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The Construction, Real Estate and Community Association Law Firm of Florida



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## 2017 Legal Update

The 2017 legislative session has come to an end, bringing significant changes to the community association industry. The following are summaries of enacted legislative bills that we believe will have an impact on community associations. The summaries provided below are intended to provide a general description regarding the adopted bills and the manner by which the applicable community association laws are impacted as a result of their adoption. For a complete reading of the adopted legislation, please refer to the text of the bill available on the websites for the Florida Senate ([www.flsenate.gov](http://www.flsenate.gov)) and Florida House of Representatives ([www.myfloridahouse.gov](http://www.myfloridahouse.gov)). Additionally, please contact our offices should you or your community require a more detailed legal analysis opining upon the impacts that the below described legislative changes might have on a specific community association. Unless otherwise specified below, July 1, 2017, is the effective date of the legislation described in this update.



**PASSED**

# 2017 LEGISLATIVE UPDATE

## BILLS THAT PASSED

**SB 398: Estoppel Certificates**  
(Effective July 1, 2017) – Amending  
Section 718.116, Florida Statutes,  
Section 719.108, Florida Statutes, and  
Section 720.30851, Florida Statutes

- Reduces the time for associations to respond to written or electronic requests for estoppel certificates from fifteen (15) days to ten (10) business days.
- Requires each association to provide on its website the identity of a person or entity (and their street or e-mail address) to which requests for estoppel certificates may be sent.
- Provides that estoppel certificates must be submitted by hand delivery, regular mail, or e-mail to the requestor on date of issuance of estoppel certificate.
- Changes authorized association signatories for estoppel certificates from officer or agent of association to any board member, authorized agent, or authorized representative of the association, including authorized employees of the association's management company.
- Establishes the information to be contained in, and the substantial form of, an estoppel certificate. The following information must now be included in the estoppel certificate: the date of issuance, name of unit owner pursuant to association records, unit designation and address, parking space or garage number pursuant to association records, name and contact information for association counsel if the account is delinquent, fee for the preparation and delivery of the estoppel certificate, the name of the requestor, and assessment and other information, including whether the board of directors has the authority to approve of unit transfers and if there is a right of first refusal.



**PASSED**

# 2017 LEGISLATIVE UPDATE

## BILLS THAT PASSED

- Establishes a 30-day effective period for estoppel certificates sent via e-mail or hand delivery, and a 35-day effective period if delivered by regular mail. Requires issuance of an amended certificate at no charge if the association learns of new information or a mistake made in the certificate prior to the sale or refinance of the unit.
- Caps the fees which may be charged for preparation of an estoppel certificate at \$250.00, unless such certificate is requested on an expedited basis, in which case an additional \$100 may be charged; if there are delinquent amounts due to the association from the applicable parcel, the association may charge an additional fee not to exceed \$150.00.
- Provides that no fee may be charged if the estoppel isn't provided within the 10 business-day deadline; and establishes an aggregate fee limit for requests for multiple units owned by the same owner if there are no past due monetary obligations owed by such owner.
- Provides that the association waives the right to collect any amounts not included in the estoppel certificate from any person who relies on the information in good faith and his or her successors.
- Requires that the board of directors pass a resolution to establish the authority to charge a fee for the preparation and delivery of estoppel certificates.
- Provides that reimbursement for estoppel certificate fees for sales that did not occur may not be waived by agreement if the estoppel certificate fee was paid by someone other than the unit owner. Also provides for prevailing-party attorney fees related to actions for such reimbursements.
- Provides that the statutory fees authorized shall be adjusted every 5 years in keeping with the Consumer Price Index, and the adjusted amounts shall be published on the DBPR's web site.

<https://www.flsenate.gov/Session/Bill/2017/398/BillText/er/PDF>

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# 2017 LEGISLATIVE UPDATE BILLS THAT PASSED

## **HB 377: Limitations on Actions other than for the Recovery of Real Property** **(Effective July 1, 2017)**

- Completion of the Contract, as referenced in Section 95.11(3)(c), Florida Statutes, is now defined as the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

<https://www.flsenate.gov/Session/Bill/2017/377/BillText/er/PDF>

## **SB 1520: Termination of a Condominium Association** (Effective July 1, 2017) – Amending **Section 718.117, Florida Statutes**

### **Applicability**

- The statute contains language indicating it is controlling over language in a condominium's declaration and applies to all condominiums in the state in existence on or after July 1, 2007. The phrase: "Unless the declaration provides for a lower percentage" has been stricken indicating that the threshold established in the statute is the minimum vote required for optional termination.



### **Optional Termination**

- Prior to the effective date of the amendment, in order to approve a plan of termination, 80% of unit owners must approve the plan, and no more than 10% of unit owners can object. The changes to the statute now require an 80% unit owner vote approving a plan of termination; with less than 5% objecting. Additionally, the changes to the statute now

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# 2017 LEGISLATIVE UPDATE

## BILLS THAT PASSED

provide that once the plan of termination passes a unit owner vote, it would then need to be approved by the Division.

- The Division will have 45 days to review the Plan of Termination and notify the association of any deficiencies, or if it is rejected. If the Division does not respond within 45 days, the plan is deemed accepted. Under the new law, plans of termination will now need to include factual circumstances that show that the plan complies with Section 718.117, Florida Statutes, and supports the public policies of the section, which are listed below.
- If a plan of termination is rejected by 5% or more of the total voting interests of the condominium, then a new plan may not be considered for 24 months, as opposed to the current period of 18 months.
- Under the current law, a condominium owner who purchased a unit from the developer must be made “whole” upon termination. In other words, the plan of termination could not provide for paying the unit owner less than the original purchase price. SB 1520 removes the language that restricts this requirement only to the original unit owner, meaning that an owner who purchased a resale condominium would also be entitled to receive a minimum of the purchase price upon optional termination. The bill applies this section to all unit owners, not just the ones who object to the plan.

### **Public Policy Reasons the DBPR Evaluates During Review for Optional Termination**

- Ensure continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements; or avoiding the costs and responsibilities of maintenance, management, and repair from falling on the shoulders of the taxpayers.
- Prevent covenants from impairing the continued productive use of the property.
- Protect state residents from health and safety hazards.
- Provide fair treatment and just compensation for individuals, and preserve property values.
- Protect homestead property and homestead property rights.

<https://www.flsenate.gov/Session/Bill/2017/1520/BillText/er/PDF>

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# 2017 LEGISLATIVE UPDATE BILLS THAT PASSED

## **HB 6027: Financial Reporting (Effective July 1, 2017)**



association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements, and instead bases financial reporting requirements strictly on annual revenues.

- Sections 718.111(13)(b) and 719.104(c)2, Florida Statutes, are amended to remove the requirement that an association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements, and instead bases financial reporting requirements strictly on annual revenues.
- Sections 718.111(13)(d) and 719.104(b), Florida Statutes, are amended to remove the restriction which limit the ability of a condominium and cooperative association, respectively, to waive the financial reporting requirements of such Sections for more than three consecutive years.
- Section 720.303(7), Florida Statutes is amended to remove the requirement that a homeowners' association that operates fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements, and instead bases financial reporting requirements strictly on annual revenues.

<https://www.flsenate.gov/Session/Bill/2017/6027/BillText/er/PDF>

## **HB 1237: Condominiums (Effective July 1, 2017)**

### **Financial Reporting (Section 718.71, Florida Statutes)**

- A new law is created specifying that condominium associations shall provide an annual report to the Department of Business and Professional Regulation containing the names of all financial institutions with which they maintain accounts. Any association member may obtain a copy of the annual report from the department upon written request.

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# 2017 LEGISLATIVE UPDATE BILLS THAT PASSED

## **Anti-Kickback Provision (Section 718.111, Florida Statutes)**

- This new law provides that an officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to an association.
- Any officer, director, or manager who knowingly solicits, offers to accept or accepts any thing or service of value or kickback is subject to civil and, if applicable, criminal penalties.

## **Criminalization of Certain Acts (Section 718.111, Florida Statutes)**

The following acts are now punishable as criminal acts:

- Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as a felony of the third degree in accordance with Section 831.01, Florida Statutes.
- Theft or embezzlement of funds of a condominium association is punishable based upon the amount of the theft or embezzlement in accordance with Section 812.014, Florida Statutes.
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence in accordance with Section 918.13, Florida Statutes or as obstruction of justice as provided in Chapter 843, Florida Statutes.





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# 2017 LEGISLATIVE UPDATE

## BILLS THAT PASSED

- An officer or director charged by information or indictment with a crime referenced above must be removed from office and the vacancy shall be filled, unless the bylaws provide otherwise, by electing a new board member, and the election must be by secret ballot. The vacancy created by the removal of such officer or director shall be filled until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.
- If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order.
- If the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

### **Hiring of Legal Counsel (Section 718.111, Florida Statutes)**

- An association may not hire an attorney who represents the management company of the association.

### **Purchase of Foreclosed Unit (Section 718.111, Florida Statutes)**

- Except for a timeshare condominium, a board member, manager or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

### **Official Records and Association Website (Section 718.111, Florida Statutes)**

- The list of official records an association is required to maintain is now expanded to specifically include bids it receives for materials, equipment, or services.
- A renter of a unit may now inspect and copy an association's bylaws and rules. Previously, such documents were only made available to association members and their authorized representatives for inspection and copying.
- Condominium associations with 150 units or more, which do not manage time share units, are now required to post digital copies of certain records on the association's website before July 1, 2018. The following records, in digital format, must be posted on the association's website:

**PASSED**

# 2017 LEGISLATIVE UPDATE

## BILLS THAT PASSED

- The recorded declaration and bylaws, the Association's articles of incorporation, and any amendments of the foregoing.
- Rules of the association.
- Management agreements, leases, contracts (including summaries of bids for materials, equipment, or services, which must be maintained on the website for one year).
- Annual budget and any proposed budget to be considered at the annual meeting.
- Financial report and any proposed financial report to be considered at a meeting.
- Director certifications.
- Contracts or documents regarding conflicts of interest or possible conflicts of interest between an association and its directors (or other entities in which an association's director is an officer or director or financially interested).
- Unit owner meeting notices and agenda (notices must be posted in plain view on the front page of the website, or on a separate subpage labeled "notices which is conspicuously visible and linked from the front page).
- Documents to be considered and voted on during owners' meetings and documents listed on the agenda (must be posted at least seven (7) days before the meeting at which the document or information within the document will be considered).
- Board meeting notices, agenda and materials.
- The association's website must be either an independent website wholly-owned and operated by the association, or a website or web portal operated by a third-party provider. The association's website must be accessible through the internet and must contain a sub-page, web portal, or protected electronic location that may be accessible only to the unit owners and employees of the association not the general public. Upon a unit owner's written request, the association must provide the unit



https://www.

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# 2017 LEGISLATIVE UPDATE

## BILLS THAT PASSED

owner with a username and password and access to the protected sections of the association's website.

- An association shall ensure that the information and records listed above, which are not permitted to be accessible to unit owners, are not posted on the association's website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure that the information is redacted before posting online.
- To implement the website requirement above, the Department of Business and Professional Regulation shall include within the next condominium annual fee statement a notice informing condominium associations or 150 or more units of the requirement to create a website for association documents on or before July 1, 2018.

### **Financial Reporting (Section 718.111, Florida Statutes)**

- An association must mail or hand deliver the most-recent financial report to a requesting owner within five (5) business days after the association receives a written request from the owner. A unit owner may provide written notice to the Division of the association's failure to mail or hand deliver the most-recent financial report after submitting a proper written request to the association. If the Division determines that the association failed to comply with a proper written request by a unit owner, the Division shall provide written notice to the association that it must mail or hand deliver a copy of the most-recent financial report to the unit owner and the Division within five (5) days of receiving such notice. If the association fails to comply with the Division's request, the association may not take advantage of the option to waive the financial reporting requirement in the future. A financial report received by the Division in accordance with this section shall be maintained by the Division and the Division shall provide a copy of the report to an association member upon their request.
- The provision permitting associations with fewer than fifty (50) units to prepare a report of cash receipts and expenditures in lieu of financial statements has been removed. Associations with total annual revenues of less than \$150,000.00 are still required to prepare a report of cash receipts and expenditures.

**PASSED**

# 2017 LEGISLATIVE UPDATE BILLS THAT PASSED

## **Debit Cards (Section 718.111, Florida Statutes)**

- A new provision has been added specifying that an association, its officers, directors, employees and agents may not use a debit card issued in the name of the association or billed directly to the association for the payment of any association expense. Use of a debit card issued in the name of an association or billed directly to the association for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud in accordance with Section 817.61, Florida Statutes.

## **Director Term Limits (Section 718.112, Florida Statutes)**

- Board members may serve two-year terms if permitted by the bylaws or articles of incorporation. A board member may not serve more than four consecutive two-year terms, unless approved by the vote of 2/3 of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.



## **Recall of Director (Section 718.112, Florida Statutes)**

- A board shall duly notice and hold a board meeting within five (5) full business days after the adjournment of the unit owner meeting to recall one or more of the board members or after receipt of the agreement in writing for recall. The requirements for the board to certify the recall at the board meeting, or to file a petition for arbitration within five (5) business days therefrom in the event it does not certify the recall, have been removed from the statute.
- Such member or members recalled shall turn over to the board within ten (10) full business days any and all records and property of the association in their possession. Previously, the recalled director(s) had to do so in five (5) business days.

**PASSED**

# 2017 LEGISLATIVE UPDATE

## BILLS THAT PASSED

- Removes the requirement that the board which does not certify the recall must file a petition for arbitration with the Division.

### **Conflict of Interest (Section 718.112, Florida Statutes)**

- An association 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 a relative within the third degree of relation by blood or marriage of a board member or officer. The foregoing does not apply to a service provider in which a board member or officer, or a relative owns less than one (1) percent of the equity shares.

### **Arbitration (Section 718.1255, Florida Statutes)**

- The Division may, but is no longer required, to employ full-time attorneys to conduct arbitration hearings.
- The Division may certify attorneys who are not employees of the Division to conduct arbitration hearings. A person may only be certified by the Division to act as an arbitrator if they have been a member in good standing of the Florida Bar for at least five (5) years and have mediated or arbitrated at least ten (10) disputes involving condominiums in Florida during the three (3) years immediately preceding the date of application, mediated or arbitrated at least thirty (30) disputes in any subject area in Florida during the three (3) years immediately preceding the date of application, or attained board certification from the Florida Bar in real estate law or condominium and planned development law.



- An arbitrator's certification is valid for only one (1) year and an arbitrator who does not maintain the minimum qualifications for initial certification may not have their certification renewed. The department may not enter into a legal services contract for an arbitration hearing with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within fifty (50) miles of the dispute.

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# 2017 LEGISLATIVE UPDATE BILLS THAT PASSED

- Upon determination by the Division that a dispute exists and that a petition substantially meets the requirements of the statute and any other applicable rules, the Division is required to assign or enter into a contract with an arbitrator and serve a copy of the petition on all respondents. The arbitrator is now required to conduct a hearing within thirty (30) days after being assigned, or entering into a contract with the Division, unless the petition is withdrawn or a continuance is granted for good cause shown.
- The arbitration decision is now required to be rendered within thirty (30) days after the hearing and presented to the parties in writing. An arbitrator's failure to render a written decision within thirty days after the hearing may result in the cancellation of the arbitrator's certification.

## **Agreement for Operation, Maintenance or Management of Condominiums (Section 718.3025, Florida Statutes) – Entirely New Subsection of Section 718.3025, Florida Statutes**

- A maintenance or management service company managing a residential condominium after turnover, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid assessments or take a deed in lieu of foreclosure. The foregoing does not apply to timeshare condominium associations.
- If 50% or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to an association managing a residential condominium after turnover, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be cancelled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party. The foregoing does not apply to timeshare condominium associations.



**PASSED**

# 2017 LEGISLATIVE UPDATE

## BILLS THAT PASSED

### **Conflicts of Interest (Section 718.3027, Florida Statutes) – Entirely New Section of Chapter 718, Florida Statutes**

Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:

- A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.
- A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.
- If a director or an officer, or a relative of a director or an officer proposes to engage in an activity that is a conflict of interest, as described above, the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or director has violated the foregoing provision, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.
- A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described above, may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, or the relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.
- A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest is

**PASSED**

# 2017 LEGISLATIVE UPDATE BILLS THAT PASSED

voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20% percent of the voting interests of the association.

## **Obligations of Owners and Occupants (Section 718.303, Florida Statutes)**

- The Bill clarifies that an association may suspend a unit owner's or member's voting rights in connection with the nonpayment of a monetary obligation owed to the association and now imposes a monetary limitation that the amount owed must exceeds \$1,000.00 and be more than ninety (90) days delinquent.
- Proof of the monetary obligation must now be provided to the unit owner or member thirty (30) days before the suspension of voting rights can take effect.
- A receiver may not exercise the voting rights of any unit owner whose unit is placed in receivership for the benefit of the association.



## **Ombudsman (Section 718.5012, Florida Statutes)**

- An ombudsman now has the specific power to review secret ballots cast at a vote of the association.

<https://www.flsenate.gov/Session/Bill/2017/1237/BillText/er/PDF>

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## 2017 LEGISLATIVE UPDATE BILLS THAT DID NOT PASS

### **Important to Note:**

House Bill 653, which dealt with modified requirements for retrofitting high-rise condominiums in Florida with fire sprinklers and other life safety systems, passed in both the House of Representatives and the Senate, however this Bill was vetoed by the Governor. The most notable change the Bill proposed was allowing residential condominium buildings—greater than 75 feet in height—to vote to forego retrofitting with fire sprinklers and other engineered life safety systems. Attributing his veto to the high-rise fire in London that killed dozens of residents, Governor Rick Scott rejected a bill that would have eased the fire-protection requirements for high-rise buildings in Florida. As a result, condominiums that meet the minimum height requirement must comply with existing retrofitting requirements by the initial 2019 deadline. For more information on how your building can prepare for this deadline, please contact our office.

