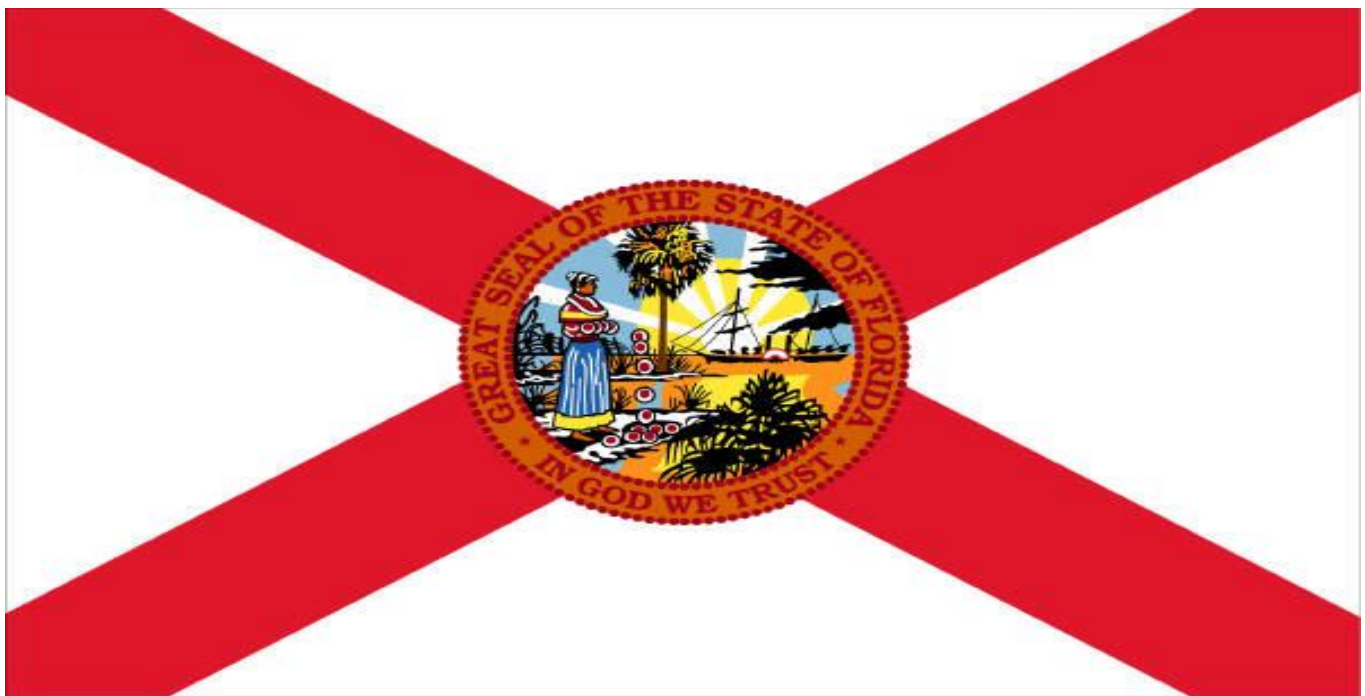


2010 COMMUNITY ASSOCIATION LEGISLATIVE UPDATE



By: Joshua Gerstin, Esq.

*Fixing Previous Unintended
Consequences or Making
More?*

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2010 Community Association Legislative Update

*FIXING PREVIOUS UNINTENDED CONSEQUENCES OR
MAKING MORE?*

HOMEOWNER ASSOCIATIONS.

1. §720.303(2)(b): HOA Directors' Meetings. Clarified prior legislation. Board meetings can be closed if proposed or pending litigation is being discussed or if association personnel matters are being discussed.
2. §720.303(5): HOA Records. Owners' record request is triggered by association's *receipt* of the request. Records not available to owners: employee payroll, social security, driver's license and credit card #'s, e-mail addresses, telephone numbers, personal information used to identify. Association allowed to charge "reasonable costs" for duplication.
3. §720.303(6): HOA Budgets. Allows lot owners to terminate reserve funding by a majority vote of all those eligible to vote. Sets forth reserve funding

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requirements and the required disclosures when an association does not maintain reserves.

4. §720.303(12): HOA Director & Volunteer Compensation. Directors, officers and committee members may not receive compensation for performing their duties. However, out-of-pocket expenses may be reimbursed either by a majority vote of votes casts at a members' meeting or as otherwise allowed in the association's *Governing Documents*.

5. §720.304 (2)(b): HOA Parcel Flags. All though association restrictions are severely limited, flags and flag poles on a parcel must still conform with local ordinances such as building codes, setback and location criteria that are codified in an association's *Governing Documents*.

6. §720.305(2): HOA Member Obligations. Associations can deny common area and facility use rights to owners more than ninety (90) days delinquent in monetary obligations. Utility services, parcel access and parking cannot be restricted and notice must be given to the owner before any restrictions are implemented.

Fines. Fines in excess of \$1,000.00 can be basis for a lien on an owner's parcel. *Governing Documents* must authorize the fines to exceed \$1,000.00 as well allow for the imposition of a lien.

7. §720.306(7): HOA Meetings. Members' meeting may be adjourned to a different location and at a different time.

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8. §720.306(8): HOA Voting. Absentee ballots can be used in association elections if the two envelope secrecy and verification of one vote per parcel procedure is utilized and if allowable in the association's *Governing Documents*.
9. §720.306(9): HOA Director Term. If absentee ballots are utilized nominations in advance of directors' elections are allowed (nominations from the floor are still required). If a board vacancy occurs, except if caused by a recall, the remaining directors may fill the vacancy or call an election. The new director, whether appointed or elected, serves only the unexpired term.
10. §720.308(5): Tenants & HOA Assessments. Tenants in homes in which the owner failed to pay assessments may be required to pay his/her rent to the association up to the amount of the delinquency. Notification to owner and tenant required. Association may file for eviction for tenants that refuse to comply. Prepaid rent, upon proof to the association, must be credited to owner's account.

Unanswered questions: Can the association demand rent for amounts that became due before the effective date of the law?

If the association collects rent on a short term tenancy, does it have to pay sales tax? What if the owner doesn't pay the sales tax - is the association liable since it collected the rental payments?

What about the expenses incurred by the association to collect rent? With a receiver the Court allows the receiver's fees to be paid from the rent (and the Court approves the payments or payment schedule).

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Does the association collect the entire rent check or is it only entitled to payment of current maintenance? Does that mean the tenant pays rent in two checks - one to the association and one to the owner?

Can the association use the 'application of payments' procedure to collect the entire balance on the owner's account?

How is the accounting done? Is the rent considered non-assessment income?

11. §720.315: HOA Developer Assessments. Developer controlled association's cannot levy a special assessment on owners/potential owners, prior to the transition of control without approval by a majority of non developer owned homes/parcels at a special meeting.

CONDOMINIUM ASSOCIATIONS.

1. §399.02: Elevator Fire Fighter Service. Condominium and cooperative associations granted a five year extension to comply with new firefighter control upgrade requirements.
2. §617.0721, 617.0808 and 617.1606: Corporate Statutes. The Florida Not for Profit Corporation Act is clarified. Member voting, removal of directors and access to records of The Florida Not for Profit Corporation Act do not apply to condominium, cooperative, or homeowners' associations.
3. §627.714: Condominium Insurance Policies. New individual condominium unit owner insurance policies must include lost assessment coverage of at least \$2,000.00. Amount is not multiplied by the number of association

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assessments, considered excess over other policies. The association's policy and a maximum deductible of \$250.00 per loss applies still applies.

4. §633.0215: Florida Fire Prevention Code. Condominium and cooperative buildings less than four stories in height with an exterior exit corridors are exempt from the manual fire alarm requirements under Section 9.6 of the Life Safety Code.
5. §718.110: Condominium Amendments, Leasing. Amendments regarding leasing are clarified as being limited to new restrictions that totally prohibit leasing or the number of leases. An amendment may reclassify as limited common elements, a portion of common elements designed and intended for use by less than all unit owners.
6. §718.111(11): Condominium Insurance. The requirement of an a condominium unit owner to obtain their own insurance is repealed. Property excepted from Association insurance coverage is the responsibility of each unit owner. A condominium association must reevaluate the replacement cost amount for casualty coverage every 36 months. The special notice requirement a meeting at which a deductible is approved is repealed.
7. §718.111(12): Condominium Association Records. The Association must remove from records available to owners electronic mailing addresses and telephone numbers upon the request of a member. The Association is not responsible for a member's use of official records unless the Association had an affirmative duty to not disclose the misused information. Penalties are specified for persons who fail to keep records or defacing or destroying records. Information exempt from unit owner access and copy rights include most personnel records, Social Security and driver's license numbers, e-mail addresses and emergency contact information, electronic security information

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8. §718.111(13): Condominium Association Financial Records. Annual reserve summaries shall include a good faith estimate of reserves utilizing a straight line accounting method unless pooled reserves are utilized. Associations with fewer than seventy-five units may prepare a cash report, rather than a statutory financial report.
9. §718.112(2)(d): Condominium Association Unit Owner Meetings. Cancelling a director's election because there are not enough candidates is clarified. Outgoing directors are eligible for reappointment if there is no election. Co-owners serving as directors is permitted if the two owners own more than one unit. Within ninety days after election, a director must certify his or her their ability to comply with the condominium's documents or has completed a State education course. If a certificate is not filed, the director may be temporarily suspended and the position filled by a board appointed alternative.
10. §718.112(2)(l): Condominium Fire Sprinklers. By December 31, 2016, condominium associations that have not opted out of retrofitting requirements must apply for a building permit which will demonstrate compliance with the retrofitting requirement no later than December 31, 2019. If an effort to obtain members' votes to opt out fails, the association may seek a new vote in three years.
11. §718.111(2)(n): Condominium Association Director Delinquencies. Officers and directors who are delinquent for more than ninety days of not only regular assessments, but also any monetary obligations to the association shall be deemed to abandon their office.
12. §718.111(2)(o): Condominium Association Director Crimes. An officer or director charged by indictment or information of felony theft or embezzlement

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of their condominium association's funds, are suspended, until the earlier of a resolution of charges or the end of their term.

13. §718.115(d): Condominium Telecommunications Services. Telecommunication services such as internet access and similar services provided pursuant to a bulk contract may be incorporated into an association's budget.
14. §718.116: Condominium Association Assessments. Lenders who acquire units as the result of a mortgage foreclosure are required to pay twelve months of delinquent assessments, or one percent of the original principal balance on the unit, whichever is less.
 - (a). Tenants. Tenants occupying units in which the owner failed to pay assessments may be required to pay his/her rent to the association up to the amount of the delinquency. Notification to owner and tenant required. Association may file for eviction for tenants that refuse to comply. Prepaid rent, upon proof to the association, must be credited to owner's account.

Unanswered questions:

(i) Can the association demand rent for amounts that became due before the effective date of the law?

(ii) If the association collects rent on a short term tenancy, does it have to pay sales tax? What if the owner doesn't pay the sales tax - is the association liable since it collected the rental payments?

(iii) What about the expenses incurred by the association to collect rent? With a receiver the Court allows the receiver's fees to

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(v) Can the association use the 'application of payments' procedure to collect the entire balance on the owner's account?

(vi) How is the accounting done? Is the rent considered non-assessment income?

15. §718.117: Condominium Termination. The procedure of terminating a condominium after a catastrophe or when the condominium governance structure is no longer economically viable is clarified.

16. §718.303: Condominium Enforcement. If a unit owner's monetary obligations, including assessments, are delinquent for over ninety days, then common element and facility use rights and voting rights may be suspended, except for such rights intended only for that unit for egress, ingress, parking and elevator access. Fines or suspensions may not occur without fourteen days advance notice to the unit owner and the person whose rights will be suspended or who will be fined. A notice and hearing is unnecessary if a suspension or fine is to the of failure pay monetary obligations owed to the association. The board of directors must approve a suspension.

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