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## Summer 2011

### **NEWS ALERT: Florida House Bill 1195 is enacted and becomes law on July 1, 2011**

House Bill 1195, which amends several provisions of Chapters 718 and 720, Florida Statutes, was recently approved by Governor Scott. The new law was intended to remove, clarify and improve glitches that were contained in the legislature that was passed last year. These amendments become effective on July 1, 2011. Below is a summary of some of the most significant changes affecting Florida condominiums, cooperatives, and homeowners associations.

#### **AMENDMENTS TO CHAPTER 718 - CONDOMINIUMS**

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

Under last year's amendments, certain personal information of members was protected from disclosure as part of the official records of the Association, including social security numbers, drivers license numbers, credit card numbers, email addresses, 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. House Bill 1195 now expressly provides that email or facsimile numbers provided to fulfill notice obligations are still official records. The amendment also limits the protection of an association for wrongly disclosing such information

to only instances where the disclosure is inadvertent as opposed to simply erroneous under the previous version of the statute.

Effective July 1, 2011, §718.111(12) expressly allows members to consent in writing to the disclosure of information otherwise protected by the statute. This will allow associations to continue the practice of publishing member directories to the extent that the members expressly consent in writing to their personal information being included.

§718.111(12) has been amended to provide that "written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association" are not "personnel records" which can be withheld from a member who requests to inspect or copy such record. This information must be provided upon request.

##### **Board Meetings; §718.112(2)(c)**

Condominium Association board meetings held for the purpose of discussing personnel matters may now be conducted as "closed door" meetings which members do not have a right to attend.

**Board Elections and Eligibility; §718.112(2)(d)**

This section is now amended to provide that if there are fewer candidates for the Board than there are vacancies, all of the candidates automatically become members of the Board and, unless the Bylaws of the association provide otherwise, a majority of those directors, even if less than a quorum or only one director, may fill the remaining vacancies by appointment.

This section is also amended to provide that in order for a member to be a candidate for the Board, and have his or her name listed on the ballot, that person must be eligible to serve on the Board as of the deadline for submitting notice of intent to run. Therefore, any person who is delinquent in the payment of assessments or other fees or fines to the Association as of forty (40) days prior to the annual meeting shall not be entitled to be a candidate and have their name included on the ballot. In other words, if a potential candidate for the Board is even one day delinquent as of the deadline for receipt of Notice of Intent to be a Candidate forms, i.e. forty (40) days prior to the annual meeting, that person cannot be placed on the ballot. On the other hand, under the existing provision of Section 718.112(2)(n), once on the Board, a director who is more than ninety (90) days delinquent is deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Finally, the requirements for providing a candidate certification form and/or attending a division approved educational curriculum have been clarified to provide that the educational course, if taken in lieu of signing a written certification, must be completed within 1 year before or 90 days after the Board member is elected or appointed to the Board, and that the certification is valid for so long as the director serves on the Board without interruption.

**Hurricane Shutters & Impact Glass; §718.113(5)**

The Condominium Board's ability to install hurricane shutters, which requires consent of a

majority of the voting interests has now been amended to also require membership consent before the Board can install impact glass or other code-compliant windows.

**Association Powers; §718.114**

This statute now limits the Board's power to enter agreements to acquire leaseholds, membership, and other possessory or use interests in land or facilities such as country, clubs, golf courses, marinas, and other recreational facilities and now requires prior approval by a majority of the total voting interests, unless otherwise authorized under the Declaration.

**Liability for Assessments; §718.116**

Perhaps one of the most notable, and potentially troublesome, amendments under House Bill 1195 is the amendment to Section 718.116, which provides: "an association, or its successor or assignee, that acquires title to a unit through foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association...which holds a superior lien interest on the unit." Therefore, if a condominium association forecloses its own claim of lien for assessments and takes title to a unit, it may argue that it is not liable for unpaid assessments due and owing to a master association to which the unit is also subject. However, the statute only provides that this applies to "any other association...which holds a superior lien interest on the unit."

**Collection of Rent; § 718.116**

This statute has been significantly revised and now clearly allows a condominium association to make demand and collect the full rent from a tenant when a unit owner is delinquent in the payment of assessments and has leased the unit. The statute also clearly provides that those rental payments may continue to be collected until such time as the monetary obligations of the unit owner related to the unit have been paid in full to the association.

This is a significant change and deletes the glitch in the statute that previously referred to “future monetary obligations.”

**Termination; § 718.117**

The statute now addresses and allows for partial termination of a condominium, and provides new procedures and guidelines for the same.

**Fines and Suspensions; § 718.303**

This statute has been amended to clarify some of the confusion created by last year’s amendments.

Section 718.303 now allows condominium associations to suspend the common area use rights of an owner and his tenants, guests and invitees for 1) violations of the associations’ governing documents, or 2) where the unit owner is more than 90 days delinquent in paying a monetary obligation due to the Association.

Suspensions of unit owners voting rights and/or use rights in common elements facilities when the unit is delinquent for more than 90 days in paying a monetary obligation may be imposed by the Board at a properly noticed Board meeting. Fines and/or suspensions of use rights for violations of the governing documents still require a hearing before a fining/suspension committee.

The amendments also clarify that where a member’s voting rights have been suspended for non-payment of assessments or other monetary obligations, that voting interest cannot be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve any action of the Association. In other words, the suspension effectively decreases the total number of voting interests in the Association in an amount equal to that member’s voting interest. For example, in the case where each unit has 1 voting interest, if there were 50 units in the condominium, the total voting interests to be considered for all

matters would be reduced to 49 if the voting rights of the owner of one unit were suspended.

**AMENDMENTS TO CHAPTER 719 - COOPERATIVES**

**Collection of Assessments; § 719.108(4)**

§ 719.303(4) is amended to remove “and any reasonable costs for collection services for which the association has contracted against the unit owner of the cooperative parcel” for the amounts secured by the cooperative’s lien for unpaid assessments. The statute now provides only, “The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney’s fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien.”

**Collection of Rent; § 719.108(10)**

As under the condominium statute, as amended, this law has been significantly revised, and now clearly allows a homeowners association to make demand and collect the full rent from a tenant when an owner is delinquent in the payment of assessments and has leased the property. The statute also clearly provides that those rental payments may continue to be collected until such time as the monetary obligations of the owner related to the property have been paid in full to the association. Thankfully, the statute also removes the previous vague language which only allowed the Association to demand “future monetary obligations.”

**Fines and Suspensions; § 719.303**

Section 718.303 now allows cooperative associations to suspend the common area use rights of an owner and his tenants, guests and invitees for 1) violations of the associations’ governing documents, or 2) where the unit owner is more than

90 days delinquent in paying a monetary obligation due to the Association.

Cooperative association may also now suspend a member's voting rights for non-payment of assessments or other monetary obligations. Under the amendment, a voting interest allocated to a unit or member which has been suspended by the association cannot be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve any action of the Association. In other words, the suspension effectively decreases the total number of voting interests in the Association in an amount equal to that member's voting interest. For example, in the case where each unit has 1 voting interest, if there were 50 units in the cooperative, the total voting interests to be considered for all matters would be reduced to 49 if the voting rights of the owner of one unit were suspended.

Suspensions of unit owners voting rights and/or use rights in common elements facilities when the unit is delinquent for more than 90 days in paying a monetary obligation may be imposed by the Board at a properly noticed Board meeting. Fines and/or suspensions of use rights for violations of the governing documents still require a hearing before a fining/suspension committee.

## **AMENDMENTS TO CHAPTER 720 – HOMEOWNERS ASSOCIATIONS**

### **Board Meetings; § 720.303(2)**

Members of homeowners associations now have the right to speak at Board meetings on all agenda items, not just those placed on the agenda by a petition of the members.

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

The statute has been amended to expressly allow members to consent in writing to the disclosure of personal information otherwise protected from

disclosure under the statute, i.e. social security numbers, drivers license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, any addresses of a unit owner other than as provided to fulfill the association's notice requirements. This will allow associations to continue the practice of publishing member directories, but only to the extent that the members actually expressly consent in writing to their personal information being included in these directories.

The homeowners association statute also added protection similar to that found in the condominium statute which provides that the association is not liable for inadvertent disclosure of protected information. But what happens when a member who consented in writing to their personal information being included or disseminated later revokes their consent? This still remains an unanswered question.

Finally, the statute was amended to provide that "written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association" are not considered "personnel records" which can be withheld from a member who requests to inspect or copy such record. This information is open for inspection and must be provided upon request.\

### **Fines and Suspensions; § 720.305**

This statute has been substantially amended to clarify some of the confusion created by last year's amendments.

Section 720.305 now clearly allows homeowners associations to suspend the voting rights and common area use rights of an owner's and his tenants, guests and invitees for violations of the associations' governing documents, and also where the owner is more than 90 days delinquent in the payment of a monetary obligation to the Association, in which case a hearing is no longer required.

The amendments also clarify that where a member's voting rights have been suspended for non-payment of assessments or other monetary obligations, that voting interest cannot be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve any action of the Association. In other words, the suspension effectively decreases the total number of voting interests in the Association in an amount equal to that member's voting interest. For example, in the case where each lot has 1 voting interest, if there were 50 lots in the community, the total voting interests to be considered for all matters would be reduced to 49 if the voting rights of the owner of one lot were suspended.

Fines or suspensions of common area use rights for failure to comply with the Association's governing documents still require a hearing before a fining/suspension committee with 14 days notice. Whereas, suspension of common area use rights and voting rights for a member's failure to pay a monetary obligation for more than 90 days can be imposed by the Board alone, but only after a properly noticed Board meeting.

#### **Elections and Board Vacancies; §720.306**

Under a new addition to Section 720.306, the statute now provides that a person who is more than ninety (90) days delinquent in the payment of any fee, fine or other monetary obligation to the Association is not eligible for Board membership, nor is any person who has been convicted of any felony unless the person's civil rights have been restored for at least five (5) years as of the date on which such person seeks election to the Board. This is different from the condominium statute, where a member who is even one day delinquent is ineligible to run for the Board, and where the statute expressly states that an existing Board member who becomes more than ninety (90) days delinquent is deemed to have abandoned office. However, it seems that Section 720.306 applies both to candidates running for the Board, as well as

existing Board members. If a candidate for the Board is more than ninety (90) days delinquent, at the time of nomination or at the time of the election, that person's name need not be placed on the ballot. Further, if a Board member becomes more than ninety (90) days delinquent, that Board member is no longer eligible to continue to serve on the Board and may be replaced by a new director appointed by the remainder of the Board.

It should also be noted that Section 720.306 states that the validity of any action by the Board is not affected if it is later determined that a member of the Board is ineligible for Board membership.

#### **Liability for Assessments; §720.3085**

As was the amendment to Section 718, discussed above, one notable and potentially troublesome amendment under House Bill 1195 is the amendment to Section 720.3085, which provides: "an association, or its successor or assignee, that acquires title to a parcel through foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association...which holds a superior lien interest on the unit." Therefore, if a homeowners association forecloses its own claim of lien for assessments and takes title to a property, it may argue that it is not liable for unpaid assessments due and owing to a master association to which the property is also subject. However, the statute only provides that this applies to "any other association...which holds a superior lien interest on the unit."

#### **Collection of Rent; § 720.3085**

As under the condominium statute, as amended, this law has been significantly revised, and now clearly allows a homeowners association to make demand and collect the full rent from a tenant when an owner is delinquent in the payment of assessments and has leased the property. The statute also clearly provides that those rental

payments may continue to be collected until such time as the monetary obligations of the owner related to the property have been paid in full to the association. Thankfully, the statute also removes the previous vague language which only allowed the Association to demand “future monetary obligations.”

**Agreements Entered by Association; § 720.309**

This is an addition to the statute that relates to communication service contracts, including bulk internet contracts. Essentially the statute provides that if the Declaration authorizes the Board to enter such contracts and allocate the cost as a common expense, the Association may do so regardless as to how assessments are allocated (i.e. equal or unequal sharing of common expenses). However, if the Declaration is silent, the Board may still enter the contract, but the fee must be allocated on a per-parcel basis rather than a percentage basis. Furthermore, the contract may be canceled by a majority vote of those members present at the next regular or special meeting of the Association.

It is important to note that if an Association has already entered a bulk communications contract prior to July 1, 2011, in which the cost of service is not divided equally among all parcels, such may be changed by a majority of the voting interests present at the next regular or special meeting of the association in order to allocate the cost equally among all parcels.

**AMENDMENTS TO SECTION 633.0215**  
**– FL FIRE PREVENTION CODE**

Section 633.0215 has been amended to exempt condominiums, cooperatives and other multifamily residential buildings of less than four (4) stories, which have an exterior corridor providing a means of egress, from the requirement of installing a manual fire alarm system. Previously, the statute only exempted condominium of one or two stories.

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