

**SUMMARY OF
2014 LEGISLATIVE ENACTMENTS
SIGNIFICANTLY AFFECTING
FLORIDA COMMUNITY ASSOCIATIONS**

There were a number of bills passed in the 2014 Legislative session which may have some impact on Florida community associations. This legislative update, however, only relates to those bills which most directly impact association operations.

The three bills most directly impacting associations are House Bill 807 (dealing with a wide range of issues), House Bill 7037 (which deals with community association management and collection issues), and Senate Bill 440 (addressing non-residential condominiums). All three of these bills were signed into law by the Governor on June 13, 2014, and became law July 1, 2014.

For ease of review, changes are summarized in the order stated in the Bills. Please recall that statutes referring to a section (abbreviated with the symbol § which stands for “section”) in Chapter 718 of the Florida Statutes affect condominium associations; statutes referring to a Section in Chapter 719 affect cooperative associations; and statutes referring to a Section in Chapter 720 affect homeowners’ associations.

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HOUSE BILL 807 “RESIDENTIAL PROPERTIES”

House Bill 807 will affect all three types of Florida community associations. This was the bill which became the platform for amendments on various subjects relating to community association operations. The provisions affecting each type of community association are summarized below.

Time Share Associations

Licensing and Regulation as a Public Lodging Establishment. There are a number of amendments contained in the bill as they relate to timeshares and public lodging establishments under Chapter 509 of the Florida Statutes. Detailed analysis is beyond the scope of this summary.

Condominium Associations

Abandoned units. §718.111(5)(b)1. This amendment provides that a condominium association’s right of access, at the sole discretion of the board, now includes a right of entry into an abandoned unit and adjacent common elements for inspection and repair purposes, including mold assessment, and abatement if mold is present. Included in the amendment is language which entitles the association to rely upon a *presumption of abandonment* where:

- The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or
- Where no tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owners or determine the whereabouts of the owner after reasonable inquiry.

The amendment further provides, that except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association’s intent to enter the unit has been mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission.

The association is now also permitted to charge access-related expenses to a unit as an assessment, further giving the association the ability to petition the court to appoint a receiver to lease out an abandoned unit for the benefit of the association and its members.

Insurance. §718.111(11)(j). A condominium association’s duty to repair pursuant to this section is currently triggered by the occurrence of an insurable event which causes damage to condominium property that the association is required to insure. Wording has been added to clarify that if damage is caused by something other than an insurable event then the duty to

repair or reconstruct is dictated by the Declaration or Bylaws. It should be noted that if an association votes to “opt out” of this section then the governing documents would also dictate the responsibility for the repair or reconstruction of property not covered by insurance, in connection with an insurable event resulting in damage.

Records. §718.111(12)(c) All telephone numbers of a member are exempt from records inspection; however, a member may consent in writing to disclose this contact information. Also, subsection (12)(f) now provides that an outgoing board or committee member must return all association records and property to the incoming board within five days after an election. A civil penalty may be imposed if the records are willfully and knowingly withheld.

Meetings. §718.112(2). Directors and committee members may participate at meetings, including voting, via “real-time” electronic or video communication devices. Email communications between board and committee members are stated to be permitted as a means of communications, but may not be utilized for voting. Also, within 60 days after receipt of a petition from the membership seeking to place an issue on a directors’ meeting agenda, the directors shall place the issue on the agenda of its next regular board meeting, or call a special meeting,

Assessments. §718.116(1)(a). Addressing a court decision which limited the ability of associations to collect delinquent assessments from subsequent purchasers when the condominium association had acquired title through foreclosure or a deed in lieu of foreclosure, the new legislation states that the term “previous owner” does not include such associations. The delinquent assessment liability of an owner who acquires a unit after an association acquired title to that same unit through foreclosure or deed in lieu of foreclosure will now only exclude the amounts which came due while the association held title.

Termination §718.117(9). If a proposed termination plan is not approved by the members, then a 180 day waiting period is required before a new attempt to terminate the condominium can be made.

Living Study Council. §718.50151. This section, which created the Condominium Association Living Study Council, was repealed and that entity no longer exists.

Bulk Sales. §718.707. The time limitation for acquisition of parcels as a bulk assignor or as a bulk buyer is extended for an additional year to July 1, 2016. This provides protection for investors and entities acquiring units in these types of transactions.

Cooperative Associations

Records. §719.104(2)(c). All telephone numbers of a member are exempt from records inspection; however, a member may consent in writing to disclose this information. Also, subsection (2)(e) now provides that an outgoing board or committee member must return all association records and property to the incoming board within five days after an election. A civil penalty may be imposed if the records are willfully and knowingly withheld.

Financial Reporting. §719.104(4). Within 90 days after the end of the fiscal year, a cooperative association shall contract for completing the association's annual financial report, and within 21 days after receipt, but no later than 120 days after the fiscal year, provide each member with a copy of the report or a notice that the report is available without charge. These requirements, and the revenue dollar thresholds set forth below which have now been increased, all mirror the statutes relating to condominiums. Associations with annual revenues exceeding the following amounts are required to produce the following types of financial reports, subject to the exceptions noted below:

Audited financial statements, revenues over \$500,000;
Reviewed financial statements, revenues from \$300,000 to \$499,999;
Compiled financial statements, revenues from \$150,000 to \$299,999;

Otherwise, for associations with revenues of less than \$150,000, or less than fifty units regardless of revenues, only a report showing cash receipts and expenditures is necessary.

The association's membership can also vote to waive the statutory financial reporting requirements and produce a less costly and detailed report, by a vote of a majority of a quorum of the members at a meeting voting in person or by proxy. Conversely, wording has been added to permit twenty percent of the unit owners to petition for a greater level of financial reporting, which triggers a membership meeting at which members can vote to require the greater level of reporting.

Directors. §719.106(1)(a). Again to bring the cooperative statutes in harmony with those relating to condominiums, this section was amended to add several provisions relating to ineligibility of persons to serve as directors. A person suspended or removed by the Division pursuant to the Cooperative Act, or someone who is delinquent in payment of any monetary obligation due to the association, is not eligible to be a candidate for director and may not be listed on an election ballot. A person convicted of a felony (in most jurisdictions in the country) is not eligible for to be a director unless the felon's civil rights have been restored for at least five years. A director or officer charged with felony theft or embezzlement involving association funds or property is automatically suspended from office.

Emergency Powers. §719.128. This is another section of the Condominium Act which has been incorporated into the statutes governing cooperatives. If a state of emergency is declared by the Governor under section 252.36 of the Florida Statutes, then, limited to the time necessary to protect the health safety and welfare of the association, the board members, and other persons acting on behalf of the association, are empowered to make many procedural and other decisions relating to such issues as meeting notice requirements, designating an executive officer, determining property unavailable for entry or occupancy, taking action to mitigate damages, contracting for repairs on behalf of owners, levying special assessments, and borrowing funds. The powers set forth in this statute can be modified or limited in the governing documents of the association, and it would be advisable for boards to review the statute and consider whether any modifications are desired.

Homeowners Associations

Meetings. §720.303(2)(a). Board meetings must be held at a location accessible to physically handicapped persons, if such an accommodation is requested by a handicapped person who has a right to attend the meetings.

Records. §720.303(c). The same change which was made for condominiums and cooperatives was made here. All telephone numbers of a member are exempt from records inspection; however, a member may consent in writing to disclose this information. An outgoing board or committee member must return all association records and property to the incoming board within five days after an election. A civil penalty may be imposed if the records are willfully and knowingly withheld.

Members' Meetings. §720.306(1)(a). Members' meetings must be held at a location accessible to physically handicapped persons, if such an accommodation is requested by a physically handicapped person who has a right to attend the meetings.

Amendments. §720.306(1)(b). The current statutes require that a copy of recorded amendments be provided to members within 30 days from the time of recording. This amendment states that if all members were provided with a copy of the proposed amendments prior to adoption, and the amendments were adopted as proposed, then in lieu of providing the text of an approved amendment to members, a notice may be provided to the members with the amendment's recording information and a statement that the amendment is available to members upon request at no charge, including electronically where applicable.

Emergency Powers. §720.316. The same changes which were made to the cooperative statutes were made here, so all three types of common interest communities are moving toward some degree of uniformity. If a state of emergency is declared by the Governor under section 252.36 of the Florida Statutes, then, limited to the time necessary to protect the health safety and welfare of the association, the board members, and other persons acting on behalf of the association, are empowered to make many procedural and other decisions relating to such issues as meeting notice requirements, designating an executive officer, determining property unavailable for entry or occupancy, taking action to mitigate damages, contracting for repairs on behalf of owners, levying special assessments, and borrowing funds. The powers set forth in this statute can be modified or limited in the governing documents of the association, and it would be advisable for boards to review the statute and consider whether any modifications are desired.

MRTA. §712.05(1). The Marketable Record Title Act is clarified to provide that after the board of directors adopts a Notice preserving the covenants and restrictions for an additional 30 years, and records this in the public records as required, it is not necessary to also publish the Notice in a newspaper of general circulation. This clarification will save time and money for those associations needing to take action to preserve their restrictions.

SENATE BILL 440 “NON-RESIDENTIAL CONDOMINIUMS”

This Bill limits certain portions of the Condominium Act to residential condominiums. Commercial condominiums, office condominiums, marinas, land condominiums and other types of non-residential condominiums are now exempt from certain regulations which otherwise apply to “residential” condominiums.

These include:

Non-residential condominium associations will be exempt from the duty to respond to written inquiries from unit owners;

The prohibition on utilizing general proxies will not apply to non-residential condominium associations;

Director eligibility requirements will differ from residential condominiums;

The detailed election procedures mandated for residential condominiums will not be applicable;

Sprinkler retrofitting requirements will not apply to non-residential condominiums;

Hurricane shutter and other statutory hurricane protection provisions will not apply to non-residential condominiums; and

Mandatory statutory non-binding arbitration of certain disputes between owners and associations is not applicable to non-residential condominiums.

HOUSE BILL 7037 “RESIDENTIAL COMMUNITIES” (COMMUNITY ASSOCIATION MANAGEMENT, AND COLLECTION ISSUES)

This bill is a product of the continuing debate as to what tasks community association managers can undertake on behalf of associations without crossing the lines which have been very narrowly drawn by the Florida Supreme Court with regard to certain types of activities performed by managers and management companies which constitute the unauthorized practice of law. The Florida Supreme Court is currently reviewing this issue again, and it is the Supreme Court, not the Legislature, which retains the ultimate authority to determine whether managers can legally perform the activities which have been challenged. While we wait for a ruling by the Florida Supreme Court on this issue, the Legislature has now added certain tasks and activities to the definition of “community association management” by this new legislation, which must be performed by a licensed manager or management company.

Community Association Management. §468.431(2). Expands the definition of “community association management”, and thereby the authority of community association managers, to undertake a broad range of activities and tasks, some of which have previously been determined to involve the practice of law. The activities and tasks added to the definition include: determining the number of days required for statutory notices; determining and collecting amounts due to the association; calculating the number of votes required for certain actions to be taken by the association; completing forms; drafting meeting notices and agendas; calculating, preparing, and responding to certificates of assessment and estoppel certificates; negotiation monetary and other terms of contracts; drafting prearbitration demand letters and notices; and complying with and interpreting the association’s governing documents in connection with the tasks and activities to be performed.

Manager Liability and Practice Standards. §468.4334(1). Managers are required to discharge their duties loyally, skillfully, diligently, dealing honestly and fairly, in good faith, with full disclosure to the community association, accounting for all funds and not charging unreasonable and excessive fees. 468.4334(2): Management contracts with associations may provide that associations hold harmless and indemnify the managers from negligence and any other types of claims except for matters that involve criminal law violations, improper personal benefits, gross negligence or recklessness, actions taken in bad faith or with malicious purpose, or actions exhibiting wanton and willful disregard of human rights, safety or property. It should be noted that in the past most management contracts only contained exclusions for gross negligence and willful misconduct, so the new legislation provides some additional protection for associations.

Condominium Association Assessments. §718.116(5)(d). A condominium association release of lien form is adopted which includes a witness requirement. A form for a notice of intent to foreclose is provided in 718.116(6)(b). In what, in our opinion, appears to have been a legislative oversight, existing subsections 6(c) and 6(d) were omitted from the statute. These subsections contained the authority for a condominium association to purchase a condominium parcel at the foreclosure sale and subsequently deal with the unit, as well as the authority to collect rent during the pendency of a suit from the occupant of the unit.

Condominium Liens. §718.121(4). A condominium association notice of intent of lien form is created.

Cooperative Association Assessments. §719.108(4). Substantial changes to this statute have been made, since the cooperative statutes were missing some of the provisions found in Chapter 718 and otherwise were incomplete in the treatment of assessment collections. First, wording has been deleted which previously required a lien to be filed within one year after an assessment came due. Next, a cooperative association notice of intent to lien form is adopted in subsection (4)(a). In subsection (4)(b), the one-year period for bringing an action to foreclose on a claim of lien is made consistent with condominium law, and wording has also been added to clarify that the lien secures all amounts coming due after the lien is recorded through the date of a final judgment. A form for a notice of contest of lien has been added to subsection (4)(c), and a form for a release of lien has been added to (4)(d).

Homeowners' Association Assessments, 720.3085. Required language for a release of lien has been added to subsection (1)(d); required language for a notice of intent to lien has been added to (4)(a), and required language for a notice of intent to foreclose has been added to subsection (5).

We will continue to keep our clients abreast of changes in the law which affect associations by providing a supplemental legislative update or by including reference to such changes on our website.