

Rosenbaum 'On the Watch'

The Rosenbaum Association Reporter

Summer Edition

2017



"In today's world, clients need answers now, not at the convenience of the attorney or paralegal"

Daniel S. Rosenbaum

Daniel S. Rosenbaum
President's Message:

Hot Time in the Summer - And We Like It That Way

I'm not referring to the weather, but the fact that we are extremely busy at the Firm with many new clients, some extraordinary results on client matters, and excellent new additions to our attorneys and staff. Perhaps "hot" is not the correct word to describe all of this activity, but the Firm continues to experience high-quality expansion, and with it, staff and attorneys who are willing to devote one hundred percent to the needs of our clients. This is what we are all about. I like to sum it up in two concepts: First, "extraordinarily responsive." In today's world, clients need answers now, not at the convenience of the attorney or paralegal. Our clients face the same demands that we do. We understand the importance of that. Your experience with us will always be respectful, understanding, highly responsive, and the highest quality legal work. Second, we "outperform." Outperformance means we provide extraordinary performance, better than that

which one finds in the marketplace of attorneys. Outperformance means a higher level of communication with our clients; a more thorough understanding of their legal matters; a better developed plan to address the legal issues presented and as many options as possible with full explanations about each option. Outperformance means doing it better, more expeditiously, more thoughtfully, more efficiently and always exceeding our clients' expectations. This is what we are about. This is what we will always be about. Our client representation will only get better over time as we continue to grow and add attorneys and staff of the highest caliber. It is a "bottoms up" experience — it starts with our receptionist, to our legal assistants, administrative and accounting staff, paralegals, and our attorneys. We care deeply about you and your legal matters. It really is that simple.



House Bill 1237

What it Means for Condominium Associations

The Good, the Bad, and the Ugly

By Steven R. Braten, Shareholder sbraten@rosenbaumpllc.com

The Florida Legislature Unanimously Approves HB 1237

Both the State House of Representatives and Senate unanimously approved the now infamous House Bill 1237 (HB 1237), which bill was approved one year after El Nuevo Herald and Univision 23 published the results of a joint investigation into condominium scandals. The series, "Condo Nightmares," highlighted association electoral fraud, fake signatures on ballots, conflicts of interests, misappropriation of funds and rigged vendor bids. A report by a Miami-Dade grand jury in February of this year recommended significant changes to Florida's Condominium Act (Chapter 718), as well as the Department of Business and Professional Regulation (DBPR) – the state agency responsible for monitoring and punishing violations of Chapter 718.

When Will HB 1237 Become Law?

Governor Scott signed HB 1237 into law effective July 1st. What will this mean for your condominium association? First, HB 1237 is not as "bad" or "ugly" as you may have been led to believe. Many of the changes that makes certain conduct a crime, were probably punishable as crimes under Florida's existing penal code, HB 1237 simply makes certain behavior that arises in the context of condominium association governance a specific crime, making it easier for our State's attorneys to prosecute such behavior. As you will see in this article, the real potential for "chaos" or "damage", are the changes the Florida Legislature made to the provisions of §718.112 governing the recall of directors.

Summary of Legislative Amendments

The "Good News"

New Safeguards Enforceable by Criminal Punishment

§718.111(1)(a) – amended to add "kick back" to the list that officers, directors, or managers may not solicit. The prior version was limited to soliciting, offering to accept, or accepting any thing or service of value for which consideration was not provided for his or her own benefit or that of his or her family.

§718.111(1)(d) – amended to provide that "[f]orgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01" which is Florida's forgery statute. Forgery is punishable as a third-degree felony. Although this amendment provides Florida's State attorneys the new ability to prosecute forgery in the context of condominium elections, such behavior should be punishable, as no person should have cause to commit forgery over the election of volunteer members to a board of a condominium association.

In addition, the amendments to 718.111(1)(d) make "the theft or embezzlement of funds of a condominium association punishable as provided in s. 812.014." Section 812.014 is simply Florida's "Theft" statute – so no big surprise here.

"[R]efusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13 or as obstruction of justice as provided in chapter 843." Tampering with physical evidence is a third-degree felony under s. 918.13. How someone would be punished for obstruction of justice under Chapter 843 is not as clear as there is not a specific "obstruction of justice" section of chapter 843. Section 843.02 provides that obstructing a peace officer without violence is a first-degree misdemeanor. It remains unclear how law

enforcement will approach these particular new laws.

Any officer or director who is charged by information or indictment with one of the crimes set forth in in 718.111(1)(d) is automatically removed from office and the vacancy is to be filled "as provided in s. 718.112(2)(d)2., which requires the association to hold an election by secret ballot. Presumably, the same process as is followed to hold the annual election would apply. The new director serves until the end of the removed officer's or director's period of suspension or the end of his or her term, whichever occurs first. If the charges against the removed officer or director are resolved "without a finding of guilt, the officer or director is reinstated to the Board for the remainder of his or her term of office, if any."

Many association practitioners are concerned that these new laws will have a chilling effect on unit owners willing to serve on their association boards, a process that already suffers from apathy. We believe, however, that these "new" laws will not deter condominium unit owners from volunteering to serve on their association boards because the crimes are ones that are easily avoided.

§718.111(3)(b) – "An association may not hire an attorney who represents the management company of the association."

§718.111(9) – Except for timeshare condominiums, "a board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure."

§718.111(12)(a)17. – "Bids for materials, equipment, or services" are not considered part of the official records of the association.

§718.111(12)(c)1. – Renters of condominium units now have a right to inspection and copy the association's bylaws and rules.

The “Bad News” Mandatory Website for Communities of 150 Units or more

HB 1237 requires all condominium associations of 150 units or more to implement an “independent website or web portal wholly owned and operated by the association”. §718.111(12)(g)1. Aside from where the Legislature “stuck” this new website requirement (under a subparagraph of §718.111(12) that specifies those records exempt from the

association’s official records), the unit threshold - 150 units - may place a substantial financial burden on low-rise condominiums.

In addition, the association’s website must have a subpage, web portal, or other protected electronic location that is inaccessible to the general public and which may only be accessible to unit owners and employees of the association (commonly referred to as a “membership page” or a “membership section”). The association would have to provide owners with a user name and password to access the member’s page. The member’s page will be required to contain certain mandatory contents as follows:.

Your Governing Documents Must be Posted

- The recorded Declaration of Condominium and each amendment for each condominium to the Declaration operated by the association;
- The recorded Bylaws and each amendment to the Bylaws; the Articles of Incorporation of the association and each amendment thereto;
- The copy of the Articles of Incorporation posted on the website must be a copy of those filed with the Department of State;
- The Rules of the association; Agreements & Bids
- Any management agreement, lease, or other contract which the Association is a party or the unit owners have an obligation or responsibility;
- Summaries of bids for materials equipment or services must be maintained on the website for one year;

Financial Information

- The annual budget required by 718.112(2)(f) and any proposed budget to be considered at the annual meeting; the financial report required by 718.111(13) and any proposed financial reports to be considered at a meeting;

Director Related Information

- The certification of each director required by 718.112(2)(d)4.b. (referring to a director’s obligation to certify within 90 days of being elected or appointed to the Board that he or she has read the association’s governing documents; 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. Alternatively a newly elected or appointed director may submit a certificate of having satisfactorily completed the educa-

tional curriculum administered by divisions – approved condominium education provider within 1 year before or 90 days after the date of election or appointment);

- All contracts or transactions between the association and any director, officer, corporation, firm or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested; any contract or document regarding a conflict of interest or possible conflict of interest provided in 468.436(2) (referring to the section on disciplinary proceedings of CAMS);

Notices & Agendas

- Notices of any unit owner meetings with the agenda no later than 14 days before the meeting. The notice must be posted in “plain view” on the front page of the website or on a separate subpage of the website labeled “Notices”, which is conspicuously visible and linked from the first page of the website.
- Any documents to be considered and voted on by the owners at an owners meeting or any document listed on the agenda of an owners meeting at least 7 days before the owners meeting at which the document or information within the document will be considered;
- Notice of any board meeting, the agenda and any other documents required for the meeting which must be posted on the association’s website no later than the date required for notice pursuant to 718.112(2)(c) (either 48 hours or 14 days depending on the nature of the item to be considered at the Board meeting).

Note: The new law requiring condominium associations to establish a website now places a mandatory

obligation on those associations to “insure that the information and records” which are not permitted to be accessible to unit owners are not posted on the Association’s website. Association must take steps to redact any protected information before the information is posted online.

Financial Reporting & Related Amendments

§718.111(13) Financial Reporting, has been amended to require condominium associations to provide the most recent financial report within 5 business days after receipt of a written request from the unit owner.

§718.111(13)(e) has been added to provide unit owners with a remedy if an association does not comply with a written request for the most recent financial report within five business days. The unit owner may now file a complaint with the Division. The Division will then send a letter to the association requiring the association to mail a copy of the financial report to the Division and unit owner. If the association does not comply, then that association will not be able to waive the financial reporting requirements of **§718.112(13)**, which allows an association to reduce the level of review upon a majority vote of the membership. This is not much of a sanction compared to the failure to respond to other official records requests.

§718.111(15) has been added to prohibit a condominium association from utilizing a debit card (not a credit card). If an officer, director, employee or other agent of the association utilizes a debit card for any expense that is not a lawful obligation of the association, such person may be prosecuted for committing credit card fraud pursuant to §817.61.

The “Bad News”

Term Limits Added to Section 718.112

Term Limits Added to Section 718.112 §718.112(2)(d)2., had been previously amended to authorize associations to amend their Bylaws to permit directors to serve 2-year terms. The Legislature has now amended this section to establish term limits for Directors – four consecutive 2-year terms unless approved by an affirmative vote of two-thirds of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. This is an important exception to prevent a potential crisis if there are not enough volunteers willing to serve on your community’s board.

§718.1255 has been amended to provide for certain minimum requirements to become certified by the Division to act as an arbitrator.

§718.3025(5) has been added to provide that, after turnover from the developer, a party contracting to provide maintenance or management services to a condominium association, or an officer or board member of such party may not purchase a unit at a foreclosure sale resulting from an association’s foreclosure of a lien for unpaid assessments or take a deed in lieu of foreclosure.

In addition, if 50% or more of the units in a condominium are owned by a party contracting to provide maintenance or management services to a condominium association after turnover the contract may be canceled by a majority vote of the remaining unit owners.

§718.3027, entitled “Conflicts of interest” is a new section that has been added to the Condominium Act to protect associations if they enter into contracts with parties where the contracting party is related to a director

or officer of an association from entering into contracts with the association, which should be reviewed carefully by all of those currently serving on their boards or who intend to run for their association board.

§718.303 has been amended to provide that unit owners must owe a monetary obligation of more than \$1,000 and be more than 90 days delinquent before their voting rights may be suspended. The statute has also been amended to clarify that a court appointed receiver may not exercise voting rights relative to any units placed in receivership.

§718.71 has been added to require an association to provide an annual report to the Department, containing the names of all of the financial institutions which it maintains accounts and a copy of this report may be obtained from the Department upon written request of any association member.

The Ugly

The Legislature Makes

Some Questionable Changes to the Recall Statute

While the media has primarily focused on the legislative changes to the Condominium Act that imposes new criminal penalties, the legislative amendments to the recall procedures of directors has been completely overlooked. Under the prior law (§718.112(j)), if either a majority of the total voting interest of the association votes in favor of recall at a special meeting or by written agreement, the provision that the Board may hold a meeting to decide whether to certify the recall has been DELETED from the statute. Rather, the recall is effective “immediately” and the recalled directors are required to turn over to the board within 10 full business days any and all records and property of the association. This begs the question whether the Board may still review the ballots or written agreement, to verify validity such that a true majority has voted in favor of recall. The entire section of the statute that set forth the procedure for the Association to file a petition with the Division if the Board did not certify the recall attempt (§718.112(j)(3)) has been DELETED. It appears that the intent of the statute is to prevent a board from delaying the effectiveness of a VALID recall by filing a petition with the Division challenging the recall on grounds other than the sufficiency of service or validity of the ballots or written agreements served on the association. The amended statute, however, no longer fully addresses what an association may do if the recall is not properly served on the association, or if a majority of the total voting interests does not

“The entire section of the statute that sets forth the procedure for the Association to file a petition with the Division if the Board did not certify the recall attempt has been DELETED.”

vote in favor of the recall. While the procedure for filing a petition with the Division was deleted from former subparagraph 3 of §718.112(j), reference to this petition was not completely deleted from §718.112(j).

Therefore, after July 1st, if an association is served with either a petition to call a special members meeting to recall one or more directors, or with written recall agreements, the association should immediately consult its association attorney. It may be that the Board will need to have its association counsel review all of the recall ballots or written agreement forms to decide whether in addition to proper service, an actual majority of the unit owners have voted in favor of recall. If not, the proper action may be to take no action and treat the recall effort as a nullity, forcing the unit owner representative to file a petition with the Division to prove a valid recall was served on the association. To be sure, the Legislature will have to revisit the changes it made to the recall procedures to either clarify the new amendments to provide guidance to associations and their lawyers when service is defective or less than a majority of the unit owners vote in favor of recall.



What You Need to Know About the New Estoppel Legislation

By Lauren B. Feffer, Esquire lfeffer@rosenbaumpllc.com

The Florida Legislature has updated the laws regulating estoppels for condominiums, cooperatives, and homeowners' associations ... here's what you need to know:

The Old	The New
Estoppels had to be issued within 15 days of receipt of written notice	Estoppels have to be issued within 10 business days of receipt of written or electronic request
The estoppel had to be signed by an officer or agent of the association	Each association must designate on its website the person or entity, with a street or email address for receipt of a request for an estoppel certificate. The estoppel has to be provided by hand delivery, regular mail, or e-mail to the requestor on the date of the issuance of the estoppel certificate.
The estoppel had to state all assessments and other moneys owed to the Association	The estoppel must contain all of the information identified in the statute and be in substantially the same form (please refer to statutory sample condominium form below). The association may elect to include additional information.
Any person other than the owner who relied upon the estoppel was protected by the estoppel	An estoppel that is hand delivered or sent electronically has a 30 day effective period; if an estoppel is sent via regular mail it has a 35 day effective period. If additional information or a mistake becomes known by the association during the effective period, then the estoppel may be amended, but the amended estoppel certificate cannot be charged for. An amended estoppel certificate may be delivered and becomes effective if a sale or refinancing has not been completed, must also be delivered on the date of issuance, and a new 30 or 35 day effective period begins on the date it is issued.
Silent as to waiver	Expressly provides that an association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.
Silent as to result of failing to deliver within requisite time period	A failure to deliver the estoppel certificate within 10 business days of receipt of the request results in the association being unable to charge a fee for the estoppel.
A summary proceeding could be brought to compel compliance and the prevailing party was entitled to reasonable attorney's fees	Also provides that a summary proceeding may be brought to compel compliance and provides that the prevailing party is entitled to recover reasonable attorney fees.

The Old	The New
<p>Provided that an association could charge a reasonable fee for the preparation of the estoppel certificate, and the fee had to be set forth on the certificate</p>	<p>A reasonable fee for the preparation and delivery of the estoppel certificate may be charge, which may not exceed \$250 if on the date of issuance no delinquent amounts are owed to the association. If delinquent amounts are owed, an additional fee of up to \$150 dollars may be charged. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, an additional fee of \$100 may be charged.</p>
<p>Silent as to estoppels for more than one parcel or unit owned by the same owner</p>	<p>Includes a fee schedule for the preparation of multiple estoppels for the same owner based on the number of parcels or units</p>
<p>Provided that if the certificate is requested in conjunction with the sale or mortgage of the property and the closing does not occur and the preparer receives a written request within 30 days after the closing date for which the certificate was sought with reasonable documentation that the sale did not occur, from a payor that is not the owner, the fee shall be refunded to the payor within 30 days of the written request. The refund is the obligation of the owner and the association may collect it from the owner in the same manner as an assessment.</p>	<p>Contains the same language as the former version, but also provides that the right to reimbursement may not be waived or modified by any contract or agreement and the prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.</p>
<p>Silent as to adjustment of reasonable fee</p>	<p>Provides that the fees in the statute shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.</p>

It is also important to note that, substantially similar to the prior versions of the statutes, the authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written board resolution or be provided by a written management, bookkeeping, or maintenance contract.

A review of the detailed changes to the statutes regulating the estoppel certificates reveals that the legislature is aiming at full and complete disclosure by associations to prospective purchasers and mortgagees. The legislature has tightened up some of the gaps in the former version of the statute seemingly in an effort to make estoppel certificates more reliable and uniform. It is important that association board members and managers become well acquainted with these new estoppel certificate requirements, because the association will be strictly bound by the information it or its agent provides on an estoppel certificate and can be subject to penalty and prevailing party attorney fees in the event the association or its agent fails to comply with these new guidelines.

Updated laws regulating estoppels for condominiums, cooperatives, and homeowners' associations

Sample Condominium Estoppel Certificate Form:

1. Date of issuance: _____.
2. Name(s) of the unit owner(s) as reflected in the books and records of the association: _____.
3. Unit designation and address: _____.
4. Parking or garage space number, as reflected in the books and records of the association: _____.
5. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information. _____.
6. Fee for the preparation and delivery of the estoppel certificate: _____.
7. Name of the requestor: _____.
8. Assessment information and other information:

ASSESSMENT INFORMATION:

- a. The regular periodic assessment levied against the unit is \$ _____ per _____ (Insert frequency of payment).
- b. The regular periodic assessment is paid through _____ (insert date paid through).
- c. The next installment of the regular periodic assessment is due _____ (insert due date) in the amount of \$ _____.
- d. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the unit owner for a specific unit is provided.
- e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided.

In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

- f. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ____ (Yes) ____ (No).
If yes, specify the type and the amount of the fee: _____.
- g. Is there any open violation of rule or regulation noticed to the unit owner in the association official records? ____ (Yes) ____ (No)
- h. Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit? ____ (Yes) ____ (No).
If yes, has the board approved the transfer of the unit? ____ (Yes) ____ (No).
- i. Is there a right of first refusal provided to the members or the association? ____ (Yes) ____ (No).
If yes, have the members or the association exercised that right of first refusal? ____ (Yes) ____ (No)
- j. Provide a list of, and contact information for, all other associations of which the unit is a member.
- k. Provide contact information for all insurance maintained by the association.
- l. Provide the signature of an officer or authorized agent of the association.

Medical Marijuana

Update

Legislation to enact Florida's medical marijuana constitutional amendment is headed to the desk of Gov. Rick Scott. A compromise has been reached on how to implement last year's constitutional amendment. The amendment, which was passed by 71 percent of voters in November 2016, states that laws must be in place by July 3, 2017 and enacted by October of 2017. Governor Scott should be able to sign the bill ahead of the first deadline.

The House and Senate approved the bill during the final day of the special session. The House passed it 108-9 and the Senate voted in favor 29-6.

Both chambers reached agreement that there would not be a sales tax. The bill still bans the smoking of marijuana despite amendment supporters saying it is written into the language.

Additionally, under the agreement, there will be a limit of 25 retail dispensaries per medical marijuana treatment center, which can increase by five for every 100,000 patients added to the registry. The cap would expire on April 1, 2020. The legislation also adds 10 more medical marijuana treatment centers, meaning there would be 17 statewide by October. Four additional centers would be added for every 100,000 patients. Patients and caregivers say the proposed rules remain too restrictive. The bill allows patients to receive an

order for three 70-day supplies during a doctor's visit that they could then take to a medical marijuana treatment center, but it bans smoking. The smoking ban is likely to be challenged in the courts. Training for doctors would drop from eight hours to two but they would still have to stringently document patients' conditions before prescribing marijuana. According to the Department of Health, the state registry currently has 16,614 patients. A recent state revenue impact study projects that by 2022 there will be 472,000 medical cannabis patients generating approximately \$542 million dollars in sales. The new laws remain too new to predict how they will impact community associations, especially if the smoking ban is successfully challenged.

Hi, I'm Rhonda

It's summer time here in South Florida which is absolutely my favorite season! When you wake up on most summer days, the temperature is already in the 80s and climbs to its peak around 1-2 pm when the skies open up with a quick deluge of rain. On my days off, I love nothing more than to head early to the beach, find a great spot to set up my beach chair, and take a nice refreshing plunge in the cool, blue ocean. On those work summer days however, I really enjoy being in my air-conditioned office doing what I love! Not only am I involved in the firm's collection, foreclosure and real estate practices but, I also have the wonderful opportunity to assist in marketing. My marketing role takes me to many community association trade shows and local events. This gives me the unique opportunity to talk to existing Rosenbaum Law clients and meet the new prospective additions to our family.



Rhonda Ugowski, FRP

Our firm's philosophy is to work collectively as one team to provide our clients the attention they deserve, along with the very best service available at extremely reasonable rates. That personal interest and attention to our clients is what makes **Rosenbaum Law** so different from all the rest.

Many of you have attended our FREE Continuing Education Courses for property managers and board members,

including the Board Certification Course. These free courses are available for groups of 10 or more managers or board members. Currently we are in the process of writing new courses that are of interest to all associations, including the upcoming Legal Update. To locate the times, dates and course locations visit our website at www.rosenbaumpllc.com. Look under the "Rosenbaum University" tab on our website, you can find a list of the **FREE** CAM credit courses. Please feel free to call or e-mail me for additional details at rugowski@rosenbaumpllc.com or to schedule your own private class.

In the meantime, *I'm Rhonda* and during the next few hot summer months, whether you find me relaxing at the beach, in the cool comfort of my office, at a community association trade show or other event, I will most likely be trying to talk to someone about all the great things **Rosenbaum Law** has to offer!

For upcoming events visit our events calendar at: www.rosenbaumpllc.com/events_calendar.cfm
For Legislative updates visit: www.rosenbaumpllc.com/rm_news.cfm



Rosenbaum Law - Connecting the people and principles that make the difference

250 South Australian Avenue, 5th Floor, West Palm Beach, Florida 33401
561.653.2900 | www.rosenbaumpllc.com