

SUMMARY OF 2018 LEGISLATIVE CHANGES

The Florida Legislature has recently passed and the governor has signed into law amendments to various provisions of the Florida statutes concerning condominiums, homeowners associations and cooperatives. Unless otherwise indicated, the effective date of the amendments is July 1, 2018.

The following is a summary of the amendments. The full text can be found on Dicker, Krivok & Stoloff, P.A.'s website at www.dkslaw.net. If you have any questions, concerning the amendments, then please do not hesitate to contact the firm.

CONDOMINIUM ASSOCIATIONS

Official Records Condominiums – § 718.111

- Condominium associations must now make official records available within 10 working days (increased from 5 working days). §718.111(12)(b), Fla. Stat.
- Electronic records relating to voting are now deemed official records that must be kept by condominium associations for one year. §718.111(12)(a)12., Fla. Stat.
- Condominium associations must now permanently maintain certain official records from the inception of the association, rather than for just 7 years. §718.111(12), Fla. Stat.

These records are:

- A copy of the articles of incorporation, declaration, bylaws and rules of the association;
- The minutes of all meetings;
- A copy of the plans, permits, warranties, and other items provided by the developer;
- Accounting records for the association.

Condominium Websites – § 718.111

- For associations that are required to post certain records to a website, the deadline has been extended from July 1, 2018 to January 1, 2019. §718.111(12)(g)1., Fla. Stat.
- A list of executory contracts or other documents must be maintained on the website. §718.111(12)(g)2.e., Fla. Stat.
- Summaries of bids for materials, equipment or services that exceed \$500 must be maintained on the website. In lieu of summaries, complete copies of bids may be posted. §718.111(12)(g)2.e., Fla. Stat.
- The association, or its agent, is not liable for disclosing information that is protected or restricted, unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information. §718.111(12)(g)3., Fla. Stat.
- Instead of posting proposed financial reports to be considered at a meeting on the website, the association must post any monthly income or expense statement to be considered at a meeting.

- Failure of the association to post the required information is not alone sufficient to invalidate any action or decision by the Board or its committees.

Condominium Financial Reporting – § 718.111

- If an owner has submitted a written request to the association to provide a copy of the most recent financial report and the association does not do so within 5 business days, and then fails to provide the Department of Business and Professional Regulation with a copy of such report within the same time frame after the Division's request for such record, the association may not waive the financial reporting requirement for the fiscal year in which the owner's request was made or for the following fiscal year. §718.111(13)(e), Fla. Stat.

Notice of Board and Owner Meetings – § 718.112

- Condominium associations can adopt rules and procedures for noticing owner meetings and agendas on a website, so long as the time requirement for noticing such meetings is met. Any rule adopted must include a requirement that the electronic notice be sent in the same manner as a notice for a meeting of the members, and must include a hyperlink to the website where the notice is posted. This notice must be sent to all owners who have provided their e-mails as an official record. Associations must still actually post meeting notices on the property. §718.112(2)(c)1., § 718.112(2)(d)3., Fla. Stat.
- Condominium owners who consent to receiving notices electronically are responsible for removing or bypassing filters that can block receipt of mass e-mails sent to members from the association providing electronic notices. §718.112(2)(d)6., Fla. Stat.

Board Members Terms – § 718.112

- Condominium association board members cannot serve for more than 8 consecutive years, regardless of the director's term length, 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. §718.112(2)(d)2., Fla. Stat.

Condominium Board Member Recall – § 718.112

- If a recall is facially valid, then the recall of the Board member(s) is effective immediately upon the conclusion of the board meeting. §718.112(2)(j), Fla. Stat.
- If the Board decides that the recall is not facially valid, a unit owner or unit owner's representative can challenge the Board's determination on facial validity. §718.112(2)(j)4., Fla. Stat.
- A recalled Board member may petition may challenge the facial validity of the written agreement, ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator determines the recall was invalid, then the petitioning board member shall immediately be reinstated and the recall is considered to be null and void. A board member who is successful in challenging a recall is entitled to recover

reasonable attorneys' fees and costs from the respondents. The arbitrator may award reasonable attorneys' fees and costs to the respondents if they prevail, if the arbitrator makes a finding that the petitioner's claim is frivolous. §718.112(2)(j)6., Fla. Stat.

Alterations or Additions to Condominium Property – § 718.113

- Provides that approval of 75% of the voting interests must be obtained **before** material alterations or substantial additions to condominium common elements are commenced, unless the condominium's declaration provides otherwise. This restriction applies to condominium associations existing on July 1, 2018. §718.113(2), Fla. Stat.

Electric Vehicles in Condominium Associations – § 718.113, § 718.121

- Condominium associations may not prohibit a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The installation is subject to a number of restrictions provided by the statute, such as complying with applicable building codes, separately metering the charging station to the unit owner, and not causing irreparable damage to the condominium property. §718.113(8), Fla. Stat.
- The unit owner installing the charging station is responsible for the cost for the installation, operation and maintenance of the charging station, and related hazard and liability insurance. §718.113(8), Fla. Stat.
- If the unit owner or his successor decides there is no longer a need for the electronic vehicle charging station, such person is responsible for the cost of removal. §718.113(8)(e), Fla. Stat.
- Labor performed on, or materials furnished for, the installation of an electric vehicle charging station may not be the basis for filing a lien under Part I of Chapter 713, Florida Statutes, against the Association, but such a lien may be filed against the unit owner. §718.121(2), Fla. Stat.

Fines and Suspensions – § 718.303

- Condominium fining committees are required to have at least three members who are appointed by the board. Committee members cannot be officers, directors, or employees of the association, or be a spouse, parent, child, brother, or sister of an officer, director, or employee of the association. §718.303(3)(b), Fla. Stat.
- The fine or suspension can only be imposed if the fining committee approves the fine or suspension by a majority vote. §718.303(3)(b), Fla. Stat.
- Condominium associations must provide written notice of any fine or suspension, by mail or hand delivery, to the unit owner, and, if applicable, to any tenant, licensee, or invitee of the unit owner. §718.303(3)(b), Fla. Stat.
- Any fine levied by the Board and approved by the committee is due within 5 days after the date of the committee meeting at which the fine was approved. §718.303(3)(b), Fla. Stat.

COOPERATIVE ASSOCIATIONS

Official Records Cooperatives – § 719.104

- Cooperative associations must now make official records available within 10 working days (increased from 5 working days). § 719.104(2)(b), Fla. Stat.
- Electronic records relating to voting are now deemed official records that must be kept by cooperative associations for one year. §719.104(2)(a)10., Fla. Stat.
- Cooperative associations must now permanently maintain certain official records from the inception of the association, rather than for just 7 years. §719.104(2), Fla. Stat. These records are:
 - A copy of the articles of incorporation, declaration, bylaws and rules of the association;
 - The minutes of all meetings;
 - A copy of the plans, permits, warranties, and other items provided by the developer;
 - Accounting records for the association.

Notice of Board Meetings – § 719.106

- Cooperative associations may adopt rules and procedures for noticing owner meetings and agendas on a website, so long as the time requirement for noticing such meetings is met. Any rule adopted must include a requirement that the electronic notice be sent in the same manner as a notice for a meeting of the members, and must include a hyperlink to the website where the notice is posted. This notice must be sent to all owners who have provided their e-mails as an official record. Associations must still actually post meeting notices on the property. § 719.106(1)(c), § 719.106(1)(d), Fla. Stat.
- Cooperative owners who consent to receiving notices electronically are responsible for removing or bypassing filters that can block receipt of mass e-mails sent to members from the association providing electronic notices. § 719.106(1)(d)3., Fla. Stat.

Communications by Cooperative Board Members – § 719.106

- Members of a board of directors for homeowners and cooperative associations can use e-mail as a means of communication. However, a board member may not cast a vote upon an association related matter via e-mail. §719.106(1)(c), Fla. Stat.

Cooperative Associations' Board Members – § 719.106

- A cooperative director or officer is deemed to have abandoned their office if the officer or director is more than 90 days delinquent in payment of any monetary obligation due to the Association. §719.106(1)(m), Fla. Stat.
- In residential cooperatives of more than 10 units, co-owners of a unit may not serve as members on the board at the same time, unless the co-owners own more than one unit, or if there are not enough eligible candidates to fill vacancies on the board. §719.106(1)(a)1., Fla. Stat.

Fines and Suspensions – § 719.303

- Cooperative associations' fining committees are required to have at least three members who are appointed by the board. Committee members cannot be officers, directors, or employees of the association, or be a spouse, parent, child, brother, or sister of an officer, director, or employee of the association. §719.303(3)(b), Fla. Stat.
- The fine or suspension can only be imposed if the fining committee approves the fine or suspension by a majority vote. §719.303(3)(b), Fla. Stat.
- Cooperative associations must provide written notice of any fine or suspension, by mail or hand delivery, to the unit owner, and, if applicable, to any tenant, licensee, or invitee of the unit owner. §719.303(3)(b), Fla. Stat.
- Any fine levied by the Board and approved by the committee of is due within 5 days after the date of the committee meeting at which the fine was approved. §719.303(3)(b), Fla. Stat.

HOMEOWNERS ASSOCIATIONS

Communications by Homeowners Association Board Members – § 720.303

- Members of a board of directors for homeowners associations can use e-mail as a means of communication. However, a board member may not cast a vote upon an association related matter via e-mail. §720.303(2)(a), Fla. Stat.

Notices – § 720.303

- Homeowner associations can now give notice by electronic transmission to parcel owners who have provided written consent and an e-mail address or fax number for such purpose. §720.303(2)(c)1.

Fines and Suspensions – § 720.305

- Any fine levied by the Board and approved by the committee of an HOA, is due within 5 days after the date of the committee meeting at which the fine was approved. §718.303(3)(b), §719.303(3n)(b), §720.305(2)(b), Fla. Stat.

Amendments – § 720.306

- A proposal to amend the governing documents must contain the full text of the provision to be amended. Proposed new language must be underlined and proposed deleted language must be stricken. §720.306(1)(e), Fla. Stat.
- Notices required in connection with proposed amendments must be mailed or delivered to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the property is located, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission. §720.306(1)(g), Fla. Stat.

Elections – § 720.306

- If an election is not required because there are fewer or an equal number of candidates than there are vacancies, and nominations from the floor are not required, then write-in nominations are not permitted, and the candidates will commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting.
§720.306(9)(a), Fla. Stat.

Payment of Assessments – § 720.3085

- How payments to a homeowners association are applied (first to the interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees, and then to the delinquent assessment) applies notwithstanding any asserted accord and satisfaction, restrictive endorsement or instruction placed on or accompanying a payment.
720.3085(3)(b), Fla. Stat. This is intended to clarify existing law.

Preservation of Covenants: Board Meeting - § 720.303

- At the first board meeting, excluding the organizational meeting, after the annual meeting, the board shall consider whether to file a notice to preserve the covenants and restrictions under Florida Statute Chapter 712 and authorize and direct the appropriate officer to execute such notice in conformance with the requirements of § 720.3032.

Preservation of Covenants - § 720.3032

- Sets forth easier procedures to preserve the covenants and restrictions and sets forth the requirements of a Notice to preserve the covenants and restrictions under Florida Statute Chapter 712, The Marketable Record Title Act.

Marketable Record Title Act Chapter 712

- Establishes three methods community associations can use to preserve the covenants and restrictions. Two methods involve the recording of a Notice in conformance with the requirements set forth in Florida Statute Section 712.06 or 720.3032. The third method involves the recording of an amendment to the covenant or restriction which is indexed under the name of the association and references the recording information of the covenant or restriction to be preserved.
- A vote of two-thirds of the directors at a meeting noticed at least seven days in advance is no longer required. However, as described above, § 720.303 requires the Board to meet at the first meeting after the annual meeting to determine whether to record a notice to preserve the covenants.