

## Legislative Update 2017

The 2017 legislative session was a remarkable one with lobbyists, attorneys and others connected to the Community Association world keeping busy right up to the end of June. The following four bills, related to Association Law were signed into law by Governor Rick Scott:

### SB 164 – Certificates of Title for Motor Vehicles

- This legislation allows co-owners of vehicles to transfer title into the name of the surviving owner without having to pay a fee or service charge.

Pertains to – Cooperative mobile homeowners under F.S. 719 and mobile home owners under F.S. 723.

Chief Benefit – Reduces fees for owners of mobile homes.

Effective Date – 7/1/17

### SB 398 – Estoppel Certificates

- Expands the persons authorized to complete estoppel certificates to include board members, authorized agents, authorized representatives of the association, and employees of the management company.
- Provides the mandatory statutory wording which must be included on the estoppel certificate.
- Sets a 30 day effective date for estoppels that are hand-delivered or sent by electronic means and a 35 day effective date for estoppel certificates that are mailed.
- Requires the responsible person to complete an amended estoppel certificate if new information is received during the effective period. Additional fees may not be charged for the amended estoppel certificate.
- Waives the payment of any amounts above those contained in the estoppel certificate for anyone who in good faith relies on the estoppel.
- Requires the association to remit the estoppel certificate within 10 business days or waive the fee for its preparation and delivery.
- Limits fees charged for the estoppel certificate to \$250.00 for an estoppel certificate on a non-delinquent account. An additional \$150.00 may be charged for a delinquent account and an additional \$100.00 may be charged for an expedited request (within 3 days after the request).
- Limits fees charged for multiple estoppel certificates to:
  1. 25 or fewer units - \$750.00
  2. 26-50 units - \$ 1,000.00
  3. 51-100 units - \$1,500.00
  4. 100+ units - \$2,500.00

- Protects the requestor's right to reimbursement by prohibiting any contract or agreement from waiving reimbursement and by allowing prevailing party damages, attorney fees and costs if an action for reimbursement.
- Provides for increases in the fees every 5 years based upon the CPI. The DBPR will periodically calculate the fees and post the new rates on its website.
- Requires condominium associations with 150 units or more, to designate the person or entity who will prepare the estoppel certificate, along with their address for mailing the requests on their official website.

Pertains to - This legislation pertains to all condominium associations, cooperatives, and homeowners associations and amends the current §718.116(8), §719.108(6) and §720.30851.

Chief Benefit – Provides uniformity of fees and uniformity of language used in the estoppel certificate.

Chief Drawbacks – Requires the association to respond with an estoppel certificate on a short deadline. Requires amount due to remain constant for a period of 30-35 days. Most likely this will result in the inability to capture the following month's assessments or special assessments imposed during the 30-day period.

Effective Date – July 1, 2017

#### HB 1237 - Condominiums

- Prohibits "kickbacks" to officers, directors, and property managers from any person providing or proposing to provide goods and services to the association (potential criminal penalties).
- Criminalizes ballot envelope/voting certificate forgery and makes it punishable under §831.01, F.S., as a third-degree felony.
- Criminalizes theft or embezzlement of funds and makes it punishable under §812.014, F.S. as a misdemeanor, third-degree felony, second-degree felony, or first-degree felony dependent upon the amount stolen.
- Criminalizes destruction of official records or refusal to allow inspection of public records and characterizes it as tampering with evidence under §918.13, F.S. or Chapter 843, F.S. and makes it punishable as a third-degree felony under §918.13, F.S. and a first-degree misdemeanor –third degree felony under Chapter 843, F.S., dependent upon the statute violated.
- Requires removal of an officer or director charged with any of the crimes referenced in this paragraph and the replacement of said officer and/or director with another officer and/or director until the end of his or her term, or the end of his or her suspension, whichever comes first.
- Prohibits appointment of the removed officer or director to any association board during the pendency of the charges. Also prohibits the charged officer or director from access to the official records without a court order.
- Requires reinstatement of the charged officer or director if the charges are resolved without a determination of guilt.
- Prohibits the hiring of an attorney by an association who also represents the management company.

- Prohibits board members, managers and management companies from purchasing non-timeshare units at association foreclosure sales.
- Requires bids for materials, equipment, and services to be placed within the official records of the association.
- Permits renters the right to inspect and copy the association's bylaws and rules.
- Requires condominiums with 150 or more units to establish and maintain a website for the association. The deadline to get the website online is July 1, 2018. The Division will send out reminders to the associations of the website requirement along with their annual statements. The following must be posted to the website:

- 1) A subpage that is accessible only to unit owners;
- 2) A user name and password must be supplied to owners upon written request;
- 3) Recorded Declaration of Condominium and all amendments;
- 4) Recorded Bylaws and all amendments;
- 5) Articles of Incorporation and all amendments;
- 6) Rules of the association;
- 7) Management agreement, lease, and all contracts upon which the owners have an obligation;
- 8) Summaries of bids for material, equipment, or services (for 1 year);
- 9) Annual budget and any proposed budget;
- 10) Financial report required by §718.111(13) and any financial report to be considered at a meeting;
- 11) The certification of all directors required by §718.112(2)(d)4.b.
- 12) All contracts or transactions between the association and any director, officer, corporation, firm or association that is not an affiliated condominium association or any other entity in which a director or officer is financially interested;
- 13) Any contract or document regarding a conflict of interest as per §§468.436(2) and 718.3026(3);
- 14) Notice and agenda of unit owner meetings no later than 14 days before the meeting (posted in plain view on the front page of the website or on a separate subpage entitled "Notices") which is visible from the front page;
- 15) Any documents to be considered and voted on at a meeting at least 7 days before;
- 16) Notice and agenda of any meeting and documents to be posted pursuant to the deadline in §718.112(2)(c);

17) The Association is responsible to assure that no confidential information is posted on the Association's website and any document containing confidential information in it that must be posted, must first be redacted;

- The 50 unit limitation for financial reporting has been removed making all condominiums responsible to report;
- Unit owners who make a request for the most recent financial report and are not supplied with it, may send a notice to the Division stating that the association has failed to send the report after written request. If such a notice is received by the Division, and the Division determines that the association has failed to provide it, the Division will provide notice to the association demanding that they send the report to the Unit owner and the Division within 5 business days after receipt of the notice. If these requirements are not adhered to, the Association will be barred from waiving its financial reporting requirements;
- Debit Cards – The Association, its officers and directors, employees and agents may not use an association debit card for association purchases. Use of a debit card in derogation of this law may be prosecuted as credit card fraud under §817.61, F.S.
- Term Limits - Directors are term limited to 4 consecutive 2-year terms unless 2/3 of the members votes to elect them or unless there are not enough persons running to fill the open seats;
- The association's board of directors is no longer required to call a meeting to certify the vote on the recall of a director(s);
- Recalled directors must return all association records and property within 10 days of a successful recall vote;
- Associations 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 relative of an officer or director within the "third degree of consanguinity" by blood or marriage. This provision does not apply to those who own less than 1% of the equity shares in the association;
- Parties contracting with an association to provide maintenance or management services to an association or its officers or board members may not purchase a condominium unit within the association at an association foreclosure sale;
- Directors, officers and their relatives must disclose to the board any activity which may be reasonably construed as a conflict of interest. This includes contracts for good and services with the association. Contracts entered into where the conflict has not been previously disclosed are voidable and will terminate upon the filing of a written notice of termination;
- Actions to suspend the voting rights of a delinquent unit owner may not be taken unless the owner owes more than \$1,000.00, is more than 90 days late and proof of the obligation is provided to the unit owner at least 30 days before the suspension takes effect.
- Associations must provide an annual report to the Division of all of the financial institutions it maintains accounts with. This report may be obtained by written request from the Division.

Pertains to – All condominium associations (except for timeshares as stated).

Chief Benefits – Addresses the many issues in South Florida with self-dealing, fraud, and the failure to reveal conflicts of interest as they pertain to the associations.

Chief Drawbacks – Permits criminal penalties for director action which may be overreaching. May have a chilling effect on individuals volunteering to participate on the board of directors. Automatically removes a director from the board without due process. Requires “reinstatement” of a director who was removed pending charges, but who was not convicted without any explanation of how that process will work. Allowing renters access to Bylaws and Rules will result in many additional records review requests each year. Requires condominiums to expend additional monies to build and support websites that will require hundreds of pages of association records to be downloaded to it. Regulates directors, officers, employees, and property manager’s use of debit cards for association related business, but does not include a similar prohibition against credit card usage. Contains term-limiting language, but gives no guidance on whether the limits are prospective or retrospective. Makes it difficult to bar delinquent unit owners from participating fully in association business.

Effective Date – July 1, 2017 for all but the website requirements, which are effective on July 1, 2018.

#### SB 1520 – Termination of a Condominium Association

- Provides for termination of a condominium when the community is no longer economically viable;
- Requires affirmative vote of 80% or more of the owners and negative vote of no more than 5% of the voters;
- Requires approval of the termination by the Division;
- Requires a waiting period of 24 months to propose a subsequent plan of termination after rejection of a previous plan;
- Requires the identity of the person or entity that owns or controls 25% or more of the units;
- Requires the identity of the natural persons who own 10% or more of the entity which owns or controls 25% or more of the units;
- Carries an effective date of July 1, 2007 – 10 years before the legislation was passed and signed into law.

Pertains to: Condominium associations only.

Chief Benefit: Provides for a more open process when terminating a condominium.

Chief Drawback: Attempts to be applied retrospectively back to July 1, 2007, which may spur litigation over the appropriateness of the effective date.

Effective Date: July 1, 2007

Please contact Jonathan, Zach, or Erica if you have any questions pertaining to these changes.