

2017 FLORIDA COMMUNITY ASSOCIATION LAW UPDATE

(HOUSE BILL 1237 / COMPANION HOUSE BILL 6027)

House Bill 1237 makes significant reforms to Condominium Act (Chapter 718, Florida Statutes). House Bill 1237 is in direct response to the rise in complaints by condominium residents over corruption and criminal activity in condominiums in Florida, and, in particular, Miami-Dade County. House Bill 1237 applies only to condominium associations.

House Bill 1237 is effective on July 1, 2017, except for the provisions regarding websites, which becomes effective July 1, 2018. In addition, a companion bill (House Bill 6027) was adopted. House Bill 6027 is effective July 1, 2017. House Bill 6027 applies to condominiums (Chapter 718, Florida Statutes), homeowner associations (Chapter 720, Florida Statutes) and cooperatives (Chapter 719, Florida Statutes).

The following is a brief summary of the new laws:

HOUSE BILL 1237

Criminal Penalties

- An officer, director or manager may not solicit, offer to accept, or accept any thing, service of value, or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the condominium association. A violation of this provision could result in civil and criminal penalties.
- Forgery of a ballot envelope or voting certificate used in an election is punishable as provided in Fla. Stat. § 831.01.
- The theft or embezzlement of funds of a condominium association is punishable as a crime as provided in Fla. Stat. § 812.014.
- The destruction of or the refusal to allow inspection or copying of an official record in furtherance of any crime is punishable as tampering with physical evidence as provided in Fla. Stat. § 918.13 or as obstruction of justice as provided in Fla. Stat. § 843.
- An officer or director charged by information or indictment with a crime referenced above must be removed from office and the vacancy shall be filled as provided in Fla. Stat. § 718.112(2)(d)(2) until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.

- If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of a condominium association, except pursuant to court order.
- If the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

Official Records

- Bids for materials, equipment or services are an official record.
- The renter of a unit has the right to inspect and copy the condominium association's bylaws and rules. Renters do not have the right to inspect and/or copy any other official records.
- By **July 1, 2018**, a condominium association with 150 or more units which does not manage timeshare units shall post digital copies of some of its official records on its website. For a list of official records that must be posted to the condominium association's website refer to Fla. Stat. § 718.111(12)(g).
- To implement the website requirement, the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation ("Division") is directed to include within the next condominium association annual fee statement, a notice informing condominium associations of 150 units or more of the requirement to create a website for condominium association documents that is operational on or before July 1, 2018.

Conflicts of Interest

- An association may not hire an attorney who represents the management company of the condominium association.
- A board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the condominium association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.
- A condominium association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This does not apply if the board member or officer (or relative as described) owns less than 1% of the equity shares.

- A party contracting to provide maintenance or management services to a condominium association after transfer of control of the condominium association, which is not a timeshare condominium association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the condominium association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.
- If 50% or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to a condominium association managing a residential condominium after transfer of control of the condominium association, which is not a timeshare condominium association, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be cancelled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party.
- Directors and officers of a condominium association, that is not a timeshare condominium association, and the relatives of such directors and officers must disclose to the board any activity that may reasonably be construed to be a conflict of interest.
- A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:
 1. A director or officer or a relative, enters into a contract for goods and services with the association.
 2. A director or an officer or a relative, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the condominium association or proposes to enter into a contract or other transaction with the association.
- If a director, officer or a relative proposes to engage in an activity that is a conflict of interest, the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board of directors votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this provision, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.
- A contract entered into between a director or an officer, or a relative, and the condominium association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required, is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20% of the voting interests of the condominium association.

- For purposes of the conflict of interest provisions, the term “relative” means a relative within the third degree of consanguinity by blood or marriage.

Financial Reports

- A condominium association that operates fewer than 50 units must prepare a financial statement based on its total annual revenues (not just a report of cash receipts and expenditures).
- A unit owner may provide written notice to the Division of the condominium association’s failure to mail or hand deliver a copy of the most recent financial report within 5 business days after submission of a written request to the condominium association for a copy of such report. If the Division determines that the condominium association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the Division shall provide written notice to the condominium association that the condominium association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the Division. A condominium association that fails to comply with the Division’s request may not waive the financial reporting requirement provided in the statute. A financial report received by the Division shall be maintained, and the Division shall provide a copy of such report to a condominium association member upon his or her request.
- A condominium association shall provide an annual report to the Division containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the Division upon written request of any condominium association member.

Debit Cards

- A condominium association and its officers, directors, employees and agents may **NOT** use a debit card issued in the name of the condominium association, or billed directly to the condominium association, for the payment of any condominium association expense.
- The use of a debit card issued in the name of the condominium association, or billed directly to the condominium association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud pursuant to Fla. Stat. §817.61.

Term Limits

- A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the condominium association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

Recalls

- After an effective recall, the recalled board members shall turn over to the board within **10 full business days** after the recall vote any and all records and property of the condominium association in their possession. This is an increase from the original 5 full business days.
- The statute still requires the board of directors to hold a meeting within 5 full business days after receipt of a written recall agreement (or within 5 full business days after adjournment of a recall meeting). However, the statute no longer requires the Board to “certify” or “not certify” the recall. The board of directors are still permitted to file a petition for recall arbitration challenging the recall.

Arbitration of Disputes

- The Division may, but is not required to employ arbitrators.
- The Division may also certify attorneys who are not employed by the Division to act as arbitrators and conduct the arbitration hearings provided in Chapter 718, Florida Statutes (Condominium Act).
- A person may only be certified by the Division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar.
- Arbitrator certification is valid for 1 year.
- An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed.
- The Division may not enter into a legal services contract for an arbitration hearing under Chapter 718, Florida Statutes (Condominium Act) with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute.
- Upon determination by the Division that a dispute exists and that the petition substantially meets the requirements of the arbitration statutes, and any other applicable rules, the Division shall assign or enter into a contract with an arbitrator and serve a copy of the petition upon all respondents.
- The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

- The arbitration decision must be rendered within 30 days of the hearing.
- The arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

Suspension of Voting Rights

- Voting rights may only be suspended if the delinquent amount is more than \$1,000 **AND** more than 90 days delinquent.
- Proof of such monetary obligation must be provided to the unit owner or member 30 days before such suspension can take effect.

Court Appointed Receivers

- A court appointed receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the condominium association.

Ombudsman

The Ombudsman may review secret ballots cast at a vote of the condominium association.

HOUSE BILL 6027

House Bill 6027 is applicable to Condominiums (Fla. Stat. § 718.111), Cooperatives (Fla. Stat. § 719.104), and Homeowner Associations (Fla. Stat. § 720.303).

Financial Reports

- An association that operates fewer than 50 units (or a community of fewer than 50 units) must prepare a financial statement based on its total annual revenues (not just a report of cash receipts and expenditures).
- Deletes the provision prohibiting condominium associations and cooperative associations from waiving certain financial reporting requirements for more than 3 consecutive years. ***NOTE:** This change does not apply to homeowner associations (Chapter 720.303, Florida Statutes).

**

If you have any questions about this Article, please contact:

Robert A. Cooper, Esq.
Hahn Loeser & Parks LLP
2400 First Street
Suite 300
Fort Myers, Florida 33901
Phone: (239) 337-6730
Email: racooner@hahnlaw.com
www.hahnlaw.com

Joel W. Hyatt, Esq.
Hahn Loeser & Parks LLP
2400 First Street
Suite 300
Fort Myers, Florida 33901
Phone: (239) 337-6725
Email: jhyatt@hahnlaw.com
www.hahnlaw.com

This Article is for general information and does not include full legal analysis of the matters presented. Please refer to the House Bills 1237 and/or 6027 for the complete text of the proposed changes. The Article should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The invitation to contact the authors or attorneys in our firm is not a solicitation to provide professional services and should not be construed as a statement as to any availability to perform legal services in any jurisdiction in which such attorney is not permitted to practice.