

Chapter 718, FS (Condominium Association) 2010 Legislative Update

All changes/amendments effective July 1, 2010

1. **Elevators:** §399.02 (Phase II Firefighters' Service); §553.509(2) (Alternative Power Source)
 - a. Allows for a 5 years delay to retrofit existing elevators with a special access key (in condominiums and cooperatives) unless the elevator is replaced or requires major modification.
 - b. An Association is not obligated to retrofit, and may forego retrofitting, any improvements required by Section 559.509(2), Florida Statutes (Alternative power source for elevators) upon an affirmative vote of a majority of the voting interests of the Association.

2. **Rental/Leasing Restrictions:** §718.110(13)

Any amendment prohibiting unit owners from renting their units or altering the duration of rental terms or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their unit after the effective date of the amendment.

3. **Designation of Limited Common Elements by Amendment:** §718.110(14)

An Association may reclassify common elements serving one unit or a group of units as limited common elements by amendment to the Declaration (with required vote of owners).

4. **Insurance:** §627.714 and §718.111(11)
 - a. All HO-6 policies issued or renewed after July 1, 2010 must include at least \$2,000 in property loss assessment coverage with a deductible of not more than \$250 per property loss.
 - b. The master insurance policy must be based on the 'replacement cost' of the property to be insured, which must be determined at least once every 36 months.
 - c. Removes the 'informational requirements' to be included in a Notice of a Board meeting at which deductibles for insurance will be established. **NOTE:** 14 days notice requirement pursuant to Section 718.112(2)(3) remains.
 - d. Removes language regarding insurance of 'improvements' that benefit fewer than all the owners.
 - e. Removes the requirement that owners must provide proof of hazard and liability insurance to the Association, and removes the Association's right to 'force place' insurance.
 - f. Removes the requirement that the Association must be an additional named insured and loss payee on all HO-6 casualty insurance policies issued to unit owners.

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5. **Fire Alarm Systems:** §633.0215

Manual fire alarm systems are not required for condominium buildings less than four stories with exterior means of egress and exterior corridors.

6. **Official Records:** §718.111(12)

- a. Any person (*i.e.*, directors, CAMS) who knowingly or intentionally fail to create or maintain or destroy Official Records with the intent to harm the Association or one or more of its members are personally subject to civil penalties.
- b. The Association is not responsible or liable for any owner's use or misuse of Official Records unless the Association has an affirmative duty not to disclose.
- c. Personnel records of Association's employees (*i.e.*, disciplinary, payroll, health and insurance records) are exempt from unit owner access.
- d. Email addresses, telephone numbers, emergency contact information and any address(es) of a unit owner other than as provided to fulfill the Association's notice requirement are exempt from unit owner access.
- e. All electronic security measures that are used by the Association to safeguard data, including passwords, are exempt from unit owner access.
- f. All software and operating systems used by the Association which allows for manipulation of data, even if the owner owns a copy of the same software, are exempt from unit owner access. However, all data is part of the Official Records of the Association.

7. **Financial Reporting Requirements:** §718.111(13)

- a. Associations that operate fewer than 75 units, regardless of the Association's annual revenues, shall prepare a report of cash receipts and expenditures instead of financial statements. **NOTE:** previously applicable to Associations that operate fewer than 50 units.
- b. The Division of Florida Condominiums, Timeshares, and Mobile Homes must adopt rules setting forth standards for presenting a summary of Association's reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the Association to fully fund reserves for each reserve item based on the straight line accounting method. This disclosure is not applicable to reserves funded under the pooling method.

8. **Board Eligibility:** §718.112(2)(d)

- a. If the number of board members whose terms have expired exceeds the number of eligible members showing interest in or demonstrating an intention to run for the vacant positions, then each board

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member whose term has expired is eligible for reappointment. **NOTE:** eliminates the “automatic appointment.”

- b. Co-owners in condominiums with more than 10 units cannot serve as members of the Board at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.
 - c. Creates a requirement that new directors, within 90 days of election or appointment, shall certify to the Association in writing that he or she has read the governing documents of the Association, he or she will work to uphold such governing documents to the best of his or her ability and he or she will faithfully discharge his or her fiduciary responsibilities to the Association’s members. In lieu of the written certification, the newly elected or appointed director can submit a certification of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. If a director fails to timely file the certification or the educational certificate with the Association, he or she is suspended from the Board until such time as he or she complies.
9. **Fire Sprinkler Retrofit** §718.112(2)(l)
- a. Once every 3 years at a special meeting of the unit owners, an Association can ‘opt-out’ of the fire sprinkler retrofit requirement with the affirmative vote of a majority of the entire membership.
 - b. Extends the deadline to complete the fire sprinkler retrofit for Associations that do not ‘opt out’ to December 31, 2019.
10. **Director or Officer Delinquency:** §718.112(2)(n)
- A director or officer more than 90 days delinquent in the payment of any monetary obligation due the Association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.
11. **Common Expenses / Bulk Communication Services:** §718.115(1)(d)
- a. The cost of communications services, information services and internet services obtained pursuant to a bulk contract is a common expenses.
 - b. The Board of Directors (without owner approval) may enter into contracts for ‘communication services’ which includes high speed internet and telephone services.
 - c. Any bulk rate contract executed by the Board of Directors must be for at least 2 years.
12. **Collections and Foreclosures:** §718.116
- a. Increases the first mortgagee liability cap to the lesser of 12 months of unpaid common expenses and regular periodic assessments or 1% of the original mortgage debt.

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- b. If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the Association, the Association may demand that the tenant pay to the Association the future monetary obligations related to the unit. The demand to the tenant must be in writing and the Association must mail a copy of the demand to the tenant and to the unit owner.
 - c. The demand by the Association is continuing in nature, and upon demand, the tenant must continue to pay the monetary obligations until the Association releases the tenant or the tenant discontinues tenancy in the unit.
 - d. A tenant who acts in good faith in response to a written demand from an Association is immune from any claim from the unit owner.
 - e. If the tenant prepaid rent to the unit owner before receiving the demand from the Association and provides written evidence of paying the rent to the Association within 14 days after receiving the demand, the tenant shall receive a credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the Association to be credited against the monetary obligations of the unit owner to the Association. The Association shall, upon request, provide the tenant with written receipts for payments made.
 - f. The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increases at least 10 days before the date on which the rent is due.
 - g. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due in the amount of monies paid to the Association.
 - h. The Association may issue notices under §83.56, FS, and may sue for eviction under §§83.59 -83.625, FS, as if the Association was the landlord if the tenant fails to pay a monetary obligation, but the Association is not considered a 'landlord' under Chapter 83, FS, for any other purpose.
 - i. The tenant, by virtue of payment of monetary obligations, does not have any rights of an unit owner to vote in any election or to examine the books and records of the Association.
 - j. A court may supersede the effect of this subsection by appointing a receiver.
13. **Suspension and Fines:** §718.303
- a. If a unit owner is delinquent for more than 90 days in paying a monetary obligation due to the Association, the Association can suspend the unit owner's right (or the right of the unit owner's occupant, licensee or invitee) to use common elements or any other common property until the monetary obligation is paid. This does not apply to limited common elements intended to be used only by that unit owner or common elements that must be used to access the unit, utility services, parking spaces or elevators.

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- b. Suspension of common elements rights must be effected at a properly noticed meeting of the Board. After the imposition of the suspension, the Association must notify the unit owner and the unit's occupants, licensees or invitees, as applicable, of the suspension by mail or personal delivery.
- c. It appears that the traditional 14 days notice and hearing do not apply to suspensions of use rights associated with failure to pay monetary obligations.
- d. The Association may also suspend voting rights of owners for non-payment of assessments (delinquent more than 90 days).

14. **Bulk Buyers:** §718.701-708

This is the "Distressed Condominium Relief Act (also known as the Bulk-Buyer Law). The Distressed Condominium Relief Act provides that "bulk buyers" and "bulk assignees" of condominium units are not liable for certain previous developer obligations, including warranties, post-transition audits, converter reserves, transfer of control, disclosures to buyers, etc. These provisions are an attempt to eliminate some of the risk associated with becoming a "successor developer" and to encourage more persons to buy outstanding condominium units in bulk.

For more information about the 2010 Legislative changes to Florida's Community Association laws, please contact:

Robert A. Cooper, Esq.
Hahn Loeser & Parks LLP
2532 East First Street
Fort Myers, Florida 33901
(239) 337-6730
racooper@hahnlaw.com
www.hahnlaw.com

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