

# BABB

## Property Pro

## 2010 Community Association Law Update

### **CONDOMINIUMS – CHAPTER 718 FLORIDA STATUTES**

**718.110(13): Condominium Rental Amendments.** The limitation on leasing amendments is clarified, now limited only to new restrictions that (1) totally prohibit leasing, (2) alter the duration of the rental term or (3) restrict the number of leases.

**718.110(14): Condominium LCE Amendments.** A document amendment may reclassify a portion of common elements that is designed and intended for use by less than all unit owners as limited common elements, upon the same vote as a regular amendment.

**718.111(11): Condominium Insurance.** The requirement of an a condominium unit owner to obtain their own insurance, and the corresponding requirement that the condominium association be an additional insured on such policies, is repealed.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 The special notice requirement for a meeting at which a deductible is approved is repealed.

**718.111(12): Condominium Association Records.** The Association must remove from open records electronic mailing addresses and telephone numbers upon the request of a member when the member no longer consents to receiving notice electronically. The Association is not responsible for a member's use of official records unless the Association has an affirmative duty not to 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, emergency contact information, electronic security information including passwords, as well as software and operating systems.

**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. Small associations, those administering fewer than 75 (formerly 50) units may prepare a cash report, rather than a statutory financial report regardless of budget size.

**718.112(2)(d)(1): Condominium Association Unit Owner Meetings.** The process for cancelling a director's election because there are no more candidates than terms vacant, is clarified. Outgoing directors are eligible for reappointment if there is no election. Co-owners serving as directors is permitted only if the two owners own more than one unit, or there only 10 units in the condominium or if there are no other eligible candidates for the Board. Within ninety days after election, a director must certify their ability to comply with the condominium's documents or has completed a State education course, and if a certificate is not filed, then the director may be temporarily suspended and the position filled by a board appointed alternative.

**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 demonstrating compliance with the retrofitting requirement no later than December 31, 2019. If an effort to obtain members' votes to opt out fails, then the association may seek a new vote only after the passage of three years. Electronic notice of such a meeting is prohibited. The Division of Land Sales is to establish rules for voting procedures.

**718.112(2)(n): Condominium Association Director Delinquencies.** Officers and directors who are delinquent for more than ninety days of regular assessments, but also any monetary obligations to the association (fines, legal fees, interest) shall be deemed to abandon their office.

§718.112(2)(o): Condominium Association Director Crimes. An officer or director charged by indictment or information of felony theft or embezzlement of their condominium association's funds, are suspended, until the resolution of charges or the end of the term, whichever is first.

§718.115(1)(d): Condominium Communications Services. Communications, including internet and other information services, provided pursuant to a bulk contract may be incorporated into an Association's budget.

§718.116: Condominium Association Assessments. Lenders who acquire units as the result of a mortgage foreclosure are to pay twelve (12) months of delinquent assessments, or one (1%) percent of the original principal balance, whichever is less. Tenants in units for which the unit owner failed to pay assessments may be required to pay association assessments up to their obligation to the owner.

§718.117: Condominium Termination. The process of terminating a condominium after a catastrophe or when it is not economically viable to continue the condominium, is clarified.

§718.202: Condominium Developer Sales Escrows. To clarify previous laws, a developer may hold escrow deposit funds in one account, rather than required to be in separate accounts.

§718.301: Condominium Association Transition. When transition is triggered by the appointment of a receiver, a court may delay mandatory transition of control of a condominium association if the action is sought within thirty days of a receiver's appointment, and if transition would be detrimental to the association or its members.

§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 may be suspended, except for those rights intended only for that unit, or for egress, such as 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 not necessary if a suspension or fine is the result of failure to pay monies to the Association; however, the fine or suspension still must be approved by the board of directors and notice of imposition must be provided. Voting rights may also be suspended for non-payment of monetary obligations.

§718.701 to .708: Bulk Sales. A new part VII of the Condominium Act is created, entitled the "Distressed Condominium Relief Act" responding to the economic downturn and assisting lenders and unit owners who have purchased in distressed condominiums, announcing a public policy to protect interests and provide relief to allow economic opportunities.

§718.703 Definitions for Bulk Assignee. Differentiates between those who acquire more than seven units, between a "bulk assignee" who is assigned at least some of the developer's rights, and a "bulk buyer" who receives no assigned rights except for exemption from the condominium association's sale marketing limitations, capital contributions, and a right of first refusal.

§718.704 Assignment and Assumption. Permits a bulk assignee to be exempt from certain prior developer obligations, including: construction warranties and converter reserve obligations, except for the assignee's work; audit; developer appointed director liabilities; failure to fund assessments or budget guarantee if the right to guarantee is not assigned; and, other Condominium Act and Declaration obligations unless provided by the new Part VII. Insider and those intending to hinder or defraud are not entitled to these benefits. Multiple assignees are permitted, priority determined by date of recording an assignment.

§718.705 Board and Transition. Transfers under this part do not trigger transition. Assignees are required to make a good faith effort to acquire items to be provided to the Association at time of transition, and certify to the Association that the items are not available. Substantial compliance required to obtain the benefits of this Part.

§718.706 Offering. Offering for sale or lease in excess of five years requires a prospectus, Questions and Answers Sheet, escrow agreement, financial information with disclaimer of missing information if appropriate. An assignee must provide a statement and description of assignment, including treatment of reserves and contracts. Bulk buyer must comply with the declaration's transfer provisions.

§718.707 Timing. Buyer or assignee under this Part must take title as shown by a instrument recorded before July 1, 2012.

§718.708 Liability. Original developer not released from liabilities under the Act or declaration.

## **COOPERATIVES – CHAPTER 719 FLORIDA STATUTES**

§719.106(d)(1): Cooperative Association Directors. Cooperative association director vacancies may be filed by the board of directors or by member election. Unless provided by a cooperative association's by-laws, the person filling a vacant term serves to the end of the term.

§719.1055: Cooperative Life Safety Compliance. Life Safety Code provisions are updated, including allowing a licensed electrical contractor's certificate of compliance to be accepted as evidence of compliance with applicable fire and Life Safety Codes. Cooperatives which have not voted to opt out of fire sprinkler system retrofits must apply for an installation permit by December 31, 2016 with installation and compliance by December 31, 2019. Procedures for opt out are specified, noting that if a vote fails, then the vote may be rescheduled only once every three years.

§719.108: Cooperative Association Assessments. A cooperative association's lien may include late fees and collection fees in addition to other expenses; however, the lien may not be recorded until thirty days after providing the owner a notice of intent to file a lien. If an owner has not paid monetary obligations to the cooperative association, then the cooperative may require the tenant to pay the obligation, up to the amount of the monies due to the association, and if the tenant does not pay, then the association may evict the tenant.

#### **HOA'S - CHAPTER 720 FLORIDA STATUTES**

§720.303(2)(b): HOA Directors' Meetings. Homeowners' association board of directors meeting requirements are clarified, including closing meetings to members if proposed or pending litigation is being discussed with the Association's attorney, or the board of directors is discussing personnel matters.

§720.303(5): HOA Records. Access by a member to homeowners' association records is triggered upon the association's receipt of a Certified Mail Return Receipt letter. Charges for "reasonable costs" may be sought for administrative and costs to the association to duplicate. Certain records are not available to owners, including employee payroll records as well as social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers and other personal identifying information, as well as electronic security measures including pass words and software and operating systems.

§720.303(6): HOA Budgets. Reserve funding requirements for homeowners' associations are clarified, including permitting lot owners to terminate reserve funds by a majority vote of all of the association votes, and providing for disclosures when reserves are not kept as otherwise required.

§720.303(12): HOA Volunteer Compensation. Homeowners' association directors, officers and committee members may not receive compensation for their duties in such a position; however, this does not prohibit monies being paid to them as the monies are paid to any other member, such as for reimbursement of out-of-pocket expenses, insurance proceeds, developer representatives, as otherwise authorized by the governing documents, or as authorized by majority vote of the votes cast at a members' meeting.

§720.304(2)(b): HOA Parcel Flags. Flag poles and displays of flags are subject to most other governmental requirements, including building codes, and setback and location criteria specified in the governing documents.

§720.305(2): HOA Member Obligations. If a homeowner association's member's monetary obligations to the association are delinquent for more than ninety days, then common area and facility use rights may be suspended, except for parcel and utility service access. Fines may not be a lien unless the amount exceeds \$1,000.00. The association must provide notice to those impacted by imposition of a fine or suspension.

§720.306(7): HOA Meetings. Members' meetings may be adjourned to another time and place.

§720.306(8)(b): HOA Voting. Absentee ballots may be utilized in homeowners' association elections if permitted by the governing documents, and ballot secrecy procedures are utilized, including secrecy envelopes and a verification to ensure that only one ballot is submitted per parcel.

§720.306(9): HOA Director Term. Nominations in advance of directors' elections are permitted when absentee ballots are utilized. When a vacancy other than a recall occurs, the remaining directors may fill the vacancy or call an election. The person appointed or elected shall serve for the unexpired term.

§720.3085(8): HOA Assessments. Tenants in parcels for which the owner failed to pay assessments may be required to pay association assessments up to the tenant's obligation to the owner.

§720.31(6): HOA Recreational Facilities Homeowners' association acquisition of recreational facilities, including golf courses and marinas are limited, including requiring that the declaration as originally recorded provides acquisition rights, or within twelve months thereafter if approved as a material alteration or addition; however, if the declaration is silent, then approval must be by seventy-five percent of those holding all the voting interests.

§720.315: HOA Developer Assessments. Before a homeowner association's control is transitioned from the developer to the lot owner controlled board of directors, a special assessment may not be levied, except if approved by a majority vote of non-developer unit owners at a special meeting.

#### **TIMESHARES - CHAPTER 721 FLORIDA STATUTES**

Time Shares Non-Judicial Foreclosure. Effective upon becoming a law. Chapter 721 is extensively amended to provide a procedure for the foreclosure of liens, including mortgage and condominium assessment liens against time share parcels through a non-judicial foreclosure process. In addition, §721.13(13) provides that time share association officer, directors and agents must discharge their duties in good faith in a manner reasonably believed to be in the best interest of the time share owners association. Thresholds for liability are set forth. A new part III of Chapter 721 is created in 721.81 et. seq. to provide for a managing entity's non-judicial foreclosure proceedings required by the parties contract so long as the contracted insurance is obtained, for person injury claims and claims for property other than that which is the subject of the contract.

#### **NON-FOR-PROFIT CORPORATIONS - CHAPTER 617 FLORIDA STATUTES**

§617.0721, 617.0808 and 617.1606: Corporate Statutes. The Florida Not for Profit Corporation Act is clarified, confirming that these three sections concerning member voting, removal of directors and access to records do not apply to condominium, cooperative, or homeowners' associations.

#### **MISCELLANEOUS**

**SERVICE CONTRACTS: Renewal.** Effective July 1, 2010 only to contracts entered into after that date. Service contracts effective for over six months providing renewal for over one month unless the consumer gives notice, shall conspicuously disclose the automatic renewal. If the contract is for twelve months or more, then the seller shall provide notice of the renewal provision no less than thirty and no more than sixty days before renewal. Exceptions include most financial institutions, utilities, insurers, and health studios.

**BUILDING CODES: Fire Sprinklers.** Effective upon becoming a law.

§633.055 Minimum Fire Safety. A change in use to residential rental cannot be used to mandate sprinkler installation.

§399.02: Elevator Fire Fighter Service. Condominium and cooperative associations administering elevators in buildings certified for occupancy are granted a five year extension to comply with new firefighter control upgrade requirements.

§627.714(1): Condominium Insurance Policies. New individual condominium unit owner insurance policies must include lost assessment coverage of at least \$2,000.00, that dollar amount is not multiplied by the number of association assessments, the policy is considered excess over other policies which presumably means the association's policy, and a maximum deductible of \$250.00 per loss applies.

§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.