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**NEWSLETTER**

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**SPECIAL ALERT:**

**AMENDMENTS TO HOA RULES AND REGULATIONS  
NOW NEED TO BE RECORDED**

**BY: CHRISTOPHER J. SHIELDS, ESQ.**

A recent amendment due to take effect on July 1, 2018, to Chapter 720, Florida's Homeowners' Association Act will now require amendments to rules and regulations made on or after July 1, 2018 to be recorded in the County's Public Records in order to be considered legally effective.

F.S. 720.306(1) has been amended by adding a new subsection (e) to that section which states that "an amendment to any governing document is effective when recorded in the public records of the county in which the community is located." Previously, in 2015, the Florida Legislature amended F.S. 720.301(8) to include rules and regulations within the definition of what is considered to be a "governing document".

Interestingly enough, the new statute only applies to amendments to a governing document. Stated literally, the statute, as amended, does not expressly require any previously enacted rules and regulations to be recorded to be considered legally effective. In fact, for a variety of good and valid reasons, many HOAs choose not to record their rules and regulations or any subsequent amendments made to these rules and regulations. After all, rules and regulations are typically adopted by the Board alone and without a vote of the owners and rules and regulations are generally intended to merely supplement provisions of the HOA's Declaration of Covenants and Restrictions. On the other hand, recording rules and regulations does provide constructive notice to all current and all future prospective owners of the community's rules and regulations.

So while the new law will not specifically require HOAs to record their previously enacted rules and regulations, after July 1, 2018 any amendment to any HOA's rules and regulations, even those amendments to any previously unrecorded set of rules and regulations, must be recorded to be considered legally effective. This will lead to bizarre results where previously enacted rules and regulations need not be recorded, but amendments made after July 1, 2018 will now need to be recorded. This is a nuance and a legal distinction that may not be understood or appreciated by everyone. As such, many HOAs may find it otherwise prudent to now simply record any previously unrecorded rules and regulations as well as any post July 1, 2018 amendments to their rules and regulations simply to avoid confusion but more importantly, to circumvent giving rule violators the opportunity to contest the association's enforcement actions simply by arguing that all rules and regulations are not legally effective unless recorded. So now, until and unless the Florida Legislature addresses and removes this glitch in 2019, HOAs should at least consider recording even those rules and regulations which were adopted prior to July 1, 2018.

Please note this discussion only applies to amendments to Homeowner Association rules and regulations. The new law does not have any effect on nor does it pertain to amendments made to any Condominium's or Cooperative's rules and regulations. In fact, the Florida Condominium Act does not require and has never required rule amendments to be recorded.

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