

2015 LEGISLATION AFFECTING HOMEOWNERS' ASSOCIATIONS:

Voting by Members- Section 617.0721, Florida Statutes (HB 791)

Copies, facsimiles or other reliable reproductions of proxies may be substituted for original proxies as long as it is a complete copy or reproduction of the proxy. **(Effective July 1, 2015)**

Notice by Electronic Transmission- Section 720.303(2), Florida Statutes (HB 791)

Notice of Board, lot owner (except owner meetings to recall the board) and committee meetings may be provided by electronic transmission if the owner consents in writing to receive notice in such manner. *The authority to electronically send notices is not required to be in the association's bylaws as the statute previously required.* **(Effective July 1, 2015)**

Electronic Voting- Section 720.317, Florida Statutes (HB 791)

An association may conduct elections and other votes of the membership through an internet based online voting system if an owner consents in writing to vote in such manner. The online voting system must meet certain technical specifications. Written notice of any meeting where the board will consider a resolution for electronic voting must be mailed, delivered or electronically transmitted to the owners, and posted on the property, at least 14 days in advance of the meeting. Evidence of compliance with the 14 day notice must be made by an affidavit by the person providing the notice. The electronic voting process shall be consistent with the election and voting procedures of the association's bylaws. If the bylaws provide for secret ballots in the election of directors, the procedure must ensure the secrecy of the election ballots. **(Effective July 1, 2015)**

Chapter 720, "HOA Act"- Section 720.3015, Florida Statutes (HB 791)

Chapter 720, Florida Statutes, may now be cited as the "Homeowners' Association Act". **(Effective July 1, 2015)**

Definition of "Governing Documents"- Section 720.301(8), Florida Statutes (HB 791) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto are now included in the definition of "Governing Documents" in the Homeowners' Association Act. **(Effective July 1, 2015)**

Fines/Suspensions- Section 720.305(2), Florida Statutes (HB 791)

The amount of a proposed fine shall be determined by the board, but no fine or suspension may be imposed by the board unless the board first provides at least 14 days' written notice and an opportunity for a hearing before a committee of at least 3 members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, sister of an officer, director or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension imposed by the board. *The statute was previously silent on whether the board or the committee determined the amount of the fine.* **(Effective July 1, 2015)**

Suspension of Use and Voting Rights- Section 720.305(3-4), Florida Statutes (HB 791)

The association may suspend the voting rights of an owner, and the rights of an owner and, when appropriate, the owner's tenants, guests, or invitees, to use the common areas and facilities, if the owner is more than 90 days delinquent in the payment of any fee, fine or other monetary obligation to the association, even if the owner is current with respect to other lots that he/she owns. The association cannot suspend rights to common areas used to provide access or utility services to the parcel. Additionally, the association cannot **prohibit** an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. *The association was previously not permitted to impair rights of ingress and egress and rights to park. The law now provides that the association cannot prohibit such rights.* **(Effective July 1, 2015)**

Amendments- Section 720.306(1), Florida Statutes (HB 791)

The failure to provide notice of an amendment within 30 days after recording per Section 720.306(1), Florida Statutes, shall not affect the validity or enforceability of the amendment. **(Effective July 1, 2015)**

Elections/Board Vacancies- Section 720.306(9), Florida Statutes (HB 791)

A person who is delinquent in the payment of any fee, fine or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name shall not be listed on the ballot. A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine or other monetary obligation to the association shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law. The term "fee, fine or other monetary obligation" means any delinquency to the association with respect to any parcel. *The statute formerly provided that persons delinquent for more than 90 days "were not eligible for board membership".*

A person who has been convicted of any felony in this state or in a US District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, may not seek election to the

board and is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. *The statute formerly provided that such individuals "were not eligible for board membership".* **(Effective July 1, 2015)**

Construction Defects- Chapter 558, Florida Statutes (HB 87)

The Notice of Claim under the new legislation must be based upon at least a visual inspection by the claimant or its agents and must identify the location of each construction defect sufficiently so the responding parties can locate the defect without undue burden. However, the claimant does not have any obligation to perform actual testing for the Notice of Claim. The statute provides for the option for either a claimant or a party against whom a claim is made, at their own expense, to obtain the other party's photographs and videos of the construction defects identified in the Notice of Claim and all maintenance records and other documents related to the discovery, investigation, causation and extent of the defects identified in the Notice of Claim, and any resulting damages. However, a party may still assert a claim of privilege which is recognized under Florida law with respect to any of the disclosure obligations. Insurance companies have a role in the process of construction defect claim resolution through confidential settlement negotiations. The definition of "completion of a building or improvement" now includes a temporary certificate of occupancy or an equivalent authorization. **(Effective October 1, 2015)**

Termination of Lease After Foreclosure- Chapter 83, Florida Statutes (HB 779)

If a tenant is occupying a lot that is acquired by foreclosure, the tenant must vacate the premise after 30 days following the date of the acquirer's delivery of a written notice to the tenant terminating occupancy. **(Effective June 2, 2015)**

Citizens Property Insurance- Sections 627.351, 627.712(1) and 627.351, Florida Statutes (HB 715)

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

Service Animals- Section 413.08, Florida Statutes (HB 71)

This law does not relate to fair housing issues. It only relates to service animals in places of public accommodations, i.e. restaurants. It provides for penalties with respect to persons falsely claiming a need for a service animal. It also provides that a service animal must perform work or tasks and the animal cannot solely be for emotional support. It also contains procedural restrictions concerning the use of service animals in places of public accommodations. **(Effective July 1, 2015)**

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.