



2018 Florida Legislative Law Update for Community Associations

By: Robert A. Cooper

The Florida Legislature approved **House Bill 841** which amends the statutes governing condominiums, cooperatives, and homeowners' associations. House Bill 841 becomes effective **July 1, 2018**.

The Florida Legislature also approved five (5) additional Bills that do not amend the community association statutes, but will nevertheless impact community associations. **House Bill 617** is effective **October 1, 2018**. **House Bills 529, 631 and 875, and Senate Bill 566** are effective **July 1, 2018**.

The following is a brief summary of the new laws:

HOUSE BILL 841

Condominium Association Official Records.

Section 718.111(12)(b), Florida Statutes, was amended to require the following documents be permanently maintained from the inception of the condominium association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).
2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to the declaration(s).
3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.
4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.
5. A copy of the current rules of the association.
6. A book (or books) that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

***Note:** All other Official Records must be retained for 7 years unless otherwise provided by general law.

Retention of Electronic Voting Records.

Electronic records related to voting are now included in the list of Official Records that must be retained by a condominium or cooperative association for 7 years. See Sections 718.111(12)(a)(12) and 719.104(2), Florida Statutes.

Condominium Association Website.

The deadline for condominium associations to post digital copies of the official records (as specified in Section 718.111(12)(g)(2), Florida Statutes) on its website has been extended from July 1, 2018 to January 1, 2019. See Section 718.111(12)(g)(1), Florida Statutes.

The Association must maintain on its website a list of all executory contracts or other documents to which the condominium is a party or under which the condominium association or the units owners have an obligation or responsibility. *See* Section 718.111(12)(g)(2)(e), Florida Statutes.

A list of bids received by the condominium association within the past year (after bidding has closed). Summaries of bids received by the condominium association (after bidding has closed) for materials, equipment or services that exceed \$500.00 must be maintained on its website for one (1) year. Complete copies of bids may be posted in lieu of summaries. *See* Section 718.111(12)(g)(2)(e), Florida Statutes.

In addition to the financial reports of the condominium association, a condominium association must post on its website any monthly income or expense statement to be considered at any meeting. *See* Section 718.111(12)(g)(2)(g), Florida Statutes.

A condominium association, or its agent, is not liable for disclosing information that is protected or restricted, unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information. *See* Section 718.111(12)(g)(3), Florida Statutes.

The failure of a condominium association to post required information on its website is not in and of itself sufficient to invalidate any action or decision of the condominium association's board or its committees. *See* Section 718.111(12)(g)(4), Florida Statutes.

Condominium and Cooperative Association Time to Respond to Request to Inspect Official Records.

Sections 718.111(12)(b) and 719.104(2)(b), Florida Statutes, were amended to require the condominium association or cooperative to make the official records available to a unit owner within 10 working days after receipt of the written request by the Board or its designee. (The Homeowners' Association Act (Chapter 720, Florida Statutes) already contains this requirement).

Condominium Association Financial Reporting.

Last year, Section 718.111(13), Florida Statutes, was amended to require a condominium association to respond to a notice from the Division of Condominiums to provide a copy of the condominium association's most recent financial report to a requesting owner within 5 business days of receipt of the notice. Failure to timely provide the report precluded the condominium association from waiving its financial reporting requirement. House Bill 841 clarified that the waiver restriction only applies to the fiscal year in which the unit owner's request was made and the following fiscal year.

Condominium, Cooperative and Homeowners' Association Meeting Notices.

Sections 718.112(2)(c)(1), 718.112(2)(d)(3), 719.106(1)(c) and 719.106(1)(d), Florida Statutes, provides that condominium and cooperative associations may adopt, by rule, a procedure for providing additional notice of Board and member meetings by conspicuously posting the meeting notice and the agenda on a website serving the condominium or cooperative for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the property. Any rule adopted must include a requirement that the condominium or cooperative association send an electronic notice in the same manner as notice for a meeting of the members, including a link to the website where the notice is posted, to owners whose e-mail addresses are included in the official records. Condominium and cooperative associations are still required to physically post meeting notices on the property.

Section 720.303(2)(c), Florida Statutes, provides that a homeowners' association may provide notice of Board, committee, and member meetings electronically to those who have provided either an e-mail address or facsimile number and have consented to receive electronic notice.

Condominium and Cooperative Association Electronic Notice.

Section 718.112(2)(d)(6) and 719.106(1)(d)(3), Florida Statutes, provides that a unit owner who consents to receiving notices from a condominium or cooperative association by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails sent to members on behalf of the condominium or cooperative association in the course of giving electronic notice.

Condominium Association Director Term Limits.

Section 718.112(2)(d)(2), Florida Statutes, was revised to provide that Board members may serve terms longer than 1 year if permitted by the Bylaws or Articles of Incorporation. Section 718.112(2)(d)(2), Florida Statutes, was also amended to remove the reference to 2-year terms when referring to term limits. Therefore, under the new law, a Board member may not serve more than 8 consecutive years regardless of the length of Director terms, unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

Condominium Association Director Recall

Section 718.112(2)(j), Florida Statutes, was amended to provide that if a recall is determined to be facially valid, then the recall of a Board member shall be effective immediately upon the conclusion of the Board meeting that must be held within 5 business days after (1) the adjournment of the unit owner recall meeting; or (2) receipt of the written agreement to recall.

If the Board fails to meet or determines at the meeting that the recall is not facially valid, the unit owner representative may file a recall petition challenging the Board's failure to act or challenging the Boards' determination on facial validity. In addition, a recalled Board member may file a petition challenging the facial validity of the recall agreement or ballots. If the arbitrator determines the recall was invalid, then the petitioning board member shall immediately be reinstated and the recall is considered to be null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorneys' fees and costs from the respondents. The arbitrator may award reasonable attorneys' fees and costs to the respondents if they prevail, if the arbitrator makes a finding that the petitioner's claim is frivolous. *See* Section 718.112(2)(j)(6), Florida Statutes.

Condominium Association Director Conflict of Interest.

Section 718.3027(2), Florida Statutes, was revised to incorporate the disclosure requirements set forth in 718.3026(3), Florida Statutes, (which has been deleted). The Section requires the condominium association to comply with the requirements of Section 617.0832, Florida Statutes Not-For-Profit Statute), and any disclosures must be entered into the written minutes of the meeting. Further, the approval of a contract or other transaction requires an affirmative vote of two-thirds of all other directors present. Then, at the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction may be canceled by a majority vote of the members present. If the contract is canceled, the condominium association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Condominium Association Material Alterations.

Section 718.113(2), Florida Statutes, was amended to require that approval by the membership must occur before a material alteration or substantial addition is commenced.

Condominium Association Electric Vehicles.

Section 718.113(8), Florida Statutes, now provides that neither the Board, the declaration of condominium, or the restrictive covenants may prohibit, or be enforced to prohibit, any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The installation must follow the provisions set forth in the statute, including complying with applicable building codes. Electricity must be separately metered and paid by the unit owner, must not cause irreparable damage to the condominium property, and the installation of the charging station must be at the expense of the unit owner.

Condominium and Cooperative Association Fining Committee and Imposition of Fines and Suspensions.

Sections 718.303(3)(b) and 719.303(3)(b), Florida Statutes, were revised to require that condominium and cooperative association fining committees must be composed of at least 3 members appointed by the Board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director or employee. Further, if the committee does not approve the proposed fine or suspension by majority vote, then fine or suspension may not be imposed. This new law is similar to the fining procedures for homeowners' associations.

Sections 718.303(3)(b), 719.303(3)(b) and 720.305(2)(b), Florida Statutes, were also modified to establish that any fine payment is due 5 days after the date of the committee meeting at which the fine was approved. Condominium and cooperative associations must now provide written notice of the fine or suspension by mail or hand delivery to the unit owner, and, if applicable, to any tenant, licensee, or invitee of the unit owner. Homeowners' associations are already required to provide written notice of the fine or suspension by mail or hand delivery to the homeowner, and, if applicable, to any tenant, licensee, or invitee of the homeowner.

Cooperative Association Board Member Eligibility.

Section 719.106(1)(a)(1), Florida Statutes, was amended to provide that the Board shall consist of not fewer than 3 members in cooperatives with 5 or fewer units that are not-for-profit corporations. Additionally, in a residential cooperative association of more than 10 units, co-owners of a unit may not serve as members of the Board at the same time unless (1) the co-owners own more than one unit, or (2) there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

Cooperative Association Board Member Financial Delinquency.

Section 719.106(1)(m), Florida Statutes, was added to provide that a director or officer more than 90 days delinquent in the payment of any monetary obligation due to the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Cooperative Association Communication Services.

Section 719.107(1)(b), Florida Statutes, allows cooperative associations to enter into bulk contracts for communications services as defined in Chapter 202, Florida Statutes, information services or internet services, and the costs shall be a common expense of the cooperative association.

Cooperative and Homeowners' Association Board's Use of E-Mail.

Section 719.106(1)(c) and 720.303(2)(a), Florida Statutes, was amended to provide that members of the Board of a cooperative or homeowners' association may use e-mail as a means of communication, but may not cast a vote on an association matter via e-mail. **Note:** condominium association directors have the same rights and limitations concerning use of e-mail.

Homeowners' Association Amendments to the Governing Documents.

Section 720.306(1)(e), Florida Statutes, requires that a proposal to amend the governing documents must contain the full text of the provision to be amended and may not be revised or amended by reference solely to the title or number. The proposed new amendment language must be underlined and proposed deleted language must be stricken. If the proposed change is so extensive that underlining and striking through language would hinder, rather than assist, the understanding of the proposed amendment, a notation must be inserted immediately preceding the proposed amendment in substantially the following form: *"Substantial rewording. See governing documents for current text."* An amendment to a governing document is effective when recorded in the public records of the county in which the homeowners' association is located.

IMPORTANT PRACTICE NOTE: There appears to be an unintended glitch in the new statutory language. The new statutory language provides that an amendment to a "governing document" is effective when recorded in the public records of the county in which the homeowners' association is located. Section 720.301(8), Florida Statutes (Definitions), provides that "rules and regulations" adopted by the Board are "Governing Documents." It is unclear whether the Florida Legislators intended for rules and regulations to be recorded in the public records to become effective.

Homeowners' Association Elections.

Section 720.306(9)(a), Florida Statutes, was amended to add that if an election is not required because there are either an equal number or fewer qualified candidates than the vacancies that exist, and if nominations from the floor are not required pursuant to the statute or the bylaws, write-in nominations are not permitted and such qualified candidates shall commence service on the Board of Directors, regardless of whether a quorum is attained at the annual meeting.

Homeowners' Association Application of Payments.

Section 720.3085(3)(b), Florida Statutes, was amended to provide that the order in which payments are to be applied pursuant to the statute controls over any accord and satisfaction or restrictive endorsement.

House Bill 841 is effective **July 1, 2018**.

HOUSE BILL 617

House Bill 617 amended Section 712.05, Florida Statutes, to allow property owners' associations to preserve the community covenants or restrictions by recording an amendment to the covenants or restrictions in addition to the other preservation methods. House Bill 617 also provides for procedures in Chapter 712, Florida Statutes, to revitalize covenants in communities without a mandatory association, and clarifies in Part III of Chapter 720, Florida Statutes, that the revitalization process included there can be used by all types of communities and property associations and is not limited to residential communities.

House Bill 617 is effective **October 1, 2018**.

HOUSE BILL 529

House Bill 529 amended Section 633.202 *et seq.*, Florida Statutes (The Florida Fire Protection Code) to specify the size of recycling containers that are permitted in rental apartment complexes. It also requires certain containers be allowed in exit corridors and authorizes approval of alternative containers.

House Bill 529 is effective **July 1, 2018**.

HOUSE BILL 631

House Bill 631 amended Chapter 82, Florida Statutes (Forcible Entry and Unlawful Detainer), to authorize persons with a superior right to possession to ejectment and provides for a cause of action to regain possession from another person who obtained possession of real property by forcible entry, unlawful entry, or unlawful detainer; no pre-suit notice or demand is required. The Statute was also amended to redefine the terms "unlawful entry" and "forcible entry."

House Bill 631 is effective **July 1, 2018**.

HOUSE BILL 875

House Bill 872 amended Section 95.11(3), Florida Statutes, to clarify the statute of limitations on construction defect claims. The Statute is revised to provide that counterclaims, cross-claims and third party claims may be brought up to 1 year after the pleading to which the claim relates is served, even if those claims would be time barred. Further, the Statute was amended to provide that once a Certificate of Occupancy or Certificate of Completion has been issued for the property, the correction of defects or punch list work will not extend the time within which an action must be commenced.

House Bill 875 is effective **July 1, 2018**.

SENATE BILL 566

Senate Bill 566 amended Section 82.045, Florida Statutes, to establish the criteria for "transient occupancy" of residential real property and provides that transient occupancy is not extended by the presence of personal belongings of a former transient occupant. The Statute was also revised to require the party entitled to possession of a dwelling to allow a former transient occupant to recover personal belongings at reasonable times and under reasonable conditions and specifies a reasonable time to recover personal belongings.

Senate Bill 566 is effective **July 1, 2018**.

If you have any questions about this Article or the new laws, or would like us to review and update your governing documents to ensure compliance with the new laws, please contact:



ROBERT A. COOPER, ESQ.

Hahn Loeser & Parks LLP
2400 First Street, Suite 300
Fort Myers, Florida 33910

phone: 239.337.6730

email: racoper@hahnlaw.com

www.hahnlaw.com

www.hlconstructionlaw.com



KEVIN P. FULARCZYK, ESQ.

Hahn Loeser & Parks LLP
2400 First Street, Suite 300
Fort Myers, Florida 33910

phone : 239.337.6700

email: kfularczyk@hahnlaw.com

www.hahnlaw.com

www.hlconstructionlaw.com



JOEL W. HYATT, ESQ.

Hahn Loeser & Parks LLP
2400 First Street, Suite 300
Fort Myers, Florida 33910

phone : 239.337.6725

email: jhyatt@hahnlaw.com

www.hahnlaw.com

www.hlconstructionlaw.com

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