

SUMMARY OF 2016 LEGISLATIVE ENACTMENTS AND OTHER CONSIDERATIONS OF NOTE AFFECTING FLORIDA COMMUNITY ASSOCIATIONS

There were a limited number of laws passed in the 2016 Legislative session which have a meaningful impact on Florida community associations. This summary is intended to highlight and provide a brief explanation of the relevant changes, which are as follows:

1. DISCHARGING A FIREARM IN PUBLIC OR ON RESIDENTIAL PROPERTY.
2. TIME PERIOD FOR REVIEW OF RENTAL APPLICATION BY A SERVICE MEMBER.
3. ELIMINATION OF ANNUAL RENEWAL APPLICATION REGARDING CONSERVATION EASEMENTS.
4. MINIMUM FIRESAFETY STANDARDS.
5. NEW PROVISIONS AFFECTING MOBILE HOME PARK LOT TENANCIES.

Although not related to the above referenced Statutes, this summary also includes the following topics, which are important for community associations to consider and understand at this time:

6. SPRINKLER RETROFITTING REQUIREMENTS.
7. ELECTRONIC VOTING REQUIREMENTS.
8. RIGHTS AND OBLIGATIONS RELATING TO THE DENIAL OF TRANSFER APPLICATIONS.
9. ASSOCIATION'S DUTY TO ADDRESS THIRD-PARTY DISCRIMINATION IN THE COMMUNITY.

We hope that the following summary will prove useful to your association when discussing current events and legal issues that are important to your community. However, it is not intended to provide legal advice. The information set forth herein is not specific to your association and, therefore, should not be relied on or acted upon without first contacting legal counsel.

We will continue to keep our clients apprised of changes in the law which affect community associations through regular updates to our website, www.rabinparker.com, and through our quarterly newsletter. If you would like to subscribe to our newsletter, please send us an email requesting same to admin@rabinparker.com.

1. DISCHARGING A FIREARM IN PUBLIC OR ON RESIDENTIAL PROPERTY [SECTION 790.15 OF THE FLORIDA STATUTES]. Applicable to all Florida communities, this new law makes it a first degree misdemeanor to discharge a firearm outdoors in a residential area.

2. TIME PERIOD FOR REVIEW OF RENTAL APPLICATION BY A SERVICE MEMBER [SECTION 83.683 OF THE FLORIDA STATUTES]. Applicable to condominiums, cooperatives, and homeowners associations, this new law states that a community association must approve or deny a prospective tenant's lease application within seven (7) days of submission if the prospective tenant is a service member. If the lease application is denied, the association must provide written notice of the denial and said notice must provide the reason(s) for denial. If a decision is not rendered within seven (7) days of the date of the submission of the lease application, the lease is deemed approved.

3. ELIMINATION OF ANNUAL RENEWAL APPLICATION REGARDING CONSERVATION EASEMENTS [SECTION 196.011 (6)(B) OF THE FLORIDA STATUTES]. Applicable to condominiums, cooperatives, homeowners associations, and mobile/manufactured home communities, this new law eliminates the annual renewal requirement for conservation easements previously set forth in Section 196.26 of the Florida Statutes. Under the revised Statute, property owners are not required to file a renewal application for a conservation easement until or unless the use of the property is no longer consistent with the requirements or restrictions of the easement.

4. MINIMUM FIRESAFETY STANDARDS [SECTION 633.208 OF THE FLORIDA STATUTES]. Of particular importance to condominium and cooperative communities, but may also affect homeowners associations and mobile/manufactured home communities, this law expands Section 633.208(5) of the Florida Statutes, which generally authorizes fire officials to apply applicable fire safety codes (or a reasonable alternative) to existing buildings if a threat to life or property exists. The Statute has been expanded to state that a fire official may refer to NFPA 101A, Guide to Alternative Solutions to Life Safety, in order to identify low-cost reasonable alternatives to applicable life safety code requirements.

5. NEW PROVISIONS AFFECTING MOBILE HOME PARK LOT TENANCIES [CHAPTER 723 OF THE FLORIDA STATUTES]. Applicable only to mobile/manufactured home communities, this new law includes several provisions, which are as follows:

5.1 Dispute Resolution. The Division of Florida Condominiums, Timeshares, and Mobile Homes is required to provide regular status updates in connection with complaints filed with the Division.

5.2 Mandatory Training for Directors. Board members must complete certain training requirements relevant to their duties as directors of an association (the training requirements will be published on or before October 31, 2016). In lieu of attending training, a board

member may execute a form indicating that he or she has read the association's governing documents.

5.3 Notice of Rent Increase. A park owner must provide ninety (90) days' notice prior to a lot rental increase.

5.4 Non-ad Valorem Assessments. A mobile home park owner is now permitted to pass on non-ad valorem assessments (in addition to ad valorem property taxes and utility charges) subject to certain notice requirements.

5.5 Membership Representation. A homeowners association formed in compliance with Chapter 723 of the Florida Statutes is permitted to act on behalf of all mobile home owners, regardless of whether the owner is a member of the association.

6. SPRINKLER RETROFITTING REQUIREMENTS. The deadline for condominium and cooperative associations to opt out of the sprinkler retrofitting requirement is **December 31, 2016**. Given the impending deadline and the significant expense associated with installing an automatic sprinkler system, it is critically important that your association promptly ascertain whether it is required to retrofit its building(s) with an automatic sprinkler system and, if so, decide whether an opt out vote is desired. If an opt out vote is desired, you should contact legal counsel to obtain the requisite documents needed to properly conduct a vote of the membership to opt out of the requirement prior to the deadline noted above. If you have questions regarding your specific association's fire safety obligations, please contact your legal counsel.

7. ELECTRONIC VOTING REQUIREMENTS. In 2015, new laws went into effect authorizing community associations to establish electronic voting procedures. In order to institute electronic voting procedures, your association's board of directors must adopt a resolution to that effect. The resolution must be adopted at a duly called meeting, and the members must be provided at least fourteen (14) days advanced notice of the meeting. Pursuant to Florida Statutes, an association is only permitted to engage in electronic voting where: 1) the association has obtained the owner's written consent to online voting, 2) the association has developed a method by which to authenticate the identity of the voting party, 3) the association has developed a method by which to ensure the secrecy and overall integrity of each ballot cast, and 4) the association tests the voting system at least fourteen (14) days prior to a vote in order to ensure that the system is functioning properly. In addition, the actual voting software or program utilized by the association must be equipped to 1) authenticate the owner casting the vote, 2) ensure that the transmission process is secure and functional, 3) ensure that the anonymity of the voter remains intact (for votes cast in connection with an election), and 4) store the votes for future inspection.

8. RIGHTS AND OBLIGATIONS RELATING TO THE DENIAL OF TRANSFER APPLICATIONS. Pursuant to the Supreme Court's decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. (June 25, 2015), an association's right to

deny a transfer/lease application based on a prospective purchaser's criminal record requires a case-by-case analysis of the criminal charge(s) at issue. Before reviewing the criminal charges at issue, however, your association should take care to ensure that its governing documents permit the board of directors to deny an application, and, if so, under what circumstances. Assuming your association's governing documents are reasonably explicit in that regard, the next step in the process is to conduct a meaningful review of the criminal charge(s) at issue; more specifically, to review the nature of the charges in an effort to determine whether they indicate that the applicant may constitute a threat to the health, safety, or welfare of the other residents in the community. If the board, acting in good faith, finds that an individual's criminal history is such that the individual may pose a risk to the community, the board likely has sufficient cause to deny the application. That being said, these cases are often fraught with potential liability and the Association should take great care not to run afoul of federal and state fair housing guidelines. Given the liability associated with such matters, it is our recommendation that your association seek the advice of legal counsel before denying any transfer/lease applications. It is also our recommendation that every association which has such authority, obtain and maintain a policy of insurance which expressly protects the Association and its directors from claims of discrimination.

9. ASSOCIATION'S DUTY TO ADDRESS THIRD-PARTY DISCRIMINATION IN THE COMMUNITY. The U.S. Department of Housing and Urban Development (HUD) has instituted new regulations concerning a community association's obligation to prohibit discriminatory behavior amongst and between third-party residents. Under the new rule, which goes into effect on October 14, 2016, associations may be found liable for the discriminatory conduct of third-parties residing in the community if the association knew of the discrimination (or should have known of the discrimination) and failed to take reasonable action to curtail the discriminatory behavior. In other words, associations may be found liable for failure to take action where a resident harasses another resident or otherwise creates a hostile environment for another resident based on the latter individual's race, color, religion, sex, national origin, disability, or familial status. The final language of this new regulation has not yet been published; however, HUD has advised that the rule will 1) clarify what action gives rise to housing discrimination such that association involvement is required, and 2) clarify the scope of involvement required of an association.

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