

**Law Office of Jonathan James Damonte, Chartered
Legislative Report
2015 Legislative Session**



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Overview of 2015 Florida Legislative Session

- 232 passed both houses of Legislature and were sent to the Governor
- 225 have been signed by Governor
- 0 became law without Governor's signature
- 7 vetoed

Checking out Bills & Laws

- Governor's website: www.flgov.com
 - Scroll down on the right side panel and click on the "2015 Bill Actions" icon
- Legislature: www.leg.state.fl.us
 - Click on "Senate" or "House" and search by Bill number or text

2015 Legislative Changes for Community Associations

- These changes became effective July 1, 2015 unless otherwise noted.





- Service Animals and Emotional Support Animals – HB 71
 - Requires public accommodation to permit use of service animal by an individual with disability; provides conditions for public accommodation to exclude or remove service animal; revises penalties for certain persons or entities who interfere with use of service animal; provides penalty for knowing and wilful misrepresentation with respect to use or training of service animal.
 - The definition of “disability” in this section has been expanded to include anyone who has a “physical or mental impairment that substantially limits one or more major life activities of the individual.” Disability is used broadly to include “a mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the DSM” as published by the American Psychiatric Association and includes both mental and emotional illnesses. The service or emotional support animal is limited to a dog or miniature horse.
 - A public accommodation may not ask about the nature or extent of an individual’s disability.
 - The provisions regarding service animals and emotional support animals have been broadly construed in favour of those requesting the animal. The present interpretation and implementation of these laws frequently requires that “no pets” communities accept these animals. The good news is that a number of rules and regulations can be put in place to minimize the impact on the community. Legal advice should be sought as part of the process of creating these new community rules to avoid violations of the ADA and Florida Law that carry heavy penalties.
- Construction Defect Claims – HB 87
 - Revises the definition of the term “completion of building or improvement”; provides additional requirements for notice of claim; revises requirements for response; revises provisions relating to production of certain records. It provides a method for resolving construction defect disputes before filing a lawsuit. It also provides additional notice requirements for construction defects.
 - “Completion of a building or improvement” now means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for the occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction.

- The notice of claim must now identify the location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant has no obligation to perform destructive or other testing for purposes of this notice.
- Transient Occupancy – HB 305
 - It removes “transient occupancy” from the landlord-tenant regulation under Chapter 83, and permits the removal of an unwanted occupant of a residence by law enforcement officials if certain conditions are met.
 - The term “transient occupant” means a person whose residency in a dwelling intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature. There are eight (8) factors considered in determining whether a person is transient, including whether they have and ownership interest in the property, receive mail at the property, pay rent and whether they have a permanent residence elsewhere.
 - A transient occupant unlawfully detains a residential property if the transient occupant remains in occupancy of the residential property after the party entitled to possession of the property has directed the transient occupant to leave.
 - Any law enforcement officer may, upon receipt of a sworn affidavit of the party entitled to possession that a person who is a transient occupant is unlawfully detaining residential property, direct a transient occupant to surrender possession of residential property.



- Mobile Homes – HB 307
 - Requires the Division of Florida Condominiums, Timeshares, and Mobile Homes to approve training and educational programs for board members of mobile home owners associations; provides requirements for education curriculum information for board member and mobile home owner training; revises mobile home owner’s general obligations; provides and revises requirements for lot rental increases; revises provisions relating to rights of purchasers of lifetime leases; provides for removal of member of board of directors; revises quorum and voting requirements; revises provisions relating to board of directors, committee, and member meetings; revises requirements for amendment of articles of incorporation and bylaws; revises requirements for recall of board members; provides requirements for alternative resolution of recall disputes; specifies certification of education requirements for newly elected or appointed board member; revises and provides requirements relating to official records of association.

- Training and Education - The Division shall approve training and educational programs for board members of mobile home owners' associations formed and operated pursuant to section 723.075(a), Florida Statutes and mobile home owners. The training may, at the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state. The division may review and approve educational curriculums and training programs for board members and mobile home owners to be offered by providers and shall maintain a current list of approved programs and providers. The division shall establish a fee structure for the approved training programs sufficient to recover any cost incurred by the division in operating this program.
- Rent Increases - For lot rental increases the 90 day notice before any increase in lot rental amount or reduction in services may not be waived or precluded by a home owner, or the homeowners' committee, in an agreement with the park owner.
- Quorum – The previous rule required a majority of the members for a quorum. Under the new rule, unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum. The bill makes it easier for a quorum to be attained.
- Board Use of Electronic Communication – A board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time telephonic, electronic, or video communication counts toward a quorum, and such member may vote as if physically present. A speaker shall be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by members present at a meeting. Members of the board of directors may use email as a means of communication but may not cast a vote on an association matter via email.
- Timeshares – HB 453
 - Revises provisions relating to timeshares, including amendments made to timeshare instruments, public offering statements, release of certain escrow funds, real estate licensure requirements, multisite timeshare plans, substitutions and deletions of component site accommodations or facilities.
- Termination of a Condominium Association – HB 643
 - Provides and revises procedures and requirements for termination of condominium property; provides requirements for rejection of, and objection to, plan of termination; provides applicability; provides and revises requirements relating to partial termination of condominium property; authorizes plan of termination to be withdrawn, modified or amended under certain conditions.
 - Many Florida leaders including Governor Scott have publicly expressed concern about Florida's condominium termination process under section 718.117 Florida Statutes. The termination process allows investors to purchase units in bulk and terminate the condominium form of ownership for conversion to rental property after paying market value to remaining unit owners.
 - In some cases, this has caused negative consequences for unit owners who owe more on their mortgage than the current market value of their units. The legislation imposes new restrictions on the termination of condominiums, revises the methodology for determining market value of condominium units and requires first mortgages to be fully satisfied prior

to termination of the condominium. The bill makes changes to the laws regarding condominium terminations. The law permits “optional termination” if at least 80 percent of the members vote in favour of termination, and no more than 10 percent reject the termination. The new law provides that if a termination vote fails, another vote to terminate cannot be held for 18 months. When holding a termination vote, voting interests that have been suspended are still entitled to vote on the termination. In addition, a termination vote may not take place until 5 years after the recording of the declaration of condominium, unless there is no objection to the termination.

- Eligibility for Coverage by Citizens Property Insurance Corporation – HB 715
 - Removes provision that prohibited certain improvements to major structures from being eligible for Citizens Property Insurance coverage; revises provisions regarding coverage for major structures that have undergone specified changes after a date certain.
 - The bill limits the prohibited improvements to major structures that are “newly constructed, or rebuilt, repaired, restored, or remodelled to increase the total square footage of finished area by more than 25 percent.”
- Rental Agreements – HB 779
 - The bill protects tenants who are renting a home that is the subject of a foreclosure sale. The bill provides that a bona fide tenant must be given at least 30 days’ notice before eviction from a foreclosed home.
- Residential Properties – HB 791 (including Electronic Voting)
 - The bill was the catchall community association bill this year.
 - Electronic Transmission - Authorizing the use of a copy, facsimile transmission, or other reliable reproduction of an original proxy vote for certain purposes; authorizing condominium associations to conduct votes of the membership by online voting under certain conditions; authorizing the electronic transmission of notices to certain meetings of a cooperative association. The current law does not specifically authorize owners to transmit a copy of their proxy to the association (e.g. email, fax). The intent of this language is to encourage voting by members. Owners who are not available to be at meetings in person or who are out of the country may wish to avoid the time and expense of U.S. mail and send their proxy to the association by an electronic method. Electronic transmission specifically does NOT include oral communication by telephone.
 - Electronic Notice - It permits the use of copies, facsimiles or other reliable reproductions of proxies for voting at meetings of the membership as permitted by statute, and it provides that all written records maintained by a community association are official association records. Prior to the passage of this bill, in order to provide notice to owners electronically, the bylaws had to provide for electronic notice and the owner had to consent to electronic notice in writing. The bill also removes the requirement that electronic notice be authorized by the bylaws. If the owner consents in writing then the association can give the owner notice electronically.
 - Posting - It permits the posting of meeting notices on “association property,” in addition to the common elements of a condominium, and it specifies the categories to be used for the condominium association budget.



- Internet Voting - The bill provides that associations may conduct elections and other membership votes by using an internet based method. The bill states that a board resolution is required to establish internet voting for the community association. If an owner does not consent to online voting that owner is entitled to vote by paper ballot. There are several companies currently organizing that will provide internet based voting services while maintaining the secrecy of the ballots cast including Association Voting Made Simple: <https://www.associationvoting.com/> and Vote HOA NOW: <http://www.votehoanow.com/>
- Fining Committee Role – A fine may be levied only by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a fining committee. The fine may not exceed \$100 per violation, or \$1,000 in aggregate. A fine or suspension levied by the board may not be imposed unless the board first provides at least 14 days’ written notice and opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member’s household. The role of the fining committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.
- Suspension of Voting Rights – If an owner or member’s voting rights have been suspended for any reason, the total number of votes of the suspended member(s) must be subtracted from the total number of voting interests of the association when calculating the vote needed to take an action. The bill also provides that the suspension of voting rights or right to use common elements applies to members and tenants and guests of the suspended member, regardless of the number of units owned by the member.
- Order of Application of Payments and Assessments – The current law provides for a specific order in which payments received from a unit owner are to be applied. First to accrued interest; second to administrative late fees; third to costs and attorney’s fees, and finally to the delinquent assessment. The bill specifies that the required distribution of delinquent assessment payments applies regardless of any claimed “accord and satisfaction.” This change is intended to overrule the 2014 St. Croix appeals court case that held that if a check is tendered for less than the total amount of a disputed claim, the acceptance creates an accord and satisfaction if the tender is accompanied by an offer to settle for the tender amount. The court case had created uncertainty about when an association could accept partial payment for delinquent assessments, and this provision was passed by the legislature to overrule the court case and allow associations to accept partial payments for delinquent assessments. Associations should continue to seek the advice of council before accepting partial payments that purport to settle a disputed debt in other matters.



- Official Records – The new law limits the definition of records to “written” records. This makes the condominium and cooperative statute consistent with the HOA statute. Records not in writing (e.g. video recordings, audio recordings, security camera video recordings) are not “official records” under the new law and therefore not available for owner inspection as a matter of right. The association shall maintain the following items, when applicable, which constitute the official records of the association:
 - A copy of the association’s articles of incorporation and each amendment to the articles of incorporation.
 - A copy of the bylaws of the association and each amendment to the bylaws.
 - A copy of the written rules or policies of the association and each amendment of the written rules or policies.
 - The approved minutes of all meetings of the members, the board of directors, and committees of the board, which minutes must be retained within the state for at least 7 years.
 - A current roster of all members and their mailing addresses and lot identifications.
 - All of the association’s insurance policies or copies thereof, which must be retained for 7 years.
 - A copy of all contracts or agreements to which the association is a party, including, without limitation, any written agreements with the park owner, lease, or other agreements or contracts under which the association or its members has any obligation or responsibility, which must be retained for 7 years.
 - The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years.
 - All other written records of the association not specifically included in the foregoing which are related to the operation of the association.
 - The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association wilfully failed to comply with the section.

- The requirements of the section are satisfied by having a copy of the official records available for inspection or copying in the park or, at the option of the association, by making the records available to a member electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.
 - An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election or removal.
- Extension of Distressed Condominium Relief Act – The bill extends the Distressed Condominium Relief Act (DCRA) until July 1, 2018. This law gives companies that buy out distressed condominium projects immunity from various obligations associated with being a developer.
- Insurance (Condominiums) – The bill removes the provision that requires the association to be responsible for “uninsured losses.” Uninsured losses are no longer automatically a common expense of the condominium.
- Definition of Governing Documents (Homeowners’ Associations) – The new law provides that the term “governing documents” of an HOA, as used throughout the statute includes the “Rules and Regulations” of the association.
- Amendments (Homeowners’ Associations) – Under the new law, the failure to provide the statutorily required notice of recording an HOA governing document amendment no longer affects the validity of the amendment. The failure to give notice does not invalidate the amendment under the new law.
- Names Chapter 720, Florida Statutes (Homeowners’ Associations) – Chapter 720 of the Florida Statutes will now be officially known as the “Homeowners’ Association Act.”
- Board Member Eligibility (Homeowners’ Associations) – The Homeowners’ Association Act now provides that a person who is delinquent in the payment of any financial obligation as of the last day that he or she could nominate himself or herself to the board, is not eligible to be a candidate and may not be listed on the ballot. Further, a person serving on the HOA board who becomes 90 days delinquent in the payment of any monetary obligation shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law.



- Drone Surveillance – SB 766
 - The bill prohibits a person, state agency, or political subdivision from using a drone to capture an image of privately owned real property or of the owner, tenant, or occupant of

such property with the intent to conduct surveillance without his or her written consent if a reasonable expectation of privacy exists. The current exception for law enforcement agency activity is expanded to include activities by any person or entity engaged in a business licensed by the state (e.g. property appraisers, utilities, aerial mappers, cargo delivery systems) subject to certain conditions. The bill does not have the intent of affecting the use of drones for agricultural operations and provides civil remedies for compensatory and punitive damages and injunctive relief for violations. Any association currently using drones or contemplating their use should seek legal advice concerning the practice.

