

Chapter 720, FS (Homeowners Association) 2010 Legislative Update

All changes/amendments effective July 1, 2010

1. **Official Records Access:** §720.303(5)

- a. Requests for inspection of Official Records must be made by certified mail, return receipt requested.
- b. If records requested to be copied exceed 25 pages, then the Association's management company personnel are permitted to make copies (in addition to outside vendors) and the Association can charge the inspecting owner "reasonable costs" for personnel fees and charges at an hourly rate for vendor or employee time to cover administrative costs to the vendor or the Association.
- c. Personnel records for the Association's employees will not be subject to inspection (records include disciplinary, payroll, health and insurance).
- d. Personal identifying data of owners (*i.e.*, social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, emergency contact information, addresses for a parcel owner other than as provided for Association notice requirements and other personal identifying information of any person) will not be subject to inspection, other than the person's name, parcel designation, mailing address and property address, all of which are Official Records subject to inspection.
- e. Passwords used to safeguard data and software and/or operating systems will not be subject to inspection. However, the data is an Official Record subject to inspection.

2. **Budgets and Reserves:** §720.303(6)

- a. If the Budget does not provide for 'Statutory Reserve Accounts' (*i.e.*, reserve accounts established by the developer or created by vote of the owners), then funding of reserves is limited to the extent that the governing documents limit increases in assessments, including reserves.
- b. If the Budget does provide for 'Statutory Reserve Accounts' (*i.e.*, reserve accounts established by the developer or created by vote of the owners), then such reserves shall be determined, maintained and waived in the manner provided in Section 720.303(6), FS.
- c. A 'Statutory Reserve Accounts' (*i.e.*, reserve accounts established by the developer or created by vote of the owners) can be terminated (removed from the budget) upon approval of a majority of the total voting interests of the Association.
- d. If the Budget does not provide for 'Statutory Reserve Accounts' (*i.e.*, reserve accounts established by the developer or created by vote of the owners) and the Association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, then the financial report for the preceding fiscal year must contain the following statement in conspicuous type:

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THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

- e. If the Budget includes 'voluntary reserves' (*i.e.*, reserves not established by the developer or created by vote of the owners) for capital expenditures and deferred maintenance, then the financial report for the preceding fiscal year must contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURES ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

- f. For 'pooled' reserve accounts, the projected annual cash inflows may include estimated earnings from investments of principal and accounts receivable minus the allowance for doubtful accounts.

3. **Director Compensation:** §720.303(12)

Salary or compensation is generally prohibited for performing services as a director, officer or committee member unless:

- a. the financial benefit of a lawful board action will benefit all or a significant number of members (*i.e.*, routine maintenance, repair or replacement of community assets);
- b. the payment is reimbursement for out-of-pocket expenses in accordance with procedures established by the Association's governing documents or, in absence of such procedures, in accordance with an approval process established by the Board. **NOTE:** Associations should adopt procedures or protocols for expense reimbursement, limits and types of expenditures that will be reimbursed;
- c. the payment is for recovery of insurance proceeds;
- d. the salary or compensation is authorized by the governing documents;
- e. the fee, salary or compensation is authorized in advance by a vote of a majority of the voting interests voting in person or by proxy at a meeting of the members; and/or
- f. a developer or its representative may benefit financially from service to the Association.

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4. Fines/Suspensions of Use Rights: §720.305

- a. If a member is delinquent for more than 90 days in paying a monetary obligation due the Association, the Association may suspend, until such monetary obligation is paid, the rights of an owner or an owner's tenants, guests or invitees, or both, to use common areas and facilities, and may levy a reasonable fine of up to \$100 per violation, subject to an aggregate fine of not more than \$1,000.
- b. Fines less than \$1,000 cannot become a lien. **NOTE:** This new change does not specifically states that liens are permitted for fines exceeding \$1,000.
- c. Suspensions-of-use rights do not apply to utility services or property used to access the parcel.
- d. A hearing and at least 14 days notice is now required for suspension of use rights for the non-payment of monetary obligations.
- e. If the suspension is imposed, the Association must provide written notice of such suspension via mail or hand delivery to the owner, and if applicable, to any tenant, guest or invitee of the owner.

5. Voting for Directors by Secret Ballot: §720.306(8)

Creates 'condominium-like' double envelope procedures for voting by secret ballot by members for the election of directors if the governing documents of the Association permit voting by secret ballot by members.

6. Board Vacancies: 720.306(9)

- a. Unless otherwise provided in the bylaws, any vacancy occurring on the Board before the expiration of the term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum.
- b. Alternative – the Board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents.
- c. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled.

7. Collecting Rent from Tenants: §720.3085(8)

- a. If the parcel is occupied by a tenant and the parcel 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 parcel. 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 parcel owner.

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- b. 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 parcel.
 - c. A tenant who acts in good faith in response to a written demand from an Association is immune from any claim from the parcel owner.
 - d. If the tenant prepaid rent to the parcel 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 parcel owner owed to the Association. The Association shall, upon request, provide the tenant with written receipts for payments made.
 - e. 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. The tenant shall be given a credit against rents due to the parcel owner in the amount of assessments paid to the Association.
 - f. 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.
 - g. The tenant, by virtue of payment of monetary obligations, does not have any rights of a parcel owner to vote in any election or to examine the books and records of the Association.
 - h. A court may supersede the effect of this subsection by appointing a receiver.
8. **Acquisition of Recreational Leaseholds or Other Property/Property Use Rights:** §720.31(6)
- a. Similar to §718.114, FS (Condominium Law), this new subsection (6) allows the Association to enter into agreements to acquire leaseholds, memberships or other possessory or use rights in lands and facilities (*i.e.*, country clubs, golf courses, marinas, submerged land, parking areas and conservation areas), regardless of whether such lands or facilities are contiguous to the community.
 - b. Agreements must be fully described in the declaration of the Association. Agreements not entered into within 12 months after recording of the declaration may be entered into only if authorized by the declaration as a material alteration or substantial addition to the common areas and requires at least 75% of the members must vote in favor of the action (if the declaration is silent as to the voting requirement for material alterations or substantial additions).

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9. **Special Assessments by Developer (before Turnover):** §720.315

Pre-Turnover, a developer-controlled Association may not levy special assessments without the approval of a majority of the parcel owners other than the developer. Voting must take place at a duly-called meeting of the members at which a quorum has been attained.

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

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