nature of any such assessments").

Coop Director or Officer Delinquencies — (719.106(1)(m)

- A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filed according to law.

Coop Communications Services, Information Services or Internet Services— (719.107(1)

- If so provided in the Bylaws, the cost of communication services, information services or Internet services obtained pursuant to a bulk contract shall be deemed a common expense. If not obtained pursuant to a bulk contract, such cost shall be considered a common expense if it is designated as such in a written contract between the board and the company. The contract shall be for a term of not less than 2 years.
- A contract for communication services, information services or Internet services made after April 2, 1992 may be cancelled by a majority of the voting interests present at the next membership meeting.

Homeowner Association Governing Document Amendments — (720.306(1))

- A proposal to amend the governing documents must contain the full text of the provision to be amended and may not be revised or amended by reference solely to the title or number. Proposed new language must be underlined and proposed deleted language must be stricken. If the proposed change is so extensive that underlining and striking through language would hinder, rather than assist, the understanding of the proposed amendment, a notation must be inserted immediately preceding the proposed amendment in substantially the following form: "Substantial rewording. See governing documents for current text." An amendment to a governing document is effective when recorded in the public records of the county in which the community is located.
- An immaterial error or omission in the amendment process does not invalidate an otherwise properly adopted amendment.
- A notice required under this section must be mailed or delivered to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the parcel is located, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.

Homeowner Association Elections — (720.306(9))

- An election is not required unless more candidates are nominated than vacancies exist. If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted and such qualified candidates shall commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting.

Restrictive Endorsements on HOA Payments — (720.3085(4))

- Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine. <u>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.</u>

CHAPTER 2018-55, LAWS OF FLORIDA, [HB 617] (eff. 10/1/2018)

"Marketable Record Title Act" or "MRTA" — Chapter 712, Florida Statutes

New Definitions — (712.01)

- As used in this chapter, **"Community covenant or restriction"** means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which: (a) Subjects the parcel to any use restriction that may be enforced by a property owners' association; or (b) Authorizes a property owners' association to impose a charge or assessment against the parcel or the parcel owner.
- **"Person"** now includes a property owners' association (formerly homeowners association).
- **"Property Owners' Association"** means a homeowners' association as defined in s. 720.301, a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels.
- **"Parcel"** means any real property that is subject to any covenant or restriction of a property owners' association.

- **"Covenant or restriction"** means any agreement or limitation contained in a document recorded in the public records which subjects the parcel to any use or other restriction or obligation.

Effect of Filing Notice — (712.05)

- A person claiming an interest in land or other right subject to extinguishment under this chapter may preserve and protect such interest or right from extinguishment by the operation of this chapter by filing for record, at any time during the 30-year period immediately following the effective date of the root of title, a written notice in accordance with s. 712.06.
- A property owners' association may preserve and protect a community covenant or restriction from extinguishment by the operation of this chapter by filing for record, at any time during the 30-year period immediately following the effective date of the root of title:
  (a) A written notice in accordance with s. 712.06; or
  (b) A summary notice in substantial form and content as required under s. 720.3032(2); or an amendment to a community covenant or restriction that is indexed under the legal name of the property owners' association and references the recording information of the covenant or restriction to be preserved. Failure of a summary notice or amendment to be indexed to the current owners of the affected property does not affect the validity of the notice or vitiate the effect of the filing of such notice.
- A Such notice under subsection (1) or subsection (2) preserves an interest in land or other such claim of right subject to extinguishment under this chapter, or a such covenant or restriction or portion of such covenant or restriction, for not less than up to 30 years after filing the notice unless the notice is filed again as required in this chapter. A person's disability or lack of knowledge of any kind may not delay the commencement of or suspend the running of the 30-year period.

Contents of Notice — (712.06)

- The statute was revised to clarify that the notice filed under 712.06 is a different notice than required under 712.05 (2)(b) for a summary notice and amendment. Termination of the section was also updated to reflect the new term "property owners' association" in the place of homeowners' association.

Notice to Preserve Covenants or Restrictions — (720.303(2) & 720.3032)

- At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.
- Section 720.3032 (Notice of Association Information; Preservation from MRTA) provides that any property owners' association desiring to preserve covenants from potential termination after 30 years by operation of MRTA may record in the official records of each county in which the community is located a notice specifying certain information required by Section 720.3032(1). The notice must include the legal name of the association, mailing and physical address of the association, names of the subdivision plats or condominiums or, if not applicable, the common name of the community, the name, address and telephone number for the current management company or manager, indicate as to whether the association desires to preserve the covenants or restrictions from extinguishment under MRTA, list by name and recording information those covenants or restrictions affecting the community which the association desires to be preserved and provide the legal description of the community affected by the covenants or restrictions. There is form notice provided in the statute.
- A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to the members. the original signed noticed must be recorded in the official records of the county.
- Recording a document in the form required by Section 720.3032(2) satisfies the notice obligation and constitutes a summary notice as specified in s.712.05(2)(b) sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under the Marketable Record Title Act, Chapter 712.
- A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.

- The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Covenant or Restriction Revitalized by Parcel Owners Not Subject to a Homeowners Association — (712.12)

- "Community" means the real property that is subject to a recorded covenant or restriction.
- "Covenant or restriction" means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.
- "Parcel" means real property that is used for residential purposes and that is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.
- "Parcel owner" means the record owner of legal title to a parcel.
- The parcel owners of a community not subject to a homeowners' association may use the procedures set forth in ss. 720.403-720.407 to revive covenants or restrictions that have lapsed under the terms of this chapter, except:
  (a) A reference to a homeowners' association or articles of incorporation or bylaws of a homeowners' association under ss. 720.403-720.407 is not required to revive the covenants or restrictions.
  (b) The approval required under s. 720.405(6) must be in writing, and not at a meeting.
  (c) The requirements under s. 720.407(2) may be satisfied by having the organizing committee execute the revived covenants or restrictions in the name of the community.
  (d) The indexing requirements under s. 720.407(3) may be satisfied by indexing the community name in the covenants or restrictions as the grantee and the parcel owners as the grantors.
- With respect to any parcel that has ceased to be governed by covenants or restrictions as of October 1, 2018, the parcel owner may commence an action by October 1, 2019, for a judicial determination that the covenants or restrictions did not govern that parcel as of October 1, 2018, and that any revitalization of such covenants or restrictions as to that parcel would unconstitutionally deprive the parcel owner of rights or property.
- Revived covenants or restrictions that are implemented pursuant to this section do not apply to or affect the rights of the parcel owner which are recognized by any court order or judgment in any action commenced by October 1, 2019, and any such rights so recognized may not be subsequently altered by revived covenants or restrictions implemented under this section without the consent of the affected parcel owner.

Preservation of Communities; Revival of All Declarations — (720.403, 720.404)

- Part III of chapter 720 is intended to provide mechanisms for the revitalization of covenants or restrictions for all types of communities and property associations and is not limited to residential communities.

Order to Show Cause for Entry of Final Judgement of Foreclosure — (702.09, 702.10)

- The statutes were amended throughout to change "homeowners association" to "property owners' association."

Preservation of Communities; Revival of Declaration (720.403, 720.404, 720.405, 720.407)

- The term "homeowners" was replaced with "property owners" and the statute was revised to remove the requirement that only "residential" communities were eligible for revival.
- Part III of chapter 720 was revised to clarify that the chapter is intended to provide mechanisms for the revitalization of covenants or restrictions for ALL TYPES of communities and property associations and is not limited to residential communities.

TOP TEN DEADLY MISTAKES IN CONDOMINIUM RESERVES:

1. Failure to Include Reserve Schedule in Proposed Budget and/or Failure to Propose FULL Reserve Funding in the Proposed Budget.

2. Failure to Include Reserves Required by Statute – Single Item that Exceeds $10,000.

3. Using Statutory Reserve Funds to Fund an Operating Shortfall Without PRIOR Membership Approval.

4. Using Statutory Reserve Funds for Frequent or Routine Maintenance.

5. Failure to Clearly Identify Purposes of Each Reserve Items/Accounts in the Board Minutes; Reserve Account Titles Matter.

6. Creating an Unrestricted "Contingency Reserve".

7. Failure of Limited Proxy to Include Required Reserve Ditty**: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.**

8. Failure to Use a Limited Proxy that Substantially Conforms to the DBPR's Limited Proxy Form with the Proposed Reserve Question.

9. Commingling Operating & Reserve Funds -- Rule 61B-22.005(2), F.A.C.: Commingling Operating and Reserve Funds. Associations that collect operating and reserve assessments as a single payment shall not be considered to have commingled the funds provided the reserve portion of the payment is transferred to a separate reserve account, or accounts, within 30 calendar days from the date such funds were deposited.

10. Failure to Fund Reserves at Sufficient Amounts and Adjust Reserve Estimates as Necessary.

BONUS: A membership vote to waive or reduce the funding of reserves IS NOT REQUIRED unless the Association desires to waive or reduce reserve funding.