

<b>N E W S</b>	<h1>COMMUNITY LAW NEWSLETTER</h1>
<b>LETTER</b>	
Vol. 21 No.3 June 4, 2010	PAVESE LAW FIRM Written by: Christopher J. Shields, Esq., Christina Harris Schwinn, Esq., Brooke N. Bockemuehl, Esq., Stacy L. Bennings, Esq., and Charles B. Capps, Esq.

## Summer 2010 – Part 1

As eagerly anticipated or perhaps feared, senate Bill 1196 ("SB 1196"), which was recently approved by the Florida Legislature, was signed by Governor Crist on June 1, 2010, and will take effect on July 1, 2010. SB 1196 includes some significant changes affecting Florida condominium and homeowners associations and changes several of the amendments that previously went into effect following the 2008 Florida Legislative Session. While primarily intended to clarify prior law, some new provisions merely create additional issues. Below is a brief summary of many of the significant changes that will effect condominiums and homeowners associations in Florida:

### Chapter 718 (Condominium) Amendments

#### Amendment of Declaration; § 718.110(13)

- Under the law, as amended, amendments to the condominium declaration which either: 1) prohibit owners from renting their units; 2) alters the duration of the rental term; or 3) specifies or limits the number of times that owners are entitled to rent their units during a specified period, may only be applied to unit owners who vote in favor of the amendment or acquire title after the amendment is recorded. All other amendments, even those that

indirectly may restrict a unit owner's ability to lease his unit, will be applied to all owners equally. For example, an amendment that limits lease terms to 30 days will only apply to unit owners who vote in favor of the amendment or acquire title after the amendment is recorded, but an amendment that prohibits tenants from having pets will apply to all owners equally.

#### Insurance; § 718.111(11)

- Changes all references to "hazard insurance" and "casualty loss" to "property insurance" and "property loss."
- Removes many of the additions to the Statute made by the Florida Legislature in its 2008 amendments. Changes mandatory requirements for individual unit owner policies to compliance with new Section 627.714. Eliminates requirement of association as additional named insured on policies, requirement that unit owners provide proof of insurance upon request, and force placement of insurance by condominium associations.
- Removes some notice requirements for Board meetings at which deductible amounts are established and requires only the notice requirements generally mandated for Board

meetings under Section 718.112(2)(c) and the association's governing documents. As before, Section 718.112(2)(c) requires notice of all board meetings, including specific identification of all agenda items, be posted conspicuously on the condominium property at least 48 continuous hours in advance of Board Meetings. However, an individual condominium association's governing documents may impose and have additional requirements.

- Makes unit owners responsible for insuring "property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit." Only the additional limitation on location within the unit and servicing of only the particular unit was added. This change should have little or no practical effect in most situations as most of these items will be located within the unit any way. Especially since the Legislature shifted the responsibility for the unit's HVAC system to the Association in 2008.

#### **Official Records; §718.111(12)**

The following condominium association records are now exempt from inspection by unit owners:

- Personnel records of association employees, including but not limited to, disciplinary, payroll, health, and insurance records.
- Social security numbers, drivers license numbers, credit card numbers, email address, telephone numbers, emergency contact information, any addresses of a unit owner other than as provided to fulfill the association's notice requirements and other

personal identifying information of any person, excluding the person's name, unit designation, mailing address and property address.

- Any electronic security measure that is used by the association to safeguard data, including passwords.
- The software and operating system used by the association.

#### **Financial Reporting; § 718.111(13)**

- Requires the Florida Division of Condominiums, Timeshares and Mobile Homes to adopt standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straightline accounting method, unless reserves are pooled.

#### **Board Elections; § 718.112(2)**

- Alters prohibition of co-owners serving as members of the Board of Directors at the same time. The statute now excludes timeshare units, and prevents only co-owners from simultaneously serving on the Board when they are co-owners of a single unit. Where the co-unit owners own more than one unit in the condominium, they may serve on the Board at the same time. The Statute will, however, allow co-owners to serve on the board if there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.
- Incumbent Board members will now be eligible for reappointment rather than automatically reappointed where the number of seats up for election exceeds the number of eligible candidates.

- Expands ineligibility to serve on the Board of Directors to members who are delinquent in the payment of special assessments and fines, in addition to regular assessments and fees.
- Amends the Candidate Certification Form requirement. Now, within 90 after being elected to the Board, newly elected directors must either certify in writing to the secretary of the association that he or she has read the Association's governing documents and will "faithfully discharge his or her fiduciary responsibly" and uphold the documents accordingly, OR complete a division-approved condominium education course. Failure to timely file the written certification or educational certificate will automatically disqualify the director from serving on the Board.

**Fire Sprinkler Retrofitting; § 718.112(2)(l)**

- Extends requirement for completion of retrofitting of common areas with a sprinkler system. Retrofitting must now be completed by December 31, 2019, and the Association must initiate an application for the building permit by December 31, 2016.
- Provides that if there has been a previous vote to forego retrofitting, a membership vote may be obtained at a special meeting of the unit owners called by a petition of at least 10% of the voting interests. Such a vote may only be called once every 3 years.
- Changes the vote required to opt out to a majority of the total voting interests.
- Removes the 75 foot height limit, and now allows high rise condominiums to also opt-out of retrofitting requirements.

**Director of Officer Delinquencies; § 718.112(2)(n)**

- Provides that any director or officer more than 90 days delinquent in the payment of any fee, fine, or regular or special assessment shall be deemed to have abandoned his or her position.

**Common Expenses – Bulk Telecommunications Contracts; § 718.115(1)(d)**

- Allows a condominium association to enter bulk contracts for telephone and internet in addition to cable services.

**Remedies for Unpaid Assessments; § 718.116 and § 718.303**

Perhaps one of the most important amendments for condominium associations that are dealing with unit owner delinquencies are the amendments to Sections 718.116 and 718.303, which create and expand condominium associations' remedies against delinquent owners. However, it may be wise to consider amending the governing documents to specifically provide for these remedies, especially if there are contradictory provisions in the current declaration.

- A condominium association may now collect directly from a tenant occupying a unit where the unit owner is delinquent in the payment of assessments upon written notice to the owner and tenant, without need for a court order appointing a receiver. There are a number of notice requirements and other restrictions that the Association must comply with, but the Association would be entitled to sue for an eviction if the assessments was not paid. The prevailing party in the action may also be awarded attorney's fees and costs.
- The liability of mortgagees who take title through foreclosure or deed in lieu of foreclosure has been expanded from the lesser of 6 months unpaid assessments or 1% of the original mortgage to the lesser of 12 months unpaid assessments or 1% of the original mortgage.

- A condominium association may also now suspend a unit owner’s voting rights and right to use the common elements, facilities, or association property if the unit owner is more than 90 days delinquent in the payment of assessments. However, this does not include limited common elements, utility services, access to the unit, parking spaces or elevators.

## **Chapter 720 (Homeowners Associations) Amendments**

### **Official Records; § 720.303(5)**

- Requests to inspect official records must now be sent by certified mail.
- Allows association to charge reasonable fees for personnel fees and charges at an hourly rate to cover the administrative costs of the association involved in the copying of official requested by a member.
- Exempts certain records from inspection including:

Personnel records of association employees, including but not limited to, disciplinary, payroll, health, and insurance records.

Social security numbers, drivers license numbers, credit card numbers, email address, telephone numbers, emergency contact information, any addresses of a unit owner other than as provided to fulfill the association’s notice requirements and other personal identifying information of any person, excluding the person’s name, unit designation, mailing address and property address.

Any electronic security measure that is used by the association to safeguard data, including passwords.

The software and operating system used by the association.

### **Budgets; § 720.303(6)**

- Section 720.303(6) generally requires reserves to be waived or funded once established. This amendment now allows reserve accounts to be terminated, arguably forever, upon approval of a majority of the total voting interests of association.
- Creates required financial report disclosure where budget includes funding for deferred expenditures and revises the disclosure required where the budget does not provide for reserve accounts.

### **Compensation of Directors; § 720.303(12)**

- This new Statute prohibits compensation of directors unless authorized in the governing documents or authorized in advance by a majority of the voting interest voting in person or by proxy at a meeting of the members. The new statute also lists several examples of activities that do not constitute compensation.

### **Levy of Fines; § 720.305**

- Allows a homeowners association to lien for fines, but only if the fine is \$1000.00 or more. To ensure the Association’s right to lien for fines, it may be necessary to amend the governing documents to authorize a lien for fines, especially if your current governing documents specifically provides that the association cannot lien for failure to pay a fine.

**Election of Directors; § 720.306**

- If the governing documents provide for secret balloting, the association must use the two-envelope system required for condominium association board elections.
- Overrides the requirement of Chapter 617 and provides that a board member elected or appointed to fill a vacancy shall serve for the unexpired term of the seat being filled, rather than until the next election as previously required.

**Remedies for Unpaid Assessments; § 720.3085**

- Associations may collect rent directly from a tenant occupying a unit where the unit owner is delinquent in the payment of assessments upon written notice to the owner and tenant without need for a court order. This remedy is substantial identical to the remedy which is found under Florida Statutes, Section 718.116, discussed above.

**Recreational Leaseholds and Memberships; § 720.31**

- Allows associations to enter agreements to acquire leaseholds, memberships and other interests in lands and facilities, including but not limited to, country clubs, golf courses, marinas, submerged land, parking areas, conservation areas and other recreational facilities with the approval of 75% of the total voting interests of the association unless within 12 months of recording the declaration.

**Other Statutory Amendments  
Of Interest**

**Insurance; § 627.71**

Section 627.71 adds new requirements for individual unit owner policies as follows:

Residential condominium unit owner coverage; loss assessment coverage required; excess coverage provision required.—Coverage under a unit owners residential property policy shall include property loss assessment coverage of at least \$2,000 per occurrence for an assessment made as a result of a direct loss to the property owned by all members of the association collectively when such loss is the type of loss covered by the unit owner’s residential property insurance policy, up to the limit of liability in effect at the time of the assessment. Every individual unit owner’s residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property.

This Section now contains requirements very similar to those previously contained in Section 718.111(11)(g), which are simultaneously removed by this Bill. Section 718.111(11) now incorporates Section 627.71, as amended, by reference. Therefore, this is basically a sum-zero change.

**Fire Prevention Code; § 633.0215**

- Condominiums no more than four (4) stories with exterior corridors are now exempt from the requirement to install a manual fire alarm system under Section 9.6 of the Life Safety Code.

**Remember** – We are here to assist you with your legal needs and available to answer questions that you may have regarding the amendments discussed in this newsletter and help you navigate through these complicated laws.

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This newsletter is intended only as a brief overview of what we feel are important changes made by SB 1196. However, the Bill is over 100 pages long and quite detailed. Again, this is merely intended as an overview and we strongly recommend that you seek advice of legal counsel for any specific questions or concerns that you may have.

*This newsletter is provided as a courtesy and is intended for the general information of the matters discussed herein above and should not be relied upon as legal advice. Christopher J. Shields ([christophershields@paveselaw.com](mailto:christophershields@paveselaw.com)) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm. Christina Harris Schwinn ([christinaschwinn@paveselaw.com](mailto:christinaschwinn@paveselaw.com)) is a Partner in the Pavese Law Firm. Brooke N. Bockemuehl ([brookebockemuehl@paveselaw.com](mailto:brookebockemuehl@paveselaw.com)) is an Associate with the Pavese Law Firm. Stacy L. Bennings ([stacybennings@paveselaw.com](mailto:stacybennings@paveselaw.com)) is an Associate with the Pavese Law Firm. Charles B. Capps ([charlescapps@paveselaw.com](mailto:charlescapps@paveselaw.com)) is an Associate with the Pavese Law Firm. Each attorney practices in the area of Real Estate Development and Community Association Law. Ms. Schwinn also specializes in Labor/Employment Law. Ms. Bockemuehl also practices in the area of general civil litigation, bankruptcy creditor rights for community associations. Please feel free to contact them via the e-mail addresses listed above.*