

SUMMARY OF 2013 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, 2013.

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

Section 718.104: Creation of Condominium: Upon recording of a declaration or amendment adding a phase, all units described in the declaration or phase amendment come into existence regardless of any requirements the declaration may provide. Effective June 6, 2013.

Section 718.105(4): Recording Fees: If the clerk of court has not disbursed declaration recording fees within five years after date declaration was originally recorded, the developer or association may seek such funds. Effective June 6, 2013.

Section 718.110: Amendment of Declaration: Correction of Errors and Omissions by Circuit Court: An action to cure corrections of omissions or errors in a declaration of condominium which affect the validity of the existence of the condominium must be brought within three years from the recording of the certificate of a surveyor and mapper or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first. Effective June 6, 2013.

Section 718.111(8): Purchase of Leases: An association has the power to purchase any land or recreation lease in the same manner as set forth in section 718.114 which sets forth the manner in which an association may acquire a recreation lease.

Section 718.111(11)(g)(2): Insurance: Included among the portions of condominium property a unit owner is responsible for the cost of reconstruction repairs are those set forth in subparagraph j and cost of any such repairs undertaken by the association may be collected by the association in the same manner as provided for the collection of assessments.

Section 718.111(11)(j): Insurance: Association must reconstruct or repair any portion of the condominium property which it is required to insure which is damaged by an insurable event.

Section 718.111(12)(c): Official Records: Owners may use any portable device, such as smart phones, tablets, portable scanners, to make electronic copies of official records in

lieu of the association providing copies of such records. The association may not charge members for obtaining copies of records in this manner.

Section 718.111(12)(c)(5): Official Records and Information Not Accessible to Owners: Association's may print and distribute to owners a directory containing the name, parcel address, and telephone number of each parcel owner. An owner may exclude his name and telephone number from the directory upon requesting such exclusion in writing to the association.

Section 718.111(13): Financial Reporting: The time period for which owners may vote on issues related to financial reports when the developer has not turned over control has been amended. Effective June 6, 2013.

Section 718.111(13)(a): Financial Reporting: The annual revenue threshold for preparation of various levels of financial statements has increased and now provides as follows:

Total annual revenues of \$150,000 or more but less than \$300,000: compiled financial statements.

Total annual revenues of \$300,000 or more but less than \$500,000: reviewed financial statements

Total annual revenues of \$500,000 or more: audited financial statements

Number of units in an association which only requires a report of cash receipts and expenditures has decreased from 75 to 50.

Section 718.112(2)(c)(3): Board of Director Meetings: Meetings of the Board of Directors held for the purpose of discussing personnel matters are not open to unit owners.

Section 718.112(2)(d)(2): Director Candidate Eligibility: An owner desiring to be a candidate for board membership must be eligible to be a candidate to serve on the board at the time of the deadline for submitting a notice of intent to run. A person who is delinquent in any monetary obligation to the association is not eligible to be a candidate and may not be listed on the ballot.

Section 718.112(2)(d)(2): Director Term: The requirement of a vote of the owners to allow for staggered terms is deleted. The bylaws or articles of incorporation may authorize director terms of up to two years.

Section 718.112(2)(d)(3): Notice of Unit Owner Meetings: If notice of the meeting is broadcasted in lieu of being physically posted on the condominium property, then the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice would have been required.

Section 718.112(2)(d)(4)(b): Director Certification: A director's written certification or educational certificate shall be retained by the association for inspection of owners for the longer of 5 years after the director's election or the director's uninterrupted tenure.

Section 718.112(2)(d)(4)(c): Challenge to Election: Any challenge to an election process must be commenced within 60 days from the time the election results are announced.

Section 718.112(2)(f): Annual Budget: Developer's right to vote for reserves is extended through the second fiscal year after the recording of a mapper or surveyor's certificate that is accompanied by a recorded assignment of developer's rights.

Section 718.112(2)(j)(5): Director Recall/Owners Challenge To Board's Failure to Act: If a board fails to timely act on a petition to recall a board member or members, the unit owner representative may file petition for arbitration challenging the board's failure to act. The petition for arbitration must be filed within 60 days after the expiration of the five full business day period in which the board was require to act. The arbitration review is limited to the sufficiency of service upon the board and the facial validity of the written agreement or ballots filed.

Section 718.112(2)(j)(7): Director Recall/Recalled Board Members Challenge to Recall: A board member who has been recalled may file an arbitration petition challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. Both the association and the unit owner representative shall be named as respondents.

Section 718.112(2)(j)(8): Director Recall Challenges: The Division may not accept a recall petition when there are 60 days or less until a scheduled election of the board member sought to be recalled or when 60 days or less has elapsed since the election of the board member.

Section 718.113(5): Hurricane Protection: The permitted hurricane protection which can be installed, operated, maintained and repaired by an association has been extended to include doors, impact glass and other types of code-compliant hurricane protection.

Section 718.114: Association Powers: Agreements acquiring leaseholds, memberships or other possessory or use interests must be entered into within 12 months of the date of the recording of the certificate of a surveyor and mapper or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, otherwise such agreements are a material alteration or substantial addition to the real property that is association property and the association may not enter into such agreements without the vote of a majority of the total voting interests or as authorized by the declaration. Effective June 6, 2013.

Section 718.115(e): Common Expenses: The treatment of common expenses for the installation, replacement, operation, repair and maintenance of hurricane shutters now

also includes impact glass, code-compliant windows or doors, or other types of code compliant hurricane protection.

Section 718.301(1)(g): Turnover: Unit owners, other than the developer may elect at least a majority of the board of directors seven years after the date of the recording of the certificate of a surveyor and mapper or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a record assignment of developer rights in favor of a grantee of such unit, whichever occurs first. Effective June 6, 2013.

Section 718.301(4)(q): Turnover Documents: Among the items a developer must turn over to the Association at time of turnover are a copy of the certificate of a surveyor and mapper recorded pursuant to Section 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurred first. Effective June 6, 2013.

Section 718.303(3)(a): Fines and Suspensions: An association's right to suspend an owner, or an owner's tenant, guest, or invitee's right to use common elements, does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces or elevators.

Section 718.403(1)(a), (b) and (c): Phase Condominiums: All phases must be added to the condominium within 7 years after the recording certificate of a surveyor and mapper recorded pursuant to Section 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurred first. However, this time period may be extended by an amendment approved by the members during the last three years of the 7 year period and may not exceed ten years from the recording of the aforementioned certificate. Effective June 6, 2013.

Section 718.406: Condominiums Created Within Condominiums: Defines terms associated with condominiums created within condominiums and provides for condominiums created within condominium parcels.

Section 718.5011: Ombudsman: An officer or full time employee of the ombudsman office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office.

COOPERATIVE ASSOCIATIONS

Section 719.104(2)(b): Official Records: Association official records must be kept and maintained within the State for 7 years. Records must be available for owners' inspection or copying or the association may offer the option of making the records available to a unit owner electronically via the internet or viewed in electronic format on a computer screen and printed upon request. The association is not responsible for use or

misuse of information provided to an association member or member's authorized representative.

Section 719.104(2)(c): Official Records: Any person who knowingly or intentionally defaces or destroys accounting records that are required to be maintained or who knowingly or intentionally fails to create or maintain accounting records that are required to be maintained or created, with the intent of causing harm to the association or a member is subject to civil penalty. Owners may use any portable device, such as smart phones, tablets, portable scanners, to make electronic copies of official records in lieu of the association providing copies of such records. The association may not charge a member for obtaining copies of records in this manner.

Section 719.104(2)(c): Official Records/Information Not Open to Inspection: The following records have been added to the list of records which are not open to inspection by owners:

- (1) Association records protected by the attorney client privilege.
- (3) Personnel records of association or management company employees. However the term "personnel records" does not include the written employment agreement with an association employee or management company and budgetary or financial records showing the compensation paid.
- (5) A list of various owner personal information such as social security numbers, driver license numbers and credit card numbers. Owners' facsimile numbers are not open to inspection by other owners unless such number is used to fulfill the association's notice obligations. Similarly any address or e-mail address used by the association to fulfill the association's notice obligations are not protected and are open to inspection by other owners. However, an association may print and distribute to owner's a directory containing the name, parcel address, and telephone number of each parcel owner. An owner may exclude his name and telephone number from the directory upon requesting such exclusion in writing to the association.
- (6) Association electronic security measures to safeguard data
- (7) Association software and operating system used to manipulate data.

Section 719.1055: Amendment of Cooperatative Documents: Provides for when mortgagee consent to an amendment to the cooperative documents is not required and when such consent is required. If such consent is required, provides for the method in which such consent shall be acquired.

Section 719.106(1)(c): Board and Committee Meetings: Board or committee meetings are not open to the members when such meeting is held for the purpose of discussing personnel matters.

Section 719.106(1)(d)(1)(a): Shareholder Meetings/Elections: Any challenge to the election process must be commenced within 60 days after the election results are announced.

Section 719.106(1)(d)(1)(b): Board Certification: 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. Written certifications shall be retained by the association for five years after director is elected or duration of director's tenure, whichever is longer.

Section 719.106(1)(f)(5): Recall Challenge: If a board fails to timely act on a petition to recall a board member or members, the unit owner representative may file petition for arbitration challenging the board's failure to act. The petition for arbitration must be filed within 60 days after the expiration of the five full business day period in which the board was required to act. The arbitration review is limited to the sufficiency of service upon the board and the facial validity of the written agreement or ballots filed.

Section 719. 106(1)(f)(7): Director Recall/ Challenge by Recalled Board Members: A board member who has been recalled may file an arbitration petition challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. Both the association and the unit owner representative shall be named as respondents.

Section 719. 106(1)(f)(8): Director Recall Challenges: The Division may not accept a recall petition when there are 60 days or less until a scheduled election of the board member sought to be recalled or when 60 days or less has elapsed since the election of the board member.

Section 719.303(3)(a): Obligations of Owners: An association's right to suspend an owner, or an owner's tenant, guest, or invitee's right to use common elements, does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces or elevators.

Section 719.501(1)(k): Powers and Duties of the Division: Training and educational programs provided by the Division may include web-based electronic media and live training and seminars throughout the State. The Division may review and approve education and material offered by other providers and shall maintain a list of approved programs.

HOMEOWNERS ASSOCIATIONS

Section 720.303(5): Official Records: Requires associations to maintain official records for at least 7 years and be made available for inspection and photocopying by members or their authorized representative with 45 miles of the community or within the county in which the association is located or within the community. The association may, at its option, make the records available to a parcel owner electronically via the internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. Owners may use any portable device, such as smart phones, tablets, portable scanners, to make electronic copies of official records in lieu of the association providing copies of such records. The association may not charge a member for obtaining copies of records in this manner.

Section 720.303(5)(c): Official Records: Associations may charge a fee to cover the costs required for personnel to retrieve and copy the records if the time spent exceeds one half hour and the personnel costs do not exceed \$20.00 per hour and the request does not result in the copying of 25 or fewer pages. If the association uses an outside duplicating service, the association may recover the actual cost of copying as supported by the vendor invoice.

Section 720.303(5)(c)(3): Information and Records Not Accessible to Owners: This section was amended to include personnel records of management company employees among the records which are not open to inspection by owners. However, the term “personnel records” does not include the written employment agreement with the management company employee.

Section 720.303(5)(c)(5): Information and Records Not Accessible to Owners: Allows an association to print and distribute to owners a directory containing the name, parcel address, and telephone number of each parcel owner. An owner may exclude his name and telephone number from the directory upon requesting such exclusion in writing to the association.

Section 720.303(6)(d): Budgets/Reserve Accounts: If reserve accounts are established by the developer, the budget must delineate the components for which the reserve accounts may be used.

Section 720.303(7): Financial Reporting: The annual revenue threshold for preparation of various levels of financial statements has increased and now provides as follows:

Total annual revenues of \$150,000 or more but less than \$300,000: compiled financial statements.

Total annual revenues of \$300,000 or more but less than \$500,000: reviewed financial statements

Total annual revenues of \$500,000 or more: audited financial statements

Section 720.303(10)(g):Recall Challenge: If a board fails to timely act on a petition to recall a board member or members, the unit owner representative may file petition for arbitration challenging the board's failure to act. The petition for arbitration must be filed within 60 days after the expiration of the five full business day period in which the board was require to act. The arbitration review is limited to the sufficiency of service upon the board and the facial validity of the written agreement or ballots filed.

Section 720.303(10)(k): Director Recall/ Challenge by Recalled Board Members: A board member who has been recalled may file an arbitration petition challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. Both the association and the unit owner representative shall be named as respondents.

Section 720.303(10)(l): Director Recall Challenges: The Division may not accept a recall petition when there are 60 days or less until a scheduled election of the board member sought to be recalled or when 60 days or less has elapsed since the election of the board member.

Section 720.303(13): Reporting Requirement/Registration: By no later than November 22, 2013 homeowners associations must register with the Division of Florida Condominiums, Timeshares and Mobile Homes the association's name, federal employer identification number, addresses, total number of parcels, budget revenue and expenses. Prior to turnover, developer information must be provided. The Department of Business and Professional Regulation shall prepare an annual report to present to the governor. The Division shall adopt rules to implement these provisions.

Section 720.3033: Officers and Directors: New Statute governing officers and director's certification, conflict of interest, solicitation and suspension.

Section 720.305(2)(a): Fines and Suspensions: An association's right to suspend an owner, or an owner's tenant, guest, or invitee's right to use common areas, does not apply to the portion of common areas used to provide access or utility services to the parcel. Furthermore, an association may not impair the right of an owner or tenant to have vehicular and pedestrian ingress to and egress from the parcel, including the right to park.

Section 720.306(1)(b): Amendments: Copies of amendments to the governing documents must be provided to the members within 30 days after the amendment is recorded.

Section 720.306: Amendments: Provides for when mortgagee consent to an amendment to the documents is not required and when such consent is required. If such consent is required, provides for the method in which such consent shall be acquired.

Section 720.306(6): Members Meetings: Right to Speak: Members are entitled to speak at a members meeting and are no longer required to submit a written request to speak prior to the meeting.

Section 720.306(9)(a): Elections: Associations are not required to allow nominations at the meeting if the association election process allows candidates to be nominated prior to the meeting.

Section 720.306(9): Elections: Any challenge to the election process must be commenced within 60 days after the election results are announced.

Section 720.307(1)(c-f):Turnover: Provides for additional circumstances upon which turnover shall occur.

Section 720.3075(5):Prohibited Clauses: Prior to turnover, developers cannot unilaterally make amendments to the governing documents which are arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of existing non developer members to use and enjoy the common property or materially shift economic burdens from developer to existing non developer members.

Section 720.3085(2)(b):Assessments: An association acquiring title to a lot through foreclosure or a deed in lieu of foreclosure is not considered a “previous owner” and the present owner cannot seek to recover amounts the present owner must pay for delinquent assessments from the association. However, the present owner’s liability under this section is limited to the unpaid assessments which came due prior to the association taking title. **The present owner would not be liable for assessments which came due while the association held title.**

MISCELLANEOUS

Section 468.436(2)(b) Manager Disciplinary Action: A community association manager can be subject to disciplinary action for violation any provision of Chapter 718, 719 or 720 during the course of performing community association management services pursuant to a contract with a community association.

Section 95.11: Statute Of Limitations: Deficiency Judgments: An action for deficiency related to a note secured by a residential property with one to four family units must be filed within one year of issuance of the certificate of title or the lender’s acceptance of a deed in lieu of foreclosure.

Section 702.015: Mortgage Foreclosure Complaint: Sets forth the requirements of a complaint for residential mortgage foreclosure concerning ownership of the note. The complaint must allege that the Plaintiff is the holder of the original note and the factual basis upon which Plaintiff has the right to enforce the note. If Plaintiff has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitle to enforce the note, the complaint must describe such authority and identify with specificity the document which grants such authority. If Plaintiff is in possession of the note and mortgage, Plaintiff must attach copies of the note and allonges and certify that Plaintiff holds the note, the notes location and title of the person providing the certification, the name of the person who verified possession and the time and date

verification occurred. If Plaintiff alleges a lost or destroyed note, then an affidavit concerning the lost note must be attached. Effective June 7, 2013.

Section 702.036: Finality of Foreclosure Judgment: Persons challenging the entry of a final judgment of foreclosure is limited to an action for monetary damages if the time to appeal has run, the judgment is entered against the property, the person challenging the final judgment was served properly in the foreclosure action and the property was acquired by a person who is not affiliated with the lender or foreclosed owner and at a time when there was no lis pendens of record regarding the suit to set aside, invalidate or challenge the foreclosure. The statute lists those persons who are considered affiliated with the foreclosing lender. Effective June 7, 2013.

Section 702.036: Deficiency Judgment: The amount of a deficiency judgment for an owner occupied residential property is the difference between the judgment amount, or in the case of a short sale the outstanding debt, and the fair market value of the property on the date of the sale. Effective June 7, 2013.

Section 702.10: Expedited Order to Show Cause: Sets forth the procedure in which a lien holder, who may be the plaintiff or a defendant, including a condominium, homeowners or cooperative association, may expedite the order to show cause process and push the case to judgment. This process may be used for in rem proceedings only. Effective June 7, 2013.

Section 702.11: Lost Notes: Sets forth the process to provide adequate protection if a judgment is founded upon a lost note. Effective June 7, 2013.