

2014 LEGISLATION AFFECTING COMMUNITY ASSOCIATIONS: Effective July 1, 2014

CONDOMINIUM ASSOCIATIONS

House Bill 7037

Condominium Association-Collections/Foreclosures (Sections 718.116 & 718.121, Florida Statutes)

- ❖ The following must be in substantial compliance with the forms set forth in the Florida Condominium Act:
 - Notice of Intent to Record a Lien (Initial 30 day Notice/Demand Letter)
 - Notice of Intent to Foreclose Delinquent Assessment (Second 30 day Notice/Demand Letter)
 - Release of Lien

House Bill 807

Condominium Association's Right of Access to Units & Abandoned Units (Section 718.111(5), Florida Statutes)

- ❖ In addition to the association's irrevocable right of access to units during reasonable hours for the maintenance, repair and replacement of any common element or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the units and common elements, an association may:
 - Enter an abandoned unit to inspect the unit and adjoining common elements,
 - Make repairs to the unit or to the common elements serving the unit, as needed,
 - Repair the unit if mold or deterioration is present,
 - Turn on the utilities for the unit, or
 - Otherwise maintain, preserve, or protect the unit and adjoining common elements.

- ❖ A unit is presumed abandoned if:
 - It is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 consecutive weeks without prior written notice to the association; or
 - No tenant appears to have resided in the unit for 2 consecutive months without prior notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.
- ❖ An association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission.
- ❖ Any expense incurred by the association in connection with the entry, maintenance, repair, or replacement of an abandoned unit is chargeable to the unit owner and enforceable as an assessment, and the association may use its lien authority to enforce collection of the expense.
- ❖ An **association may petition a court of competent jurisdiction to appoint a receiver to lease out an abandoned unit** for the benefit of the association to offset against the association's cost and expenses of maintaining, preserving and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs and reasonable attorney's fees.

Condominium Insurance (Section 718.111(11), Florida Statutes)

- ❖ In the absences of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair or replacement, as determined by the provisions of the declaration or bylaws.

Official Records of Condominium Association (Sections 718.111(12), Florida Statutes)

- ❖ An owner may consent to the disclosure of his/her contact information which is otherwise prohibited from being accessed by unit owners through an official records request.
- ❖ An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The Division of Florida Condominiums, Timeshares and Mobile Homes shall impose a civil penalty against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Board & Committee Meetings of Condominium Association (Section 718.112, Florida Statutes)

- ❖ A board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts towards a quorum, and such member may vote as if physically present.
 - *Previously, the statute only addressed attending meetings by traditional speaker phone.*
- ❖ Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.
- ❖ If 20% of the voting interests of the members of the association petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose.

Assessments/Foreclosures in Condominium Association (Section 718.116, Florida Statutes)

- ❖ A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up until the time of transfer of title and **a previous owner does not include an association that acquires title to a delinquent property through a foreclosure or by deed in lieu of foreclosure.**
- ❖ **A present unit owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.**

Termination of Condominium (Section 718.117, Florida Statutes)

- ❖ If the plan of termination fails to receive the required approval, the plan shall not be recorded and any new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that such failed plan of termination was first given to all unit owners in the manner required by Section 718.117, Florida Statutes.

Senate Bill 440

Non-Residential Condominiums (Sections 718.112, 718.113, 718.1255, 718.403, Florida Statutes)

- ❖ Non-residential condominium associations are not subject to the requirement that the association respond to a written inquiry by certified mail within 30 days of the association's receipt of the inquiry.

- ❖ The use of general proxies in connection with obtaining the consent of the unit owners, and in the election of directors, is permitted by non-residential condominium associations.
- ❖ Term limits of directors are permitted in non-residential condominium associations.
- ❖ Co-owners may serve on the board without limitation in non-residential condominium associations.
- ❖ Candidates for the Board are not subject to the same eligibility requirements that candidates for the board of a residential condominium, such as the requirement that a candidate submit his/her notice of intent at least 40 days before the date of the election or that candidates be current in the payment of monetary obligations due to the association on such date.
- ❖ Directors of non-residential condominium associations are not required to be certified by attending a class administered by the Division of Florida Condominiums, Timeshares and Mobile Homes or executing a document acknowledging that he/she will comply with the declaration of condominium, articles of incorporation, bylaws and written policies of the association and to faithfully discharge its duties.
- ❖ Arbitration under Section 718.1255 is not applicable to non-residential condominium associations unless otherwise specifically provided for in the declaration of condominium.
- ❖ Retrofitting of fire sprinklers pursuant to Section 718.112(2)(l), Florida Statutes, is not required by non-residential condominium associations.
- ❖ The board of directors of a non-residential condominium association is not required to adopt hurricane shutter specifications. The law allowing the unit owners to vote for the installation of hurricane protection by the association is not applicable. The board may refuse to allow the installation of hurricane shutters and other hurricane protection.
- ❖ Plot plan changes to the approximate location of existing and proposed buildings and improvements of non-residential condominiums may be modified.
- ❖ Sub-paragraphs (2)(b)-(f) of Section 718.403, Florida Statutes, regarding phase condominium requirements are not applicable to non-residential condominiums.

Fire Sprinkler Retrofitting of Residential Condominiums (Section 718.112, Florida Statutes)

- ❖ The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler before January 1, 2020.
- ❖ By December 31, 2016, an association which is not in compliance and has not voted to forego retrofitting pursuant to the statute must initiate an application for a building permit for the work demonstrating that the association will be compliant by December 31, 2019.

Distressed Condominium Act/Time Limitation (Section 718.707, Florida Statutes)

- ❖ The time limitation for classification as bulk assignee or bulk buyer is extended to condominium parcels acquired between July 1, 2010 and July 1, 2016. The statute previously sunset on July 1, 2015.¹

¹ This law was also established by House Bill 807.

HOMEOWNERS ASSOCIATIONS

House Bill 7037

Homeowners Association- Collections/Foreclosures (Section 720.3085, Florida Statutes)

- ❖ The following must be in substantial compliance with the forms set forth in the Florida Homeowners Association Act:
 - Notice of Intent to Record a Lien (Initial 45 day Notice/Demand Letter)
 - Notice of Intent to Foreclose Delinquent Assessment (Second 45 day Notice/Demand Letter)
 - Release of Lien

House Bill 807

Board Meetings of Homeowners Associations (Section 720.303(2)(a), Florida Statutes)

- ❖ A meeting of the board must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting.

Membership Meetings of Homeowners Association (Section 720.306(1)(a), Florida Statutes)

- ❖ A membership meeting must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting.

Official Records of Homeowners Associations (Section 720.303(5), Florida Statutes)

- ❖ A lot owner may consent in writing to the disclosure of contact information that is not otherwise accessible by lot owners pursuant to a written request for official records.

Amendments to Governing Documents of Homeowners Associations (Section 720.306(1)(a), Florida Statutes)

- ❖ Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. **However, if a copy of the proposed amendment is provided to the members before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association.** The copies and notice may be

provided electronically to those owners who previously consented to receive notice electronically.

Emergency Powers of Homeowners Associations (Section 720.306(1)(a), Florida Statutes)

- ❖ To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with Section 617.0830, Florida Statutes, the board of directors, in response to damage caused by an event for which a state of emergency is declared pursuant to Section 252.36, Florida Statutes, in the area encompassed by the association, may exercise the following powers:
 - Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.
 - Cancel and reschedule an association meeting.
 - Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.
 - Relocate the association's principal office or designate an alternative principal office.
 - Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.
 - Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.
 - Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.
 - Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.
 - Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.

- Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the declaration or other recorded governing documents, levy special assessments without a vote of the owners.
- Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.
- The authority granted to the association for an emergency is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

COOPERATIVE ASSOCIATIONS

House Bill 7037

Cooperative Association- Collections/Foreclosures (Section 719.108, Florida Statutes)

- ❖ The following must be in substantial compliance with the forms set forth in the Florida Cooperative Act:
 - Notice of Intent to Record a Lien
 - Notice of Contest of Lien
 - Release of Lien
- ❖ The lien of a cooperative association is not required to be filed within 1 year after the date the assessment was due.
- ❖ A claim of lien must be executed and acknowledged by an officer or authorized agent of the Association.
- ❖ The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced.
- ❖ The 1 year period is automatically extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel.
- ❖ The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the

association incident to the collections process. Upon payment in full, the person making the payment is entitled to satisfaction of the lien.

House Bill 807

Official Records of Cooperative Associations (Section 719.104, Florida Statutes)

- ❖ An owner may consent to the disclosure of his/her contact information which is otherwise prohibited from being accessed by unit owners through an official records request.
- ❖ An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The Division of Florida Condominiums, Timeshares and Mobile Homes shall impose a civil penalty against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Financial Reporting for Cooperative Associations (Section 719.104, Florida Statutes)

- ❖ Within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the bylaws of the association, the board shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from a third party, but not later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge.
- ❖ The financial statements of a cooperative association shall be as follows:
 - An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement.
 - An association with total annual revenue between \$300,000 and \$499,999 shall prepare a reviewed financial statement.
 - An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.
- ❖ An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.
- ❖ An association in a community with fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements otherwise required, unless the declaration or other recorded governing documents provide otherwise.

- ❖ The report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable:
 - Costs for security,
 - Professional, and management fees and expenses;
 - Taxes;
 - Costs for recreation facilities;
 - Expenses for refuse collection and utility services;
 - Expenses for lawn care;
 - Costs for building maintenance and repair; insurance costs; administration and salary expenses; and
 - Reserves, if maintained by the association.

- ❖ If at least 20 percent of the unit owners petition the board for a greater level of financial reporting than what is required, the association shall duly notice and hold a membership meeting within 30 days after receipt of the petition to vote on raising the level of reporting for that fiscal year. Upon approval by a majority of the voting interests represented at a meeting at which a quorum of unit owners is present, the association shall prepare an amended budget or shall adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. In addition, the association shall provide within 90 days after the meeting or the end of the fiscal year, whichever occurs later:
 - Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;
 - Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or
 - Audited financial statements, if the association is otherwise required to prepare reviewed financial statements.

- ❖ If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:
 - A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
 - A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement;
 - A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

- ❖ **However, the association's financial reporting requirement may not be waived for more than 3 consecutive years.**

Eligibility of Directors and Officers of Cooperative Associations (Section 719.106, Florida Statutes)

- ❖ A person who has been suspended or removed by the Division of Florida Condominiums, Timeshares and Mobile Homes under the Florida Cooperative Act, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot.
- ❖ A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office.
- ❖ The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office.
- ❖ A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.
- ❖ A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board.
- ❖ The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

Emergency Powers of Cooperative Associations (Section 719.128, Florida Statutes)

- ❖ To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with Section 617.0830, Florida Statutes, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to Section 252.36, Florida Statutes, in the area encompassed by the cooperative, may exercise the following powers:
 - Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances.
 - Cancel and reschedule an association meeting.
 - Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.
 - Relocate the association's principal office or designate an alternative principal office.

- Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.
- Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.
- Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.
- Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine whether the cooperative property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.
- Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the area where the cooperative is located. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.
- Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.
- Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually responsible, but which are necessary to prevent further damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by Section 719.108, Florida Statutes, to enforce collection of the charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, and the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property.
- Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

- Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.
- ❖ The authority granted to the cooperative association to perform emergency acts is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

OTHER: COMMUNITY ASSOCIATION MANAGEMENT, PUBLIC LODGING AND MRTA

House Bill 7037

Community Association Management (Section 468.431, Florida Statutes)

- ❖ Community Association Management means any of the following practices requiring substantial specialized knowledge, judgment, and managerial, skill, when done for remuneration and when the association or the associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000:

(The practices immediately below are newly authorized by law)

- Determining the number of days required for statutory notices,
- Determining the amounts due to the association,
- Collecting amounts due before the filing of a civil action,
- Calculating the votes required for a quorum or to approve a proposition or amendment,
- Completing forms related to the management of a community association that have been created by statute or by a state agency,
- Drafting meeting notices and agendas,
- Calculating and preparing certificates of assessment and estoppel certificates,
- Responding to requests for certificates of assessment and estoppel certificates,
- Negotiating monetary or performance terms of a contract subject to approval by an association,
- Drafting pre-arbitration demands,
- Coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and
- Complying with the association's governing documents and the requirements of law as necessary to perform such practices,

(The following practices were previously authorized by law)

- Controlling or disbursing funds of a community association,
- Preparing budgets or other financial documents for a community association, and
- Assisting in the noticing or conduct of community association meetings.

Professional Standards for Community Association Management & Contracts for Community Association Management Services (Section 468.4334, Florida Statutes)

- ❖ **Agent of Association:** A community association manager or a community association management firm are deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under Chapter 468, Florida Statutes.

- ❖ **Standards:** A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by Chapter 468, Florida Statutes, loyally, skillfully, and diligently, dealing honestly and fairly, in good faith, with care and full disclosure to the community association, accounting for all funds, and not charging unreasonable or excessive rates.

- ❖ **Contracts:** A contract between a community association and a community association manager or a contract between a community association and a community association management firm may provide that the community association indemnifies and holds harmless the community association manager and the community association management firm for ordinary negligence resulting from the manager or the management firm's act or omission that is the result of an instruction or direction of the community association.
 - *However, the statute also provides that it does not preclude any other negotiated indemnity or hold harmless provision.*

Furthermore, the above indemnification from a community association to a community association manager or management firm **may not cover:**

- **Any act or omission that:**
 - **Violates a criminal law,**
 - **Derives an improper personal benefit, either directly or indirectly,**
 - **Is grossly negligent, or**
 - **Is reckless, in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety or property.**

House Bill 807

Public Lodging and Timeshares (Sections 509.013, 509.032, 509.221, 509.241, 509.242, 509.251, Florida Statutes)

- ❖ Timeshare projects are not considered public lodging establishments.
 - Timeshare projects are not required to: i) be inspected by the Division of Hotels and Restaurants, ii) comply with certain sanitation requirements generally applicable to public lodging establishments, iii) obtain a license from the Division of Hotels and Restaurants before the commencement of operation.
- ❖ Vacation rentals are not considered timeshare projects.
- ❖ A timeshare project is considered a timeshare property, as defined in Chapter 721, Florida Statutes, that is located in Florida and that is also a transient lodging establishment.
- ❖ Vacation rentals or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the Division of Hotels and Restaurants shall charge a license fee as if all units in the application are in a single licensed establishment.

Florida's Marketable Record Title Act (Section 712.05, Florida Statutes)

- ❖ A homeowners' association or the clerk of the circuit court is not required to provide additional notice of the preservation of use restrictions under Florida's Marketable Record Title Act (Chapter 712, Florida Statutes) to the owners of the property under Section 712.06(3), Florida Statutes.

NOTE- This outline is summary in nature and it is not intended to provide legal advice. If you have questions regarding the information set forth herein, please contact legal counsel.