

2021 COMMUNITY ASSOCIATION LEGISLATIVE UPDATE



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2021 COMMUNITY ASSOCIATION LEGAL UPDATE

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.

CHAPTER 2021-9, LAWS OF FLORIDA [SB 630] Effective July 1, 2021.

Section 627.714, Florida Statutes – Rights of Subrogation

If a condominium association's insurance policy does not provide rights of subrogation against unit owners in the Association, an insurance policy issued to an individual unit owner in the Association may not provide rights of subrogation against the Association.

NOTE: "Subrogation" means the right held by the owner's insurance carrier to legally pursue a third party that caused an insurance loss to the insured.

Section 718.111(12)(a)11.d., Florida Statutes – Competitive Bids Kept for One Year

Competitive bids are considered official records and must be maintained by the Association for at least 1 year after receipt of the bid.

Section 718.111(12)(c)1., Florida Statutes – Renter Inspection and Copying Rights; No Purpose May be Required

A renter of a unit has a right to inspect and copy ONLY the Declaration of Condominium, Bylaws and Rules.

The Association may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspection and copy, but may not require a member to demonstrate any purpose or state any reason for the inspection.

Section 718.111(12)(g)1., Florida Statutes – Website or App

An Association managing a condominium with 150 or more units is required to post digital copies of certain official records on its website OR make such documents available through an application that can be downloaded on a mobile device. The same statutory requirements that apply to such websites now apply to an App.

Section 718.112(1)(c), Florida Statutes – Extinguish a Discriminatory Restriction

The Association may extinguish a discriminatory restriction as provided in Section 712.065, Fl. Stat.

Section 718.112(2)(d)2., Florida Statutes – Board Service on or After July 1, 2018 Counts Toward Term Limits

Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit.

NOTE: The Arbitration Case of Glanz v. Hidden Lake of Manatee Owners Association, Inc., Arb. Case No. 2019-01-5048, held that the director term limit statute does not apply retroactively and, therefore, will only

apply to a condominium association that predates the effective date of the Law if Kaufman language is present in the Declaration.

Section 718.112(2)(d)3., Florida Statutes – Posting of Membership Meeting Notices on Association Property & SMM

Notices of annual membership meetings may be posted on the condominium property or association property at least 14 continuous days before the annual meeting.

Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting.

NOTE: The Bylaws may now specify less than 14 days' notice for a special membership meeting.

Section 718.112(2)(d)4., Florida Statutes – Second Notice of Election of Directors

The second notice of the election of directors must be transmitted not less than 14 days or more than 34 days before the date of the election.

Section 718.112(2)(i), Florida Statutes – Transfer Fees

An association may not ~~no~~ charge a fee ~~shall be made by the association or any body thereof~~ in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. **Any such fee may be preset, but may not in no event may such fee exceed \$150 \$100 per applicant.** For the purpose of calculating the fee, spouses or a parent or parents and any dependent children ~~other than husband/wife or parent/dependent child, which~~ are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, a charge may not ~~no charge shall~~ be made. Such fees must be adjusted every 5 years in an amount equal to the total of the annual increases occurring in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items during that 5-year period. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

The authority to charge a security deposit may now also appear in the Articles of Incorporation, in addition to the Declaration and Bylaws.

NOTE: If the Declaration presets the amount of the transfer fee at \$100, may the Association charge the \$150 without first amending its Declaration to increase the amount? Can the Declaration's amendment article be amended to authorize the board of directors to amend the Declaration (without owner approval) to make it consistent with subsequent changes to Florida and Federal law?

Question: May condominium associations now amend their Declaration to authorize the imposition of a capital contribution due to the deletion of the language: "No charge shall be made...." Now the statute provides that the association "may not charge a fee...." The statute also was revised to apply only to the Association and no longer appears to apply to "any body thereof".

Section 689.28, Florida Statutes, prohibits transfer fee covenants, but provides that the following is not a transfer fee:

7. Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association, including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent.

Section 718.112(2)(j), Florida Statutes – Recall of Directors and Court Action

The unit owner representative or a director who has been recalled may now file either a petition for recall arbitration or a court action under Section 718.1255, Florida Statutes.

Section 718.112(2)(k), Florida Statutes – Alternative Dispute Resolution is Required

The statute has been amended to remove the requirement for mandatory nonbinding arbitration in residential condominiums and replace it with alternative dispute resolution.

Section 718.112(2)(p), Florida Statutes – Service Providers

This entire subsection on service providers has been deleted.

Section 718.113(8), Florida Statutes – Natural Gas Fuel Vehicles

This statute has been amended so that “Natural Gas Fuel Vehicles” are treated the same as electronic vehicles and owners have the right to install a “Natural Gas Fuel Station” in their LCE or exclusively designated parking space.

NOTE: “Natural Gas Fuel” means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23). This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.

In addition, electronic vehicles or natural gas fuel vehicles and fuel stations may now be installed within the boundaries of the owner’s limited common element or exclusively designated parking space. The cost of supply and storage of the natural gas fuel must be paid by the unit owner installing the natural gas fuel station or by his or her successor. The unit owner is responsible for complying with all federal, state or local laws and regulations. The owner must provide a certificate of insurance naming the association as an additional insured for any claim related to the installation, maintenance or use of the electric vehicle charging station or the natural gas fuel station. The owner must also reimburse the association the actual cost of any increased insurance premium.

The Board is now authorized to make available, install, or operate an electric vehicle charging station or a natural gas fuel station upon the common elements or association property and establish the charges or the manner of payments for the unit owners, residents, or guests who use the electric vehicle charging station or natural gas fuel station. For the purposes of this section, the installation, repair, or maintenance of an electric vehicle charging station or natural gas fuel station under this subsection does not constitute a material alteration or substantial addition to the common elements or association property.

Section 718.117, Florida Statutes – Termination of Condominium

A unit owner or lienor may contest a plan of termination by filing a petition in accordance with s. 718.1255 (pre-suit mediation) and then file a lawsuit as an alternative to filing arbitration with the Division.

Section 718.1255(4), Florida Statutes – Alternative Dispute Resolution; Mediation; Nonbinding Arbitration

Before the institution of court litigation, a party to a dispute, other than an election or recall dispute, shall **EITHER** petition the Division for nonbinding arbitration OR initiate presuit mediation. Arbitration is binding if all parties agree to be bound. In lieu of the initiation of nonbinding arbitration, a party may submit a dispute to presuit mediation in accordance with s. 720.311; however, election and recall disputes are not eligible for mediation and such disputes must be arbitrated by the Division or filed in a court of competent jurisdiction.

Section 718.1265, Florida Statutes – Association Emergency Powers

This bill addresses deficiencies in the emergency powers statute revealed during the COVID-19 pandemic and provides for the following changes:

The Board, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared, may exercise the following powers:

- (a) Conduct board, committee meetings, elections and membership meetings, in whole or in part, by telephone, real time videoconference or similar electronic or video communications. Notice may now be given by electronic transmission, PSA or posting.
- (b) Implement a disaster plan or emergency plan before, during or after the state of emergency event.
- (c) Based on the advice of emergency management officials or based on the advice of licensed professionals retained by or otherwise available to the Board to determine that the condominium property or association property or any portion thereof is unavailable for entry or occupancy to protect the health, safety or welfare.
- (d) Clarifies the term “emergency” as defined in Section 252.34(4), F.S., to mean “any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.”
- (e) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. **Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property or association property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.**

*NOTE: The Board should consider the merits of adopting (and publishing) at the beginning of the hurricane season an evacuation resolution that is **automatically triggered** in the event a mandatory evacuation order is issued in the locale in which the condominium is located so that the Association may take advantage of the statutory immunity.*

- (f) The Association is authorized to sanitize the condominium property and association property against any contagion.
- (g) During a state of emergency, the Association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:
 1. The sale, lease, or other transfer of title of a unit; or
 2. The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

Section 718.202, Florida Statutes –Sales or Reservation Deposits Prior to Closing

This law was amended to expand on the developer’s right to use sales and reservation deposits placed in escrow for “actual costs” incurred by the developer in construction and development of the condominium property. “Actual costs” is also now defined by statute.

Section 718.303, Florida Statutes –

This section was broadened to apply to “actions at law or in equity” (previously for damages or for injunctive relief).

The section was also amended to restrict the ability of a prevailing unit owner to recover additional amounts to reimburse the owner for his or her share of the assessments levied by the Association to fund the expenses of litigation from Section 718.303 to only section 718.303(1).

The due date of a fine was changed from 5 days after the committee meeting at which the fine was approved to 5 days after the notice of the approved fine is provided to the owner and/or person sought to be fined.

Section 718.405, Florida Statutes – Multi-condominium and Consolidated or Combined Declarations

The statute now clarifies that a multi-condominium association may adopt a consolidated or combined Declaration of Condominium so long as it does not merge the condominiums or change the legal descriptions of the units.

Section 718.501, Florida Statutes – Division Enforcement and Jurisdiction Over Developers

The law provides that the Division retains jurisdiction to investigate complaints filed against developers for failure to maintain the Association’s official records.

Section 718.5014, Florida Statutes – Location of the Ombudsman’s Office

The principal office of the Ombudsman may now be located outside of Leon County.

Section 719.103, Florida Statutes – Cooperative Unit is an Interest in Real Property

The definition of a cooperative “Unit” was clarified to provide that an interest in a cooperative unit is an interest in real property.

Section 719.104(2), Florida Statutes – Official Records – No Purpose or Reason

The Association may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspection and copy, but may not require a member to demonstrate any purpose or state any reason for the inspection.

Section 719.106(1)(b), Florida Statutes – Board and Committee Meetings Via Telephone or Video

A board member or committee member participating in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present. A speaker must be used so that all conversations may be heard by attendees. [Previously the statute only authorized meeting by telephone.]

NOTE: There is nothing in Chapter 719, Florida Statutes, that permits a member to attend and vote at a membership meeting via telephone or video. Section 617.0721, Florida Statutes, applies if the Association is a not-for-profit corporation and authorizes the Board to adopt a resolution permitting such remote attendance and voting.

Section 719.106(1)(f), Florida Statutes – Recall of Directors and Court Action

The unit owner representative or a director who has been recalled may now file either a petition for recall arbitration or a court action under Section 719.1255, Florida Statutes.

Section 719.106(1)(l), Florida Statutes – Alternative Dispute Resolution is Required

The statute has been amended to remove the requirement for mandatory nonbinding arbitration and replace it with alternative dispute resolution.

Section 719.106(3), Florida Statutes – Extinguish a Discriminatory Restriction

The Association may extinguish a discriminatory restriction as provided under s. 712.065.

Section 719.128, Florida Statutes – Association Emergency Powers

This bill addresses deficiencies in the emergency powers statute revealed during the COVID-19 pandemic and provides for the following changes:

The Board, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared, may exercise the following powers:

- (h) Conduct board, committee meetings, elections and membership meetings, in whole or in part, by telephone, real time videoconference or similar electronic or video communications. Notice may now be given by electronic transmission, PSA or posting.
- (i) Implement a disaster plan or emergency plan before, during or after the state of emergency event.
- (j) Based on the advice of emergency management officials or based on the advice of licensed professionals retained by or otherwise available to the Board determine that the cooperative property or association property or any portion thereof is unavailable for entry or occupancy to protect the health, safety or welfare.
- (k) Clarifies the term “emergency” as defined in Section 252.34(4), F.S., to mean “any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.”
- (l) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the locale in which the cooperative is located. **Should any unit owner or other occupant of a cooperative fail or refuse to evacuate the cooperative property or association property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.**

*NOTE: The Board should consider the merits of adopting (and publishing) at the beginning of the hurricane season an evacuation resolution that is **automatically triggered** in the event a mandatory evacuation order is issued in the locale in which the cooperative is located so that the Association may take advantage of the statutory immunity.*

- (m) The Association is authorized to sanitize the cooperative property and association property against any contagion.

- (n) During a state of emergency, the Association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common areas and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:
3. The sale, lease, or other transfer of title of a unit; or
 4. The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

Section 720.301(8), Florida Statutes – Rules are No Longer Included in the Governing Documents

The definition of the HOA’s “Governing Documents” was amended so that Rules and Regulations are NOT part of the governing documents of the HOA.

Section 720.303(2)(c), Florida Statutes – Rule Concerning Posting Notice and Agenda on Website and App

In addition to any of the authorized means of providing notice of a meeting of the Board, the Association **may**, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on the Association’s website or an application that can be downloaded on a mobile device for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the association property. Any rule adopted must, in addition to other matters, include a requirement that the Association send an electronic notice to members whose email addresses are included in the Association’s official records in the same manner as is required for a notice of a meeting of the members. Such notice must include a hyperlink to the website or such mobile application on which the meeting notice is posted.

Section 720.303(4), Florida Statutes –

Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by lot owners are part of the official records and must be maintained for at least one year after the date of the election, vote or meeting.

Section 720.303(5), Florida Statutes – Exclusion of Guest Visits to a Lot are Confidential

Information an Association obtains in a gated community in connection with guests’ visits to parcel owners or residents is not accessible to members as an official record.

Section 720.303(6), Florida Statutes – Financial Report Disclosure Statement

If the annual budget of the Association does not provide for reserve accounts under paragraph (d) of Section 720.303(6)(d) OR the Declaration, Articles of Incorporation or Bylaws do not obligate the developer to create reserves, and the Association is responsible for repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided or are not fully funded, each financial report required by the statute must contain a new text or ditty.

Under the new law, an association is only deemed to have provided for reserve accounts upon the affirmative approval of a majority of the total voting interests of the Association. The statutory language that created the second way to create “statutory” reserves (if the reserve accounts were initially established by the developer) has been deleted.

While a developer is in control of a homeowners’ association, the developer may, but is not required to, include reserves in the budget. If the developer includes reserves in the budget, the developer may determine the amount of reserves included. The statute now provides that the developer is not obligated to pay for:

- a. Contributions to reserve accounts for capital expenditures and deferred maintenance, as well as any other reserves that the homeowners’ association or the developer may be required to fund pursuant to any state, municipal, county, or other governmental statute or ordinance;

b. Operating expenses; or

c. Any other assessments related to the developer's parcels for any period of time for which the developer has provided in the declaration that in lieu of paying any assessments imposed on any parcel owned by the developer, the developer need only pay the deficit, if any, in any fiscal year of the association, between the total amount of the assessments receivable from other members plus any other association income and the lesser of the budgeted or actual expenses incurred by the association during such fiscal year.

This paragraph applies to all homeowners' associations existing on or created after July 1, 2021.

Section 720.303(10), Florida Statutes – Recall of Directors

The statute has been clarified to provide that if a board determines not to certify the written agreement or written ballots to recall a director, or if the board does not certify the recall by timely vote at a Board meeting, the Board shall, within 5 business days after the meeting, either file an action with a court of competent jurisdiction or file a binding arbitration proceedings with the Division. In addition, the parcel owner representative or a recalled director is also authorized to file either a court proceeding or a binding arbitration proceeding with the Division in many situations. The 60 day filing deadline period applies regardless if a court proceeding or arbitration proceeding is filed.

Section 720.305(2), Florida Statutes – Due Date of Fines

The statute was amended to provide that a fine is now due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee [formerly 5 days after the date of the committee meeting at which the fine was approved].

Section 720.306(1)(g), Florida Statutes – Notices for Membership Meetings

The statute was amended to delete the requirement that notices required by Section 720.306 had to be sent to the owner's address as reflected on the county's property appraiser's website. The notice must now be sent to the address identified as the owner' mailing address in the official records of the Association as required under Section 720.303(4), Florida Statutes or electronically transmitted if the owner has consented, in writing, to receiving notice by electronic transmission.

Section 720.306(1)(h), Florida Statutes – Statutory Rental Restrictions

(h)1. Except as otherwise provided in this paragraph, any governing document, or amendment to a governing document, that is enacted after **July 1, 2021**, and that prohibits or regulates rental agreements applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing document or amendment.

2. Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rental agreements for a term of less than 6 months and may prohibit the rental of a parcel for more than three times in a calendar year, and such amendments shall apply to all parcel owners.

3. This paragraph does not affect the amendment restrictions for associations of **15 or fewer parcel owners** under s. 720.303(1).

4. For purposes of this paragraph, **a change of ownership does not occur** when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes the parcel owner. For purposes of this subparagraph, the term "**affiliated entity**" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish to the association a document certifying that this subparagraph applies and provide any organizational documents for the parcel owner and the affiliated entity which support the representations in the certificate, as requested by the association.

5. For purposes of this paragraph, **a change of ownership does occur when**, with respect to a parcel owner that is a business entity, every person that owned an interest in the real property at the time of the enactment of the amendment or rule conveys their interest in the real property to an unaffiliated entity.

Section 720.306(9)(c), Florida Statutes – Election Disputes May Now Be Filed In Court

The new law provides that any election dispute between a member and an Association must be submitted to binding arbitration with the Division OR filed with a court of competent jurisdiction. Such proceedings that are submitted to binding arbitration with the Division must be conducted in the manner provided by s. 718.1255 and the Division’s procedural rules.

Section 720.307(1)(a), Florida Statutes – Mandatory Turnover of HOA

The statute was clarified to provide that turnover, if proceeding under subsection (a) must occur 3 months after 90% of the parcels in all phases of the community that will ultimately be operated by the homeowners association have been conveyed to members other than the developer.

Section 720.311(1), Florida Statutes – Dispute Resolution

The statute was amended to provide that election disputes may now be conducted in binding (but not mandatory) arbitration in accordance with s. 718.1255. Election disputes and recall disputes are **not** eligible for pre-suit mediation; these disputes must be arbitrated by the Department OR filed in court.

Section 720.3075, Florida Statutes – Extinguishment of a Discriminatory Restriction

The statute now provides that an association may extinguish a discriminatory restriction as provided in s. 712.065.

Section 720.316, Florida Statutes – New Pandemic Emergency Powers

This bill addresses deficiencies in the emergency powers statute revealed during the COVID-19 pandemic and provides for the following changes:

The Board, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared, may exercise the following powers:

- (a) Conduct board, committee meetings, elections and membership meetings, in whole or in part, by telephone, real time videoconference or similar electronic or video communications. Notice may now be given by electronic transmission, PSA or posting. Notice of decisions may also be communicated as provided in this paragraph.
- (b) Implement a disaster plan or emergency plan before, during or after the state of emergency event.
- (c) Based on the advice of emergency management officials or based on the advice of licensed professionals retained by or otherwise available to the Board determine that the common areas or facilities can be safely inhabited, accessed or occupied.
- (d) Clarifies the term “emergency” as defined in Section 252.34(4), F.S., to mean “any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.”
- (e) The Association is authorized to mitigate further damage, injury or contagion and to sanitize the common areas or facilities.

- (f) During a state of emergency, the Association may not prohibit parcel owners, tenants, guests, agents, or invitees of a parcel owner from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel and when access is necessary in connection with:
1. The sale, lease, or other transfer of title of a parcel; or
 2. The habitability of the parcel or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the parcel. Any such access is subject to reasonable restrictions adopted by the association.

CHAPTER 2021-91, LAWS OF FLORIDA [SB 56] Effective July 1, 2021.

Section 718.111(12), Florida Statutes – Official Records – Affirmative Acknowledgments

The Association must now maintain as part of its official records the affirmative acknowledgement made pursuant to s. 718.121(4)(c). Such affirmative acknowledgements are not accessible to the unit owners.

Section 718.116(6), Florida Statutes – 30 days changed to 45 Days for 2nd Notice of Intent to Foreclose

The statute was amended to change the previous 30-day notice (notice of intent to foreclose) so the Association is now required to provide a 45-day notice. If the notice is not provided at least 45 days before the foreclosure action is filed, the Association shall not recover its attorney fees or costs.

Section 718.121(4), Florida Statutes – 30 days changed to 45 Days for 1st Notice of Intent to Lien

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s. 718.111(12)(a)11.b., the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

(b) Before **changing the method of delivery for an invoice for assessments or the statement of the account**, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. **The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address.** Notice is deemed to have been delivered upon mailing as required by this paragraph.

(c) **A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The unit owner may make the affirmative acknowledgment electronically or in writing.**

(5) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must also be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this subsection. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the statutory form.

(6) Except as otherwise provided in Chapter 718, no lien may be filed until 45 days after the date on which a notice of intent to lien has been delivered to the owner by RM or CM, RRR, by first class mail to the owner's last address as reflected in the association's records, and if the address is not the unit address by first class US mail to the unit address. The notice must be in substantially the statutory form.

Section 719.104(2), Florida Statutes – Official Records – Affirmative Acknowledgments

The Association must now maintain as part of its official records the affirmative acknowledgement made pursuant to s. 719.108(3)(b). Such affirmative acknowledgements are not accessible to the unit owners.

Section 719.108(3), Florida Statutes – Association Delinquent Notice Letter & Changing Method of Delivery

(b)1. If an association sends out an invoice for assessments or a unit's statement of the account described in s. 719.104(2)(a)9.b., the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering the invoice for assessments or the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(c) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must also be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this paragraph. A rebuttable presumption that an association mailed a notice in accordance with this paragraph is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the statutory form.

Section 720.303(4), Florida Statutes – Official Records – Affirmative Acknowledgments

The Association must now maintain as part of its official records the affirmative acknowledgement made pursuant to s. 720.3085(3)(c). Such affirmative acknowledgements are not accessible to the unit owners.

Section 720.3085(3), Florida Statutes – Association Delinquent Notice Letter & Changing Method of Delivery

(c) 1. If an association sends out an invoice for assessments or a parcel's statement of the account described in s. 720.303(4)(j)2., the invoice for assessments or the parcel's statement of account must be delivered to the parcel owner by first-class United States mail or by electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each parcel owner. The written notice must be delivered to the parcel owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the owner at his or her last address as

reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The parcel owner may make the affirmative acknowledgment electronically or in writing. (d) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the parcel owner which specifies the amount owed the association and provides the parcel owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must also be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this paragraph. A rebuttable presumption that an association mailed a notice in accordance with this paragraph is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the statutory form.

CHAPTER 2021-1, LAWS OF FLORIDA [SB 72] Effective March 29, 2021.

Section 768.381, Florida Statutes – Liability Protections for COVID-19 Related Claims

To address and minimize civil liability damages relating to COVID-19 claims, the Legislature created 768.381, Florida Statutes.

“**Business entity**” has the same meaning as provided in s. 606.03, and also includes a charitable organization as defined in s. 496.404 and a corporation not for profit as defined in s. 617.01401.

“**COVID-19-related claim**” means a civil liability claim against a person, including a natural person, a business entity, an educational institution, a governmental entity, or a religious institution, which arises from or is related to COVID-19, otherwise known as the novel coronavirus. The term includes any such claim for damages, injury, or death. Any such claim, no matter how denominated, is a COVID-19-related claim for purposes of this section.

(3) In a civil action based on a COVID-19-related claim:

(a) The complaint must be pled with particularity.

(b) At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in this state which attests to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19-related damages, injury, or death occurred as a result of the defendant's acts or omissions.

(c) The court must determine, as a matter of law, whether:

1. The plaintiff complied with paragraphs (a) and (b). If the plaintiff did not comply with paragraphs (a) and (b), the court must dismiss the action without prejudice.

2. The defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued.

a. During this stage of the proceeding, admissible evidence is limited to evidence tending to demonstrate whether the defendant made such a good faith effort.

b. If the court determines that the defendant made such a good faith effort, the defendant is immune from civil liability. If more than one source or set of standards or guidance was authoritative or controlling at the time the cause of action accrued, the defendant's good faith effort to substantially comply with any one of those sources or sets of standards or guidance confers such immunity from civil liability.

c. If the court determines that the defendant did not make such a good faith effort, the plaintiff may proceed with the action. However, absent at least gross negligence proven by clear and convincing evidence, the defendant is not liable for any act or omission relating to a COVID-19-related claim.

(d) The burden of proof is upon the plaintiff to demonstrate that the defendant did not make a good faith effort under subparagraph (c)2.

(4) A plaintiff must commence a civil action for a COVID-19-related claim within 1 year after the cause of action accrues or within 1 year after the effective date of this act if the cause of action accrued before the effective date of this act.

CHAPTER 2021-13, LAWS OF FLORIDA [SB 602] Effective May 7, 2021.

Section 617.0725, Florida Statutes – Quorum and Voting Requirements

Section 617.0725, Florida Statutes pertaining to amending quorum and voting requirements does not apply to a 718, 719 or 720 association.

Section 617.1703, Florida Statutes – Application of Chapter 617, Florida Statutes

Chapter 617 is applicable to a corporation that is an association as defined in and regulated by any of chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners' associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile homeowners' associations, except:

1. For any conflict between the provisions of this chapter and chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723; or

2. As otherwise provided for in chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723.

(b) If subparagraph (a)1. or subparagraph (a)2. applies, the applicable provisions of such other respective chapters shall apply.

CHAPTER 2021-194, LAWS OF FLORIDA [SB 996] Effective July 1, 2021.

Section 194.011, Florida Statutes – Joint Petition Challenging Ad Valorem Taxes

This new law provides that a condominium association, cooperative association and a homeowners association may file with the value adjustment board a single joint petition on behalf of members who own units in the community, and the associations may seek judicial review of a decision by the property appraiser.

CHAPTER 2021-99, LAWS OF FLORIDA [SB 630] Effective July 1, 2021.

Section 718.112(2)(d), Florida Statutes – Delinquent Director Candidate

This section provides that a person who is delinquent in the payment of any assessment (formerly monetary obligation) due to the Association is not eligible to be a candidate for the Board. A person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period.

Section 718.112(2)(f), Florida Statutes – Due Date of Adoption of the Annual Budget

The board shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

Section 718.501, Florida Statutes – Division Rules Regarding Complaint Submissions

The Division is authorized to adopt rules regarding the submission of a complaint against an association.

Section 718.5014, Florida Statutes – Location of Ombudsman Office

The ombudsman shall maintain his office at a place convenient to the offices of the Division.

Section 719.106, Florida Statutes – Due Date of Adoption of the Annual Budget

The board shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

CHAPTER 2021-68, LAWS OF FLORIDA [HB 463] Effective July 1, 2021

Section 514.0115, Florida Statutes – HOA Pools Serving No More than 32 Units & Not PLEs

Pools serving homeowners' associations and other property associations which have **no more than 32 units or parcels** and are **not operated as public lodging establishments** are exempt from supervision under this chapter, except for supervision necessary to ensure water quality and compliance with s. 514.0315, and are subject to ss. 514.05 and 514.06.

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