

SUMMARY OF
2015 LEGISLATIVE ENACTMENTS
SIGNIFICANTLY AFFECTING
FLORIDA COMMUNITY ASSOCIATIONS

House Bill 791, which directly impacts the operation of community associations operating in the State of Florida, was signed into law by the governor on June 2, 2015, and became law on July 1, 2015. For ease of review, changes are summarized below in groups designated by the types of associations affected by each change. Please recall that statutes referring to a section in Chapter 617 of the Florida Statutes affect all not for profit corporations; statutes referring to a section in Chapter 718 affect condominium associations; statutes referring to a section in Chapter 719 affect cooperative associations, and statutes referring to a section in 720 affect homeowners associations.

House Bills 643 and 779 also became law on July 1, 2015. Although the majority of the changes made by these bills are beyond the scope of this summary, the provisions worth noting for community associations are summarized on page 4.

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HOUSE BILL 791

CONDOMINIUMS, COOPERATIVES, AND HOMEOWNERS' ASSOCIATIONS

- ◆ Voting by Members. §617.0721(2). This amendment provides that members of a not for profit corporation (which would include members of an Association) are permitted to vote by providing a copy, facsimile transmission, or other reliable reproduction of the original proxy for any purpose which the original proxy may have been used, so long as the reproduction is a complete reproduction of the original proxy in its entirety.
- ◆ Electronic Notice. §718.112(2)(d)(6); §719.106(1)(d); §720.303(2)(c)(1). This amendment provides that notice of board, membership, and committee meetings (with some exceptions such as recall) may be given by electronic transmission to unit owners who consent to receive such notice, regardless of whether the association's bylaws expressly permit electronic notice.
- ◆ Electronic Voting. §718.128; §719.129; §720.317. These are an entirely new sections that permit associations to conduct electronic elections and other unit owner voting through an online voting system, provided the unit owner consents in writing and the process satisfies a number of additional requirements which are listed in each of the cited statutes.
- ◆ Fines and Suspensions. §718.303; §719.303(3)(b); §720.305(2)(b). These amendments clarify that fines and suspensions are to be levied *by the Board of Directors*. The role of the fining/suspension committee is limited to confirming or rejecting the fine or suspension.

CONDOMINIUMS AND HOMEOWNERS' ASSOCIATIONS

- ◆ Voting Suspensions. §718.303(5); §720.305(4). This amendment clarifies that the total number of voting interests of the association are reduced by the number of suspended voting interests for the purpose of establishing a quorum, conducting an election, and for the purpose of approving any other action. [NOTE: This provision already existed with regard to cooperative associations in §719.303(5).]
- ◆ Suspensions. §718.303(7); §720.305(5). This amendment provides that the suspension of any member's use rights and/or voting rights applies to all of the member's units and all of the member's tenants, guests or invitees, notwithstanding the number of units owned, and even if the delinquency or violation arose from only one of the member's units.

CONDOMINIUMS AND COOPERATIVE ASSOCIATIONS.

- ◆ Official Records. §718.111(12)(a)(15); §719.104. This amendment modifies the catch-all provision in the statutory definition of "official records." Previously, official records were defined to include "all other records of the Association ... which are related to the operation of the association." The amended statute narrows the scope to include *only written* records. Therefore, under the new law it may be argued that security camera footage and other video recordings, as well as audio recordings, are no longer deemed to be official records which must be made available for owner inspection.

◆ Assessments. §718.116(3); 719.108. The order by which to apply payments from a unit owner for delinquent assessments remain unchanged – first to accrued interest, followed by any late fees, then attorney’s fees and costs, then towards the delinquent assessment first due. However, new language has been added through this amendment to state that the manner of application of payments applies regardless of any purported “accord and satisfaction.” This language was added to clarify existing law after a 2014 appellate court decided that the acceptance of a partial payment in a disputed matter, accompanied by an offer to settle for the tendered amount, constituted an “accord and satisfaction” preventing the association from collecting remaining amounts due.

CONDOMINIUM ASSOCIATIONS ONLY

◆ Insurance. §718.111(11)(j). This amendment is a glitch bill that clarifies existing law. The law now more clearly states that in the event of an *uninsured loss*, the repair responsibilities are as set forth in the Declaration and Bylaws. The Association remains responsible for deductible expenses and damages in excess of coverage (insurance shortfalls) under the property insurance policies maintained by the Association.

HOMEOWNERS’ ASSOCIATIONS ONLY

◆ Definitions. §720.301(8). The definition of “governing documents” has been amended to include Rules and Regulations adopted by the Association.

◆ Short Title. §720.3015. By this amendment, Chapter 720, Florida Statutes is now known as the “Homeowners’ Association Act.”

◆ Fines. §720.305(2). This amendment clarifies that a fine may not exceed \$100 per violation of the association’s declaration, bylaws, or rules, unless otherwise provided in the governing documents. In other words, an association can now assess a fine in an amount greater than \$100 per violation if its governing documents permit the Association to do so.

◆ Amendments. §720.306(1)(b). Although the cited provision requires notice of an approved amendment to be provided to the membership within 30 days (with O.R. Book and Page Number), the amendment to this section states that the validity and ability to enforce an amendment is not affected by an association’s failure to timely provide notice of the recording of the amendment.

◆ Director Eligibility. §720.306(9)(a) and (b). The amendment to this provision clarifies that any member who is delinquent in the payment of any fee, fine or monetary obligation as of the last date he or she could be nominated for election to the board of directors is not eligible to run for election. It further provides that a member who is 90 days delinquent in the payment of a monetary obligation is automatically deemed to have abandoned his or her seat on the board, creating a vacancy which may be filled by the remaining directors.

HOUSE BILL 643

◆ Termination of Condominium. §718.117. This amendment provides that a subsequent vote to terminate the condominium cannot take place within 18 months of a prior failed vote to terminate. In addition, when holding a vote to terminate, members whose voting interests have been suspended are nonetheless entitled to vote on termination. Finally, it provides that a termination vote may not take place within 5 years of the recording of the declaration of condominium, unless there is no objection to the termination. [NOTE: The above is a brief synopsis of the changes contained within §718.117. If your condominium association is considering termination, we advise that you review this Section in greater detail and consult legal counsel.]

◆ Alternative Dispute Resolution; Voluntary Mediation; Mandatory Nonbinding Arbitration; Legislative Findings. §718.1255. This amendment changes the definition of “dispute” to include a plan of termination pursuant to §718.117 (detailed above).

HOUSE BILL 779

◆ Rental Agreements. §83.561. This bill created a new Section §83.561 of the Florida Statutes and is applicable to both homeowners’ associations and condominium associations. Section §83.561 states that a “bona fide” tenant may remain in possession of a foreclosed property for 30 days following the delivery of a written notice of termination, which notice must substantially comply with the form cited in the statute. [NOTE: Other provisions of law, including the Federal Protection of Tenants’ Act, may require additional notice, or provide other protections in addition to the cited provision.]