

SUMMARY OF 2008 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 and homeowners associations. The effective date of the amendment to the homeowners association statute is July 1, 2008. The effective date of the amendments to the statutes concerning condominiums is October 1, 2008. The following summarizes the pertinent portions of these amendments. There is also additional pending legislation concerning homeowners associations. If the legislation is signed into law, a summary will be provided next month.

HOMEOWNERS ASSOCIATIONS

Section 720.3085(2)(c): Assessments: When a mortgage lender gets title to an HOA property, the lender will be responsible for the lesser of:

- 1) the parcel's unpaid common assessments and regular periodic or special assessments that accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or,
- 2) one percent of the original mortgage debt.

This will only apply if the mortgage lender has joined the association as a defendant in the mortgage foreclosure action.

CONDOMINIUM ASSOCIATIONS

Section 718.111(1)(b): Abstention by Directors: Directors who abstain from voting on any action is deemed to have no position with regards to such action.

Section 718.111(1)(d): Officer and Directors Liability: An officer, director or agent has a duty to act in good faith and in a manner which he or she believes to be in the interests of the association. Under certain circumstances an officer, director or agent who breaches this duty shall be liable for monetary damages.

Section 718.111(12)(a)(6): Board of Administration: The phrase "board of directors" is changed to "board of administration".

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.

Section 718.111(12)(a)(11)(d): Association Official Records: Requires all contracts for work to be performed and bids for such work to be maintained by the association.

Section 718.111(12)(a)(16): Association Official Records: A copy of the inspection report required by Section 718.301(4)(p) is an official record of the association.

Section 718.111(12)(b): Availability of Association Official Records: Except for associations governing timeshare condominiums, the official records must be maintained for seven years and be made available to an owner within 45 miles of the condominium property or within the county in which the condominium property is located. The Association can comply with this section by having the documents available at the condominium property or may offer to make the documents available electronically via the internet or viewed in electronic form.

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.

Section 718.111(12)(c)(4): Private Information Not Accessible to Owners: Social Security numbers, driver's license numbers, credit card numbers and other personal identifying information of any person are added to the list of records which are not accessible to unit owners.

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.

Section 718.111(13)(d)(3): Audit; Financial Reporting: Members' approval of the type of financial statements to be prepared are effective for the present fiscal year in which the approval occurred and the following fiscal year. The Developer shall pay for any audit or review prepared under this section if done prior to turnover. An association may not waive the financial reporting requirements for more than three consecutive years.

Section 718.112(2)(b)(2): Voting Requirements: Units owned by the association shall have no voting interest or consent rights for any purpose, including quorum.

Section 718.112(2)(c): Board of Administration Meetings: The Board must place on its agenda at its next regular or special meeting any item of business requested by a petition of at least 20 percent of the total voting interests of the association. However, such meeting must occur no later than sixty days after receipt of the petition.

Section 718.112(2)(c): Board of Administration Meetings: Requires notice of any meeting at which regular or special assessments are to be considered to specifically state such assessments will be considered and state the estimated cost and description of the purpose of such assessment.

Section 718.112(2)(d)(1): Unit Owner Meetings: Provides for the location of the annual meeting. Board members' terms expire at the annual meeting. Board members may serve two year staggered terms if Bylaws allow and upon approval of the members. Where there are no candidates to fill a board position, the board member whose term has expired will be automatically reappointed. Prohibits co-owners of a unit from serving on the board at the same time. Prohibits anyone who has been suspended or removed by the Division or who is delinquent in the payment of any fee or assessment as provided in paragraph n of this section from serving on the board. Individuals convicted of a felony are prohibited from serving on the board unless such felon's civil rights have been restored at least five years from the date on which such person sees election to the board.

Section 718.112(2)(d)(3): Director Candidates; Certification Form: A form which candidates for the Board must sign certifying that he or she has read and understands the governing documents and provisions of Florida Statute Chapter 718 and any applicable rules must be provided to all owners along with the first notice of election.

Section 718.112(2)(d)(8): Election Process: Requires all condominiums with more than ten units to abide by Chapter 718 election procedures and prohibits such condominiums from opting out of the procedures. Condominiums with 10 or less units may opt out of the statutes election procedures upon majority vote of all voting interests.

Section 718.112(2)(f)(4): Reserves: Requires specific language and font to be used on a proxy when asking questions related to the waiving or reduction in funding or use of reserves.

Section 718.112(2)(n): Director or Officer Delinquencies: Requires a director or officer who is more than ninety days delinquent in the payment of regular assessments to be deemed to have abandoned the office thus creating a vacancy to be filled.

Section 718.112(2)(o): Director and Officer Offenses: Requires an officer or director who charged with felony theft or embezzlement of association funds to be removed from office creating a vacancy to be filled.

Section 718.1124: Failure to Fill Vacancies on Board; Appointment of Receiver: Sets forth the notice requirements an owner must provide when applying to the Circuit Court for appointment of a receiver.

Section 718.113(5)(a): Installation of Hurricane Shutters: Upon approval of a majority of the members, the Association may install, hurricane shutters or other hurricane protection which complies with or exceeds applicable building codes. However, member approval is not required if the declaration provides that the association shall maintain, repair and replace hurricane shutters or other forms of hurricane protection. This section prohibits the Association from installing hurricane shutters where hurricane protection meeting or exceeding applicable building code are already in place.

Section 718.113(5)(b): Maintenance of Hurricane Shutter: Provides for when the association will be responsible for the maintenance, repair and replacement of the hurricane shutters and when such responsibility shall be the unit owners.

Section 718.113(5)(d): Approval of Unit Owner Installation of Hurricane Shutter: Requires the Association to approve a unit owners request to install hurricane shutters which meet the specifications adopted by the Board.

Section 718.113(6): Inspection of Building: For condominium buildings greater than three stories in height, requires the Board to have the building inspected every five years and have a report from an engineer or architect attesting to the required maintenance, useful life and replacement costs of the common elements. This requirement may be waived by a majority vote of the members at a properly called meeting of the association.

Section 718.113(7): Religious Objects: Prohibits an association from refusing a unit owner's request for a reasonable accommodation for the attachment of a religious item not to exceed 3 inches in width or 1.5 inches in height upon the mantle or frame of the door to the unit.

Section 718.115(1)(e): Common Expenses; Hurricane Shutters: Sets forth and clarifies when the installation, maintenance and repair of hurricane shutters shall be a common expense and when such costs shall be borne by each owner individually. Such determination is based upon who has the responsibility to install, maintain and repair hurricane shutters pursuant to the declaration of condominium. Owners who have previously installed hurricane shutters or other hurricane protection shall receive a credit equal to a pro rata portion of any assessed cost for the installation of hurricane shutters assigned to each unit.

Section 718.117(7)(a): Natural Disaster; Notice of Receivership: Requires notice to all owners when a receiver is appointed after a natural disaster.

Section 718.121(4): Liens; Notice of Intent to Lien: Requires notice of an association's intent to lien a unit to be delivered by certified mail and first class mail to the owner at the owner's last known address on record with the association at least thirty days prior to filing the lien.

Section 718.1224: Prohibition Against SLAPP Suits: Prohibits lawsuits known as "Strategic Lawsuits Against Public Participation" to be filed against an owner for speaking before governmental entities on matters concerning condominium associations.

Section 718.1265: Association's Emergency Powers: Sets forth the powers an association may exercise in response to damage caused by an event for which a state of emergency is declared.

Section 718.127: Receivership Notification: Provides for notification of the appointment of a receiver to be delivered to all owners.

Section 718.301(1)(e) and (f): Turnover Requirements: Adds two additional events triggering turnover: 1) when the developer files petition for bankruptcy; and, 2) when a receiver for the developer is appointed and not discharged within thirty days.

Section 718.301(4)(p): Turnover Requirements; Engineer's Report: Requires the developer to include in the association's official records a report of an architect or engineer attesting to the required maintenance, useful life and replacement costs of various common elements.

Section 718.3025(f): Disclosure of Financial Interest : Requires the disclosure of any financial or ownership interest a board member or any party providing maintenance or management services to the association holds with the contracting party.

Section 718.3026: Contracts for Products and Services: Associations with ten or fewer units may opt out of the provisions contained in Section 718.3026 concerning the requirements for contracts for products and services.

Section 718.3026: Competitive Bids: Some provisions which previously set forth circumstances under which associations did not have to comply with the statutory requirement to obtain competitive bids have been deleted.

Section 718.3026(3): Transactions with Directors: Sets forth the requirements which must be met when an association enters into a contract or transaction with one or more of its directors or with an entity in which an association director is a director or has a financial interest.

Section 718.303(3): Fine Committee: Prohibits board members and persons residing in a board member's household from sitting on the fine committee.

Section 718.501(1): Jurisdiction of Division: Gives the Division of Florida Land Sales, Condominiums and Mobile homes complete jurisdiction to investigate complaints and enforce compliance with the provisions of Chapter 718 with respect to associations still under the control of the developer. After turnover, the Division's jurisdiction will be limited to complaints related to financial issues, elections and unit owner access to association records.

Section 718.501(1)(d)(2): Division Powers: Extends the Division of Land Sales's right to issue orders to cease and desist unlawful acts to developer-designated officers, community association managers and community association management firms.

Section 718.501(3): Civil Action by Division: Allows the Division to bring an action in circuit or county court on behalf of an association if a developer fails to pay any restitution determined to be owed by the Division.

Section 718.501(4): Imposition of Civil Penalties by the Division: Includes among the penalties the Division may impose against an officer or director who willfully or knowingly violated a provision of Chapter 718 or a final order of the Division the right to remove such individual as an officer or from the board of administration and the right to prohibit such individual from serving as an officer or on the board for a period of time.

Section 718.501(5): Division Subpoena for Association Official Records: Upon an owner furnishing proof to the Division that he or she has made two requests for the same association official records under the circumstances set forth in this section and the association has failed to comply, the Division is required to issue a subpoena for the production of the records.

Section 718.501(5)(j): Education by the Division: Sets forth the type of training and education the Division may provide.

Section 718.501(5)(n): Cooperation with Division: Requires directors, officers, association employees, developers, community association managers and management firms to cooperate with the Division in any investigation pursuant to this section.

Section 718.5012: Ombudsman Powers: Adds to the powers of the Ombudsman the power to assist with the resolution of disputes between unit owners and the association or between unit owners which are not within the Division's jurisdiction.

Section 718.50151: Community Association Living Study: Creates a council of seven members on October 1 every five years that shall exist for a six month term beginning October 1, 2008. Deletes the requirement that members of the council shall be appointed to 2 year terms.

Section 718.50151(2)(a) and (d): Community Association Living Study: Sets forth the functions of the council and council's requirement to make recommendations for changes in the law related to community association living. Provides that the council shall review, evaluate, and advise the Legislature concerning revisions and improvements to the laws.

Section 718.503: Non-Developer Disclosures: Entitles prospective purchasers on and after January 1, 2009 to receive from a non developer seller of a condominium unit a copy of a governance form. The governance forms shall be provided by the Division and shall summarize the governance of condominium associations. Sets forth the subjects to be contained within the governance form.