

**Law Office of Jonathan James Damonte, Chartered
Legislative Report
2018 Legislative Session**



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CONDOMINIUM
AND PLANNED
DEVELOPMENT LAW

Overview of 2018 Florida Legislative Session

- ❖ 1,747 bills filed by Florida state legislators
- ❖ 196 bills passed by both House and Senate Chambers
- ❖ 20 community association bills filed
- ❖ 2 community association bills passed and signed into law by the Governor
- ❖ 0 vetoed by the Governor



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

2018 Legislative Changes for Community Associations

- ❖ (1) HB 841 addressing Community Associations became effective July 1, 2018. Sponsored by the Florida Community Associations Institute (CAI-FLA), HB 841 was this year's general community association bill. It updates the law on topics including official records, notice of meetings, term limits, recalls, fining, electric vehicle charging stations, material alteration votes, condominium bulk buyers, and amendments. It effects condominiums, cooperatives and homeowners' associations.
- ❖ (2) HB 617 addressing Covenants and Restrictions goes into effect October 1, 2018. HB 617 primarily involves the Marketable Record Title Act (MRTA). The law makes it easier to preserve covenants and restrictions of homeowners' associations by creating a summary process for preserving covenants and restrictions. It will also allow non-residential property owners' associations to preserve covenants and restrictions and provides a procedure for communities without a mandatory homeowners' association to revitalize expired covenants and restrictions.



HB 841: CONDOMINIUMS, COOPERATIVES, and HOMEOWNERS' ASSOCIATIONS:

CONDOMINIUMS:

Official Records - §718.111(12)(a) and (b), Florida Statutes

- ❖ The minutes of all meetings of the association, the board of administration, and the units owners must now be permanently maintained from the inception of the association. The previous law allowed the minutes to be disposed of after 7 years.
- ❖ Electronic records relating to voting by unit owners must be maintained in the official records for 1 year from the date of the election, vote or meeting to which the document relates.
- ❖ The amount of time for condominium associations to respond to written records requests is extended from 5 business days to 10 business days.

Websites - §718.111(12)(g), Florida Statutes

- ❖ **Extends the date that condominium associations must post some of its official records on a website to January 1, 2019. This amendment only applies to condominium with 150+ units.**
- ❖ Instead of requiring the actual contracts to be posted on the association website, associations will now post lists or summaries including:
 - ❖ Executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility.
 - ❖ A list of bids received by the association within the past year after bidding for the related materials, equipment, or services has closed.
 - ❖ Summaries of bids for materials, equipment or services exceeding \$500 must be kept on the website for 1 year. Complete copies of the bids may be posted instead of the summaries.
- ❖ The association no longer needs to post proposed financial reports. However, now it must post any monthly income or expense statement to be considered at a meeting.
- ❖ Conflict of interest documents required to be posted to the association website:
 - ❖ contracts entered into by a community association manager or firm, on behalf of the association, with any entity in which the manager or firm has a financial interest [Section 468.436(2)(b)6.]; and
 - ❖ any activity that may reasonably be construed to be a conflict of interest, including, but not limited to: a contract for goods and services between a director or an officer, or a relative of a director or an officer, and the association; and conducting business or proposing to enter into a contract or other transaction with the association by a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity, if a director or an officer, or a relative of a director or an officer, holds an interest in the entity [Section 718.3027(3)].
- ❖ The association can only be held liable for disclosing protected or restricted information if the disclosure was made with a knowing or intentional disregard for the protected information.

- ❖ Failing to post information required to the website does not invalidate any action or decision of the association's board or its committees.
- ❖ The main changes with regard to the website requirement for condominium associations involve the date of compliance (January 1, 2019) and the documents that must be posted. No changes were made to the website specifications.



Financial Reporting - §718.111(13), Florida Statutes

- ❖ A condominium association that fails to comply with a division request to provide a unit owner with a financial report may not waive the financial reporting requirement for the fiscal year the owner's request was made or the following fiscal year.

Meeting Notices - §718.112(2)(c) and (2)(d), Florida Statutes

- ❖ Notices for meetings at which regular or special assessments are to be considered must now state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments.
- ❖ Requires condominium meeting notices to be posted on the condominium property instead of association property.

Board Member Terms and Term Limits - §718.112(2)(d), Florida Statutes

- ❖ Board members may now serve terms longer than 1 year if permitted by the bylaws or the articles of incorporation. However, board members may not serve more than eight consecutive years, unless approved by an affirmative vote of two-thirds of the voting interests voting in the election or unless there are not enough eligible candidates to fill the vacancies on the board.

Recalls - §718.112(2)(j), Florida Statutes

- ❖ The board must hold a meeting within 5 business days of the unit owner recall meeting or within 5 business days after service of the written recall agreement. The board members are recalled effective immediately if the board meeting finds the recall to be facially valid.
- ❖ If the board determines the recall is not facially valid at the board meeting then the unit owners' representative may file a petition challenging the board's determination that the recall is not facially valid.
- ❖ A recalled board member may file a petition challenging the validity of the recall. The petition can challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If an arbitrator determines the recall was invalid, the petitioning board member is immediately reinstated and the recall is null and void.

- ❖ A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator makes a finding that the petitioning board member's claim is frivolous.
- ❖ The challenge to the recall must come from: (1) a recalled board member if the board determines the petition is facially valid; or (2) the unit owner representative if the board determines that the recall is not facially valid.

Material Alterations and Substantial Additions - §718.113(2), Florida Statutes

- ❖ Amends the procedure for approving material alterations or substantial additions when the condominium declaration does not include a procedure for approval of material alterations or substantial additions.
- ❖ A vote of the unit owners must be taken before the material alterations or substantial additions are commenced.
- ❖ Applies to material alterations and substantial additions to the common elements of a condominium or to real property belonging to the association.
- ❖ The amended statute does not state whether an association can still ratify a material alteration or substantial addition that was made without a vote of the owners in advance.



Electric Vehicles - §718.113(8), Florida Statutes

- ❖ Creates a new provision stating that a declaration of condominium or restrictive covenant or the board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area, under certain circumstances.
- ❖ The unit owner installing the charging station is responsible for the costs of installation, operation, maintenance, and insurance.
- ❖ The unit owner has an implied easement across the common elements of the condominium property for the installation of the electric vehicle charging station and the furnishing of electrical power, including any necessary equipment, to such charging station, subject to the requirements of this subsection.
- ❖ §718.121, Florida Statutes:
 - ❖ Labor performed on or materials furnished for the installation of an electronic vehicle charging station pursuant to s. 718.113(8) may not be the basis for filing a lien under part I of chapter 713 against the association, but such a lien may be filed against the unit owner.
 - ❖ The new law does not address who is responsible for the costs of upgrading the condominium's electrical system if an upgrade is required to handle the increased electrical usage.

Conflicts of Interests of Board Members - §718.3026(3) and §718.3027, Florida Statutes

- ❖ Deletes Section 718.3026(3) regarding contracts or other transactions between the association and one or more of its directors or entity in which one or more of its directors are financially interested.
- ❖ Amends Section 718.3027(2) regarding a director or officer, or a relative of a director or officer, who proposes to engage in an activity that is a conflict of interest as defined in s. 718.3027(1). In addition to other requirements in the statute, the following applies:
 - ❖ The association must comply with the requirements of s. 617.0832, and the disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting;
 - ❖ Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present.
 - ❖ At the next regular or special meeting of the members, the existence of the contract or transaction must be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be cancelled by a majority vote of the members present.
 - ❖ If the contract is cancelled, the 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.

Fining and Suspension Procedure - §718.303(3)(b), Florida Statutes

- ❖ Requires that the fining committee be composed of at least three 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.
- ❖ The fine or suspension is approved by a majority vote from the committee.
- ❖ The fine payment is due 5 days after the date of the committee meeting at which the fine is approved.
- ❖ The association must 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.
- ❖ **Boards should review their current fining and suspension policy to ensure it complies with the new law, including the requirement that the fine be due 5 days after the date of the committee meeting approving the fine.**

Bulk Buyers - §718.707, Florida Statutes

- ❖ Makes the condominium bulk buyer law permanent.





COOPERATIVES:

Official Records - §719.104(2)(a) and (b), Florida Statutes

- ❖ Requires the minutes of all meetings of the association, the board of directors, and the units owners to be permanently maintained from the inception of the association. (The previous law required retention of the minutes for 7 years).
- ❖ Requires electronic records relating to voting by unit owners be maintained in the official records for 1 year.
- ❖ Extends the amount of time that cooperative associations have to respond to a written records request from 5 business days to 10 business days.
- ❖ It makes all three community association statutes (Chapters 718, 719, and 720) consistent with all three statutes now providing that the association must respond within 10 business days from the date of receipt of a written records request.

Board Member Eligibility - §719.106(1), Florida Statutes

- ❖ In a residential cooperative of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless the co-owners own more than one unit or unless there are not eligible candidates to fill the vacancies.
- ❖ A director or officer more than 90 days delinquent in the payment of any monetary obligation due to the association is deemed to have abandoned the office. The vacancy created on the board is to be filled according to law.

E-Mail Communication by Cooperative Board Members - §719.106(1)(c), Florida Statutes

- ❖ Members of the board may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

Meeting Notices - §719.106(1), Florida Statutes

- ❖ The new change provides that the notice for a meeting at which regular or special assessments are to be considered must specifically state that assessments will be considered at the meeting and provide the estimated cost and description of the purposes for such assessments.

Common Expenses for Communication Services - §719.107(1)(b), Florida Statutes

- ❖ Amends the law to allow cooperative associations to enter into bulk contracts for communications services as defined in chapter 202, information services or Internet services, and such costs are considered a common expense.

Fining and Suspension Procedure - §719.303(3), Florida Statutes

- ❖ Amends the fining and suspension procedures to require that the fining committee be composed of at least three 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.
- ❖ The fine or suspension is approved by a majority vote of the committee.
- ❖ The fine payment is due 5 days after the date of the committee meeting at which the fine is approved.
- ❖ The association must 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.
- ❖ Boards should review their fining and suspension policy to ensure that it complies with the new law, in particular, the requirement that the fine be due 5 days after the date of the committee meeting at which the fine is approved.



HOMEOWNERS' ASSOCIATIONS (HOAs):

E-Mail Communication by HOA Board Members - §720.303(2)(a), Florida Statutes

- ❖ Members of the board may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

Fining and Suspension Procedure - §720.305(2)(b), Florida Statutes

- ❖ 14 day notice is required to the parcel owner before a fine or suspension levied by the board may be imposed.
- ❖ If the fining committee approves the fine or suspension, the fine is due 5 days from the date of approval.
- ❖ Boards should review their fining and suspension policy to ensure that it complies with the new law, in particular, the requirement that the fine be due 5 days after the date of the committee meeting at which the fine is approved.

Amendments to Governing Documents - §720.306(1)(e), Florida Statutes

- ❖ Amendments to the governing documents must now 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.
- ❖ Proposed new language must be underlined and proposed deleted language must be stricken.
- ❖ An amendment to a governing document is effective upon recording in the public records in the county in which the community is located.

- ❖ An immaterial error or omission in the amendment process does not invalidate an otherwise properly adopted amendment.
- ❖ A notice required pursuant to Section 720.306 must be mailed or delivered to the address identified as the parcel owner’s mailing address on the property appraiser’s website for the county in which the parcel is located, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.
- ❖ **A significant change is the requirement that any notices sent pursuant to Section 720.306 must be mailed or delivered to the address identified as the parcel owner’s mailing address on the property appraiser’s website for the county in which the parcel is located. Therefore, rather than relying on the Association’s official records and the mailing address provided by the owner, the Association must use the mailing addresses identified on the property appraiser’s website. This new requirement applies to all notices required pursuant to Section 720.306, including members’ meetings. (HOAs Only).**

Elections - §720.306(9), Florida Statutes

- ❖ If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required, write-in nominations are not permitted and such qualified candidates shall commence service on the board, regardless of whether a quorum is attained at the annual meeting.

HOA Application of Payments - §720.3085, Florida Statutes

- ❖ The application of payment (first to interest, then to any late fees, then to costs and reasonable attorney fees, and then to the delinquent assessment) applies regardless of any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment.



HB 617: MARKETABLE RECORD TITLE ACT (MRTA):

Background: The Marketable Record Title Act (MRTA), is intended to facilitate real estate transactions, by eliminating stale claims against real property. The rule of thumb for MRTA extinguishment is thirty years from the root of title. However, it is very labor intensive to determine the root of title for each lot, and often thirty (30) years from the recording of the original covenants and restrictions is used.

MRTA includes a process that allows residential homeowners’ associations to preserve the covenants and restrictions to prevent extinguishment. There is also a process that allows a community that is governed by a mandatory homeowners’ association to “revitalize” covenants and restrictions that have expired.

HB 671, which will be effective on October 1, 2018, expands the types of covenants and restrictions that may be preserved to allow residential and non-residential property owners' associations to preserve covenants and restrictions. The bill also includes a new summary process for property owners' associations to preserve covenants and restrictions. The bill also allows communities without a mandatory homeowners' association to revitalize covenants and restrictions that have expired.

Effect of Filing Notice - §712.05, Florida Statutes

- ❖ A property owners' association may preserve a community covenant or restriction from extinguishment through MRTA by filing for record, at any time during the 30-year period immediately following the effective date of the root of title:
 - ❖ A written notice in accordance with Section 712.06; or
 - ❖ A summary notice in substantial form and content as required under Section 720.3032(2); or an amendment to a community covenant or restriction that is indexed under the legal name of the property owners' association and references the legal name of the property owners' association and references the recording information of the covenant or restriction to be preserved. Failure of a summary notice or amendment to be indexed to the current owners of the affected property does not affect the validity or effectiveness of the notice.
- ❖ The notice preserves the covenant or restriction for 30 years after filing the notice unless the notice is filed again as required by MRTA.
- ❖ The requirement for approval by two-thirds of the board of directors of a homeowners' association will be removed. However, a property owners' association that will preserve the covenants and restrictions pursuant to Section 712.06 will still be required to mail a Statement of Marketable Title Action to all of the members before recording the notice.

Notice Requirements - §712.06, Florida Statutes

- ❖ Amends the requirements for the filing of notice of preservation in §712.05 F.S., with the exception of the summary notice and the amendment in §712.05(2)(b)F.S.
- ❖ Prior to filing the notice of preservation, the property owners' association must mail or hand-deliver a Statement of Marketable Title Action to the association members.
- ❖ The required Statement of Marketable Title Action language is different in the new law. The new required language is that it must state the covenant retains its status with regard to the affected real property.

Revitalization of Covenants and Restrictions by Parcel Owners Not Subject to a Homeowners' Association - §712.12, Florida Statutes (NEW)

- ❖ Creates a process for communities not governed by a homeowners' association to revitalize covenants and restrictions.

Board Meetings - §720.303(2)(e), Florida Statutes (NEW)

- ❖ Requires that at the first board meeting, excluding the organizational meeting which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, Chapter 712 and to authorize and direct the appropriate officer to file notice in accordance with Section 720.3032.

Preservation from Marketable Title Action - §720.3032, Florida Statutes (NEW)

- ❖ An association desiring to preserve covenants from potential termination after 30 years by operation of Chapter 712 may record in the official records of each county in which the community is located a notice specifying: (1) The legal name of the association; (2) The mailing and physical address of the association; (3) The names of the affected subdivision plats and condominiums or, if not applicable, the common name of the community; (4) The name, address and telephone number for

the current community association management company or community association manager, if any; (5) Indication as to whether the association desires to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, Chapter 712; (6) A listing by name and recording information of those covenants or restrictions affecting the community which the association desires to be preserved from extinguishment; (7) The legal description of the community affected by the covenants or restrictions, which may be satisfied by a reference to a recorded plat; (8) The signature of a duly authorized officer of the association, acknowledged in the same manner as deeds are acknowledged for record.

- ❖ The new law also includes a form which satisfies the notice obligation and constitutes a summary notice as specified in Section 712.05(2)(b) sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under the Marketable Record Title Act.
- ❖ A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.
- ❖ The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.



Recommendations:

1. Review and update the Association's records retention policies with regard to meeting minutes, which must now be maintained from the inception of the association. (Condominiums and Cooperatives)
2. Associations managing a condominium with 150 or more units should prepare to comply with the website requirement, so that the website is ready on January 1, 2019. (Condominiums)
3. Adopt or update board rule regarding the location of posting meeting notices to ensure that the location is on the condominium property, and not the association property. (Condominiums)
4. Review building capabilities regarding electric car charging stations and adopt procedures for owner applications for electric car charging stations. (Condominiums with limited common element parking spaces)
5. Amend current fining policies to comply with the new law requiring the fine be paid 5 days after the date of the committee meeting. (Condominiums, Cooperatives, Homeowners' Associations)
6. Adopt a process for obtaining owner mailing addresses from the County Property Appraiser's website, instead of the associations' official records, for any notices required to be mailed to the

owners by Section 720.306 (including but not limited to, annual and special members' meetings notices). (Homeowners' Associations)

7. At the first board meeting after every annual meeting but excluding the organizational meeting, the board must consider filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, Chapter 712. (Homeowners' Associations)

