

SUMMARY OF 2007 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 cooperative associations. Unless stated otherwise, the effective date of these amendments is July 1, 2007. The following summarizes the pertinent portions of these amendments.

CONDOMINIUM ASSOCIATIONS

Section 718.106(5): Public Beach Access. Local governments cannot pass an ordinance or regulation prohibiting a condominium unit owner or their guests, licensees, or invitees from pedestrian access to a public beach contiguous to the condominium property. Exception created where such prohibition is necessary to protect public health, safety, or natural resources.

Section 718.103(18): Definitions: Land. Amended to provide that the definition of “land” may include a condominium unit.

Section 718.110(11): Mortgagee Consent For Declaration Amendment. Declaration provisions requiring mortgagee consent for amendments to the declaration, bylaws or articles of incorporation shall not be enforceable as to any mortgage recorded on or after October 1, 2007 unless such amendment affects the rights or interests of the mortgagee. Such provisions remain enforceable as to a mortgage recorded prior to October 1, 2007. Section 718.110(11)(a)(2)(c)(d) and (e) also sets forth the manner in which the Association shall secure the consent or joinder of a mortgagee, how notice to the mortgagee shall be delivered and effect of an amendment obtained without the consent or joinder of the mortgagee.

Section 718.111(11): Insurance. Provides that paragraph “a” concerning the insurance a unit owner controlled residential condominium must have shall apply to every residential condominium in the state of Florida regardless of the date of its declaration of condominium.

Section 718.114: Association Powers. Provides that agreements to acquire leaseholds, memberships or other possessory or use interests which are not entered into within 12 months from the date the Declaration is recorded are considered material alterations or substantial addition to the real property that is association property.

Section 718.115: Common Expenses and Common Surplus. New paragraph (1)(f) is added to specify that common expenses include the costs of insurance acquired by an

association in accordance with Florida Statute Section 718.111(11) including costs required to participate in a self-insurance fund.

Section 718.117: Termination of Condominium: This is a substantial rewording of this section. Provides for the procedures to terminate the condominium when termination is due to economic waste or impossibility and the procedures for optional termination of a condominium. Provides for the requirements to be contained in the plan of termination, when mortgage holder consent is not required, and sets forth the association's powers in connection with a plan of termination. Provides for how the proceeds of a sale of condominium property shall be allocated and how condominium and association property shall be distributed after termination. *As of the date of this Summary the law amending Section 718.117 has not yet been signed by the Governor.

Section 718.404(1) and (2): Mixed Use Condominiums. These sections were amended to state that they will be applied retroactively.

Section 718.503: Developer Disclosure: Amends the required language developers must include in any contract for the sale of a residential unit or a lease for an unexpired term of five years or more. Also requires the developer to provide a copy of the current estimated operating budget of the association to the buyer for closings that occur more than 12 months after the filing of the offering circular with the division.

Section 718.504: Prospectus or Offering Circular: New paragraph 21(d) added to require specific language in the estimated operating budget attached to the prospectus or offering circular. New paragraph 21(e) added providing that the budget prepared by a developer in accordance with this section is to be done in good faith and provides that a subsequent increased amount of any item beyond the control of the developer shall not trigger rescission rights.

Section 718.616: Disclosure of Condition of Building and Estimated Replacement Costs: Amends provisions concerning a developer's disclosures concerning conditions of the property in connection with residential condominiums created by converting existing previously occupied improvements.

Section 718.618: Converter Reserve Accounts: Amends provisions concerning developer funded converter reserve accounts.

HOMEOWNERS ASSOCIATIONS

Section 720.302: Purpose, scope and application. Provides that associations which are subject to Chapter 718, 719 or 721 shall be subject to Chapter 720 only if there is a provision in the respective chapter expressly incorporated into Chapter 720.

Section 720.303(2)(a): Powers and Duties of Associations. Provides that the provisions concerning board meetings shall also apply to the meetings of any committee or similar body when a final decision will be made concerning the expenditure of association funds or the approval or disapproval of architectural decisions with respect to a specific parcel of residential property owned by a member.

Section 720.303(6): Budgets/Reserve Accounts. Provides that the annual budget must set forth the annual operating expenses and provides that the annual budget may include reserve accounts for capital expenditures and deferred maintenance. This section sets forth the procedures for establishing, funding, maintaining and waiving of reserve funds. This section provides for specific language to be included in financial reports if no reserve funds are established and the association is responsible to maintain and repair capital improvements.

Section 720.303(7): Financial Reporting Provides for new due dates for preparation and completion of financial reports for the prior fiscal year.

Section 720.303(5): Architectural Control. This is a new section which addresses the association's authority over architectural and construction improvements located on any parcel. The right to review and approve plans and enforce standards must be specifically stated or reasonably inferred in the declaration or other published guidelines and standards authorized by the declaration. This section sets forth setback limitations where the declaration does not provide otherwise. This sections also provides that owners' rights and privileges as set forth in the declaration or other published guidelines and standards shall not be unreasonably infringed upon or impaired by the association or any architectural type committee. This section provides for damages to be awarded to an owner whose rights are willfully infringed upon or impaired.

Section 720.303(11): Windstorm Insurance: This section was amended to allow three or more communities operating under chapter 718, 720, 719 or 721 to obtain windstorm insurance coverage as a group under certain circumstances. Also provides that an association or group of association's may self insure in accordance with Florida Statute sections 624.460-624.488.

Section 720.305(1): Prevailing Party In Litigation. Provides that a member who prevails in litigation between the member and the association may recover additional amounts as determined by the court necessary to be reimbursed for the member's share of any assessments levied to fund the association's expenses of the litigation.

Section 720.306(1)(c): Amendments. Provides that a merger or consolidation of one or more associations shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Section 720.307(3)(t): Transition of Association Control. New section which requires financial records, including financial statements, to be provided by the developer to the Association upon turnover of control from the developer.

Section 720.308: Assessments This section was amended to provide for guarantees of common expenses by the developer and the procedures concerning such guarantees. This section further provides how the guarantee amount is determined.

Section 720.308(3): Assessments. Amended to allow board of directors to levy assessments to obtain insurance from a self insurance fund.

Section 720.3085: Payment of Assessments: This is a new section which sets forth the owners' obligation to pay assessments even when title is obtained at a foreclosure sale or by deed in lieu of foreclosure. Sets forth the consequences for an owner's failure to pay. Provides for interest to accrue on past due amounts and permits associations to levy a late charge if authorized by the declaration or bylaws. Provides for the manner in which partial payments are applied. Provides that a claim of lien for unpaid assessments may not be filed until written notice or demand is made. The written demand or notice must provide the owner with 45 days within which to pay and must be sent by registered or certified mail and first class mail. Provides that associations must give 45 days notice to the owner of its intent to foreclose and collect the unpaid amount before filing a lawsuit. Provides for a sixty day stay of the foreclosure action upon the association's receipt of a "qualifying offer" from the owner to pay all amounts secured by the lien. Provides for the procedures for an owner to make a qualified offer.

Section 720.311: Dispute Resolution. Changes the procedures for initiating and participating in pre-suit mediation for disputes concerning covenant enforcement, use of a parcel or common areas, and disputes regarding amendments to the governing documents. Provides that a written demand for pre-suit mediation be made instead of filing a petition for mediation with the Division of Land Sales. Sets forth the procedures to initiate a demand for and participate in mediation. Provides that the written demand be in substantial accordance with the form set forth in this Section. Provides that attorneys fees incurred in the mediation process shall be awarded to the prevailing party in subsequent litigation. This section further provides that persons who fail to participate in the mediation process may not recover attorney's fees in subsequent litigation relating to the dispute.

COOPERATIVE ASSOCIATIONS

Section 719.103(18): Definitions: Equity Facilities Club. New section added defining "equity facilities club" as a club comprised of recreational facilities in which proprietary membership interests are sold to individuals, which membership interests entitle the individuals to use certain physical facilities owned by the equity club.

Section 719.104(3): Insurance: Amended to allow three or more communities operating under chapter 718, 720, 719 or 721 to obtain windstorm insurance coverage as a group

under certain circumstances. Also provides that an association or group of association's may self insure in accordance with Florida Statute sections 624.460-624.488.

Section 719.107(e): Common Expenses: New Section added specifying that common expenses include costs of insurance including costs required to participate in a self-insurance fund.

Section 719.108: Assessment: Requires the specific purpose of a contingent special assessment levied in connection with the purchase of insurance policy to be set forth in a written notice of such assessment to the owners.

Section 719.503 Developer Disclosure: Amends the required language developers must include in any contract for the sale of a residential unit or a lease for an unexpired term of five years or more. Also requires the developer to provide a copy of the current estimated operating budget of the association to the buyer for closings that occur more than 12 months after the filing of the offering circular with the division.

Section 719.504: Prospectus Or Offering Circular. New paragraph 20(d) added to require specific language in the estimated operating budget attached to the prospectus or offering circular. New paragraph 21(e) added providing that the budget prepared by a developer in accordance with this section be done in good faith and subsequent increased amount of any item beyond the control of the developer shall not trigger rescission rights.

MISCELLANEOUS

Section 215.555: Florida Hurricane Catastrophe Fund: Amends the definition of "covered policy" to include among authorized insurers a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under Florida Statute section 624.462.