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## SUMMARY OF 2010 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. The effective date of the amendments is July 1, 2010.

### CONDOMINIUM ASSOCIATIONS

**Section 718.103(16): Definition of Developer:** The term developer does not include a bulk assignee or bulk buyer as defined in new Section 718.703.

**Section 718.110(13): Amendments Concerning Rentals:** The type of amendments concerning the rental of units which shall only apply to owners who consent to the amendment or owners who acquire title to the unit after the effective date of the amendment are limited to amendments which prohibit owners from renting their units, limit the duration of a rental term or limiting or specifying the number of times an owner may rent his/her unit. All other amendments which concern other aspects of renting a unit now apply to all owners.

**Section 718.110(14): Designation of Limited Common Elements:** Upon a vote of the membership, common elements which only serve one unit or a group of units may be reclassified as limited common elements.

**Section 718.111(11)(c)(3): Insurance Deductibles:** Deletes certain requirements which were to be set forth in the notice of the board meeting at which directors establish the amount of the insurance deductible.

**Section 718.111(11)(g): Unit Owners Insurance Policy:** A unit owner's insurance policy must conform with Florida Statute Section 727.714. Associations are no longer required to obtain evidence of insurance from owners.

**Section 718.111(12)(a)(11): Penalty for Destruction of Records:** A civil penalty shall be imposed upon anyone who knowingly or intentionally defaces or destroys or knowingly or intentionally fails to prepare or maintain accounting records with the intent of causing harm to the association or one or more of its members.

**Section 718.111(12)(b): Availability of Association Official Records:** Associations are not responsible for the use or misuse of information provided to an owner.

**Section 718.111(12)(c): Penalty for Destruction of Accounting Records:** Reiterates that a civil penalty shall be imposed upon anyone who knowingly or intentionally defaces or destroys or knowingly or intentionally fails to prepare or maintain accounting records with the intent to cause harm to the association or its members.

**Section 718.111(12)(c): Records and Information Not Accessible to Owners:** Information and records not accessible to unit owners have been expanded to include: 1) personal records of association employees; 2) owners' email addresses, telephone numbers, emergency contact information and addresses other than addresses required to fulfill the association's notice requirements. However, owners' names, unit designation, mailing address and property address are still accessible information; 3) electronic security measures used by the association to safeguard data, including passwords; 4) software and operating systems used by the association to allow for the manipulation of data.

**Section 718.111(13): Financial Reporting:** The Division of Land Sales is required to adopt rules concerning financial reporting which includes, but is not limited to, a summary of reserves, including information about the level of funding the reserves. The rules must include standards for presenting summary of association reserves and disclosure of estimate of amount of reserves necessary to fully fund reserves. However, such disclosure is not applicable to reserves funded via the pooling method.

**Section 718.112(2)(d)(1): Unit Owner Meetings:** Where there are not enough candidates to fill all expired board of director terms, each board member whose term has expired will no longer be automatically reappointed, but such board member shall be eligible for reappointment. Prohibits co-owners of a unit from serving on the board at the same time.

Co-owners of a unit may not serve on the board of directors at the same time unless they own more than one unit or there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. This prohibition does not apply to condominiums with ten or less units or to condominium associations which include timeshare units.

Expands non-eligibility for board membership to any individual who is delinquent in the payment of a fine.

**Section 718.112(2)(d)(3)(a): Director Candidates; Certification Form:** Eliminates the requirement for candidates to sign a form certifying that he or she has read and

understands the governing documents and provisions of Florida Statute Chapter 718 and any applicable rules.

**Section 718.112(2)(d)(3)(b): Director Candidates; Certification Form:** Requires newly elected or appointed directors, within ninety days from date of election or appointment, to certify in writing that he or she has read the association's governing documents and written policies, will uphold the documents and faithfully discharge his or her fiduciary responsibilities. In lieu of such written certification, the director may attend and complete the educational curriculum administered by the Division and submit a certificate of such completion. A director who fails to timely comply with this provision is suspended from service on the board until the director has complied. The remaining directors may temporarily fill the vacancy during the period of the suspension.

**Section 718.112(2)(l): Certificate of Compliance (fire and life safety code):** Upon a vote of a majority of all voting interests, the owners may vote to forego retrofitting the building with a fire sprinkler system. By December 31, 2016 associations which are not in compliance with the sprinkler system requirements and have not obtained the vote to forego retrofitting of the system must initiate an application for a building permit demonstrating it will become compliant by December 31, 2019. If a vote to forego retrofitting has been obtained, a vote to require retrofitting may be obtained at a special meeting of the owners called by a petition of at least 10 percent of the voting interests. A vote to require retrofitting may only be taken once every three years.

Associations are no longer obligated to, and may forego retrofitting of improvements required by Florida Statute Section 553.509(2) upon the affirmative vote of a majority of the voting interests.

**Section 718.112(2)(n): Director or Officer Delinquencies:** Amended to render a director or officer who is more than ninety days delinquent in the payment of any monetary obligation due to the association to be deemed to have abandoned the office thus creating a vacancy to be filled.

**Section 718.112(2)(o): Director and Officer Offenses:** The vacancy created by removal of an officer or director charged with felony theft or embezzlement of association funds shall be filled until the end of the period of the suspension or the end of the director's term of office, whichever occurs first.

**Section 718.115(1)(d): Common Expenses;** Allows the cost of communications services, information services or internet services to be a common expense and allows the association to enter into a bulk rate contract for such services.

**Section 718.116(1)(b)(1): Assessments; Liability of Mortgagee:** Upon obtaining title to the unit, the first mortgagee is liable to pay the lesser of 1% of the original mortgage debt or the units unpaid common expenses and regular assessments which accrued or came due during the twelve months immediately preceding the acquisition of title.

**Section 718.716(11): Assessments: Tenant Occupancy:** Where an owner is delinquent in any monetary obligation to the association, the association can make a demand for the tenant to pay to the association the future monetary obligations related to the condominium unit owed to the association. The demand must be in writing. If the tenant fails to comply, the Association may have the tenant evicted in accordance with Florida Statutes Chapter 83. The unit owner shall give the tenant a credit against rent due to the unit owner for any amounts paid by the tenant to the association.

**Section 718.202(11): Sales or reservation deposits prior to closing:** Clarifies existing law and establishes that funds deposited into escrow accounts pursuant to a sale of a unit by the developer in accordance with subsections (1) and (2) may be held in one or more escrow accounts.

**Section 718.301(1)(f): Turnover Requirements:** Turnover does not have to occur when a receiver for the developer is appointed and not discharged within thirty days if the court determines that transfer of control will be detrimental to the association or its members.

**Section 718.303(3): Fines and Suspensions:** In addition to the right to fine an owner for a violation of the Association's governing documents, this section now also allows the Association to suspend the right of an owner or unit's occupants, licensees or invitees to use common elements, facilities or other association property when the unit owner is more than 90 days delinquent in any monetary obligation to the Association. The suspension shall be in effect until the monetary obligation is paid. However, the Association may not suspend use of limited common elements intended to be used only by that unit, common elements used for access to the unit, utility services provided to the unit, parking spaces or elevators. According to this section, the Association must provide the owner with 14 days prior written notice and an opportunity for a hearing before imposing a suspension of use rights or levying of a fine.

**Section 718.303(4): Notice and Hearing Requirements:** This provides that the notice and hearing requirements for the levying of a fine or suspension of use rights does not apply to the imposition of fines or suspensions against an owner or the unit's occupants, licensee or invitee because of failing to pay any amounts due to the association. However, such suspension or fine must be levied at a properly notice board meeting and the association must notify the owner of the fine or suspension in writing. Please note that the intent of this sections appears to be unclear in light of Section 718.303(3) which appears to only allow a suspension when an owner is delinquent in any monetary obligation and requiring such suspension not be imposed without notice and a hearing.

**Section 718.303(5): Suspension of Voting Rights:** The Association may suspend the voting rights of a member due to the owners non payment of any monetary obligation due to the association which is more than 90 days delinquent

**Sections 718.701-708: Distressed Condominium Relief Act:** Created in an effort to provide relief and assistance for condominiums in danger of becoming distressed due to the downturn in the market and the overwhelming number of units on the market or subject to foreclosure. Relaxes and sets forth the obligations and liabilities a "bulk assignee" or a "bulk buyer" as defined by the statute, must assume and be responsible.

## COOPERATIVE ASSOCIATIONS

**Section 719.106(1)(d)(5): Vacancy on Board:** Unless otherwise stated in the Bylaws, a vacancy on the board of directors may be filled by a vote of a majority of the remaining directors or the board may hold an election to fill the vacancy. Unless otherwise stated in the bylaws and except for vacancies filled due to a recall, a director appointed to the vacancy shall fill the vacancy for the unexpired term of the seat being filled.

**Section 719.1055(5): Certificate of Compliance (fire and life safety code)** Bylaws must contain a provision allowing a certificate of compliance from licensed electrical contractor or electrician to be accepted as evidence of compliance of the cooperative units with the applicable fire and life safety code.

**Section 719.1055(5)(1) and (2): Retrofitting of Sprinklers:** Upon a vote of a majority of all voting interests, the owners may vote to forego retrofitting the building with a fire sprinkler system. By December 31, 2016 associations which are not in compliance with the sprinkler system requirements and have not obtained the vote to forego retrofitting of the system must initiate an application for a building permit demonstrating it will become compliant by December 31, 2019. The vote to forego retrofitting may be obtained at a meeting or by written consent and is effective upon recording a certificate attesting to such vote in the public records. Notice of the membership meeting at which a vote to forego retrofitting will be held must be mailed or hand delivered to each unit owner at least 14 days prior to the meeting. Notice of the results of the opt out vote must be mailed or hand delivered to all unit owners within thirty days after the date of the vote. Evidence of compliance with these procedures must be made by an affidavit of the person providing notice and kept among the official record of the association. A copy of the notice must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

**Section 719.1055(5)(2)(b): Retrofitting of Sprinklers** If a vote to forego retrofitting has been obtained, a vote to require retrofitting may be obtained at a special meeting of the owners called by a petition of at least 10 percent of the voting interests. A vote to require retrofitting may only be taken once every three years. Notice of this meeting must be provided in the same manner as any regularly called meeting of the unit owners. However, electronic transmission may not be used to provide notice of this meeting.

**Section 719.108(4): Lien, late fees, etc.:** The lien for delinquent assessments includes administrative late fees and reasonable costs for collection services contracted for by the Association. If authorized by the governing documents, the lien also secures reasonable attorney's fees incurred. This section has been amended to require that a notice of intent to lien be delivered to the owner thirty days prior to filing the lien and sets forth requirements on how the notice shall be sent.

**Section 719.108(10): Assessments: Tenant Occupancy:** Where an owner is delinquent in any monetary obligation to the association, the association can make a demand for the

tenant to pay to the association the future monetary obligations related to the cooperative share owed to the association. The demand must be in writing. If the tenant fails to comply, the Association may have the tenant evicted in accordance with Florida Statutes Chapter 83. The unit owner shall give the tenant a credit against rent due to the unit owner for any amounts paid by the tenant to the association.

## **HOMEOWNERS ASSOCIATIONS**

**Section 720.303(5)(a): Inspection and Copying of Records:** A request to inspect records must be in writing and submitted by certified mail, return receipt requested to create rebuttable presumption that association willfully failed to comply with the request if access to the documents is not provided within ten business days of the request.

**Section 720.303(5)(c): Inspection and Copying of Records:** Allows the association to charge reasonable costs and charges for personnel or vendor time to cover the administrative costs of providing access to and photocopying of records to an owner.

**Section 720.303(5)(c): Information and Records Not Accessible to Owners:** Information and records not accessible to unit owners have been expanded to include: 1) personal records of association employees; 2) owners' social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information and addresses other than addresses required to fulfill the association's notice requirements. However, owners' names, unit designation, mailing address and property address are still accessible information; 3) electronic security measures used by the association to safeguard data, including passwords; 4) software and operating systems used by the association to allow for the manipulation of data.

**Section 720.303(6)(b): Budgets, Reserve Accounts:** Provides that if funding of reserves are not established by a vote of the members or by the developer, that the funding of reserves are limited to the extent that the governing documents do not limit increases in assessments, including reserves. Clarifies that reserve accounts established either by a vote of the members or initially by the developer as set forth in subparagraph (d) shall be determined, maintained and waived in the manner set forth in this subsection. A majority of the voting interests may terminate a reserve account established pursuant to this section.

**Section 720.303(6): Budgets, Reserve Accounts:** Paragraph 1 of this section requires certain language be included in the financial report if reserve accounts are not established by a vote of the members or initially by the developer as set forth in subparagraph (d) but the association is responsible for the repair and maintenance of capital improvements which may result in a special assessment if reserve funds are not provided. Paragraph 2 of this section requires certain language be included on the financial report if the budget does provide for the funding of accounts for deferred expenditures, but such accounts are not created or established by a vote of the members or initially by the developer as set forth in subsection (d).

**Section 720.303(6): Compensation Prohibited:** Prohibits an officer, director or committee member to directly receive any salary or compensation from the association for its services as an officer, director or committee member. However, this section lists several instances in which the officer, director or committee member may receive compensation or a financial benefit, including the reimbursement of out of pocket expenses incurred by such individual.

**Section 720.304(b): Flagpole:** Provides that flagpole and display are subject to all building codes, zoning setbacks and other applicable governmental regulations.

**Section 720.305(2): Fines, Suspensions:** Allows an association to levy a fine or suspend the use of common areas if a member is delinquent for 90 days in any monetary obligation to the association even if such right is not provided in the governing documents. The suspension may last until the monetary obligation is paid. Fines may be levied in an amount up to \$100.00 per violation and for each day of a continuing violation, but shall not exceed \$1,000.00 in the aggregate unless otherwise provided in the governing documents. Fines of \$1,000.00 or greater may be a lien against the parcel. Association may not suspend any portion of the common areas used to provide access to the parcel or utility services to the parcel. Unchanged is the requirement that fines and suspensions not be imposed without first providing 14 days notice to the person sought to be fined suspended notice and an opportunity to be heard at a hearing.

**Section 720.305(2)(a): Fines, Suspensions: Notice:** Written notice of the imposition of a fine or suspension must now be mailed or hand delivered to the owner, tenant, licensee, or invitee of the owner.

**Section 720.305(2)(b): Fines, Suspensions:** This paragraph has been deleted rendering the procedures for fines and suspension applicable to a member who has failed to pay assessments.

**Section 720.306(8)(b): Voting:** Provides for specific voting procedures for the election of directors if the association's governing documents permit voting by secret ballot by members who are not in attendance at a meeting of the members for the election of directors.

**Section 720.306(8)(b): Elections and Board Vacancies:** Allows a member to nominate himself or herself as a candidate for the board prior to balloting if the election process allows voting by absentee ballot. Unless otherwise stated in the Bylaws, a vacancy on

the board of directors may be filled by a vote of a majority of the remaining directors or the board may hold an election to fill the vacancy. Unless otherwise stated in the bylaws and except for vacancies filled due to a recall, a director appointed to the vacancy shall fill the vacancy for the unexpired term of the seat being filled.

**Section 720.3085(8): Assessments: Tenant Occupancy:** Where an owner is delinquent in any monetary obligation to the association, the association can make a demand for the tenant to pay to the association the future monetary obligations related to the parcel owed to the association. The demand must be in writing. If the tenant fails to comply, the Association may have the tenant evicted in accordance with Florida Statutes Chapter 83. The unit owner shall give the tenant a credit against rent due to the unit owner for any amounts paid by the tenant to the association.

**Section 720.31(6): Recreational Leaseholds, Right to Acquire:** Sets forth the right and conditions upon which associations may enter into agreements to acquire leaseholds, memberships, and other possessory or use interest in lands or facilities.

**Section 720.315: Special Assessments by Developer:** Prohibits board of directors controlled by the developer prior to turnover to levy a special assessment unless a majority of the parcel owners other than the developer approve the special assessment by the majority vote at a duly called special meeting of the membership at which a quorum is present.

### **MISCELLANEOUS PROVISIONS**

**Section 617.0721(7), subsections 1, 5 and 6; 617.0808(3) and 617.1606** of the corporations not for profit act do not apply to corporations that are an association as defined by Section 720.301 or regulated by Chapters 718 or 719.

**Section 627.714: Residential Condominium Unit Owner Coverage; Loss Assessment Coverage Required:** Provides for a minimum amount of loss assessment coverage to be included in an individual condominium unit owner's insurance policy and specifies a maximum amount of loss assessment coverage which can be assessed for a loss.

**Section 633.0215(13): Florida Fire Prevention Code:** Condominium, cooperative or multifamily residential buildings less than four stories in height with a corridor providing an exterior means of egress are exempt from installing a manual fire alarm system.