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**STATUTORY UPDATE FOR CONDOMINIUMS,  
COOPERATIVES AND HOMEOWNERS ASSOCIATIONS**

The following is a summary of recent changes to the Florida Statutes relating to Condominiums, Cooperatives and Homeowners Associations. It should be noted that this handout is a summary in nature and has been compiled to identify provisions which are of extra importance to our community association clients. On the other hand, because it is summary in nature, this handout should not be relied upon as a definitive guide for any Association. We suggest you review the actual statutory language or contact your Association attorney with specific questions.

**I. SENATE BILL 630**

**A. CONDOMINIUM ASSOCIATIONS**

**1. Insurance:**

- Section 627.714, Florida Statutes is amended to provide that where a condominium association's insurance policy does not provide for rights of subrogation against a unit owner, then a unit owner's individual insurance policy cannot provide for subrogation against the condominium association.
- This is likely meant to address the problem of insurance companies filing unfounded and sometimes frivolous negligence claims against condominium associations under theory of subrogation almost anytime the insurer was required to pay out for a loss under an owner's policy. Water intrusion and damage claims constituted a large part of these claims.

**2. Official Records: Section 718.111(12)**

- Amended to reduce the time period for which bids for services, work, equipment, and materials must be kept by the Association to 1 year after receipt of the bid (previously, bids were required to be kept seven (7) years).

- Expanded the official records that a renter is entitled to inspect from simply the Bylaws and Rules and Regulations of the Association, to now include the Declaration, Bylaws, and Rules and Regulations.
- Added language to explicitly prohibit an association from requiring an owner/renter to demonstrate a purpose for a records inspection. This was almost universally regarded by community association practitioners to be the correct interpretation of the prior statutory language, so the amendment simply codified what had already been in practice.
- Associations of 150 or more units are now permitted to make certain official records available on a mobile device application, as well, rather than requiring such records to be accessible through a “website.”

### **3. Bylaws: Section 718.112, Florida Statutes**

- Amended to permit Association, through Board action alone, to remove any “discriminatory restriction” that may be contained in the governing documents. Some older governing documents contained restrictions on use and occupancy that were facially discriminatory, but that could not be removed/amended out due to difficult approval thresholds in the documents. The amendments cure this problem and protect associations from the threat of claims/lawsuits alleging that their rules and restrictions are facially in violation of anti-discrimination laws.
- Clarified the 8-year “term limits” imposed on Board members through statutory amendments adopted in 2018, provided that “[o]nly board service that occurs on or after July 1, 2018 (the effective date of the prior amendments) may be used when calculating a board member’s terms limit.”
- Added a requirement that notice of any membership meeting (not just the annual meeting) include an agenda for the meeting.
- Increased the maximum “transfer” (application) fees an association may charge in connection with a sale, lease, or other transfer from \$100.00 to \$150.00 for each applicant, and now provides that the fee may be increased once every 5 years in accordance with increased in Consumer Price Index (CPI). Requires DBPR to periodically calculate and publish the permissible fees.

- Amended to allow recall disputes to be filed directly in Court, rather than pursued first through an arbitration action.
- Removed prohibition against association contracts with service providers that are owned or operated by (a) board member(s).
- Added that condominium association boards may not prohibit installation of “natural gas fuel stations” on or within an owner’s “limited common elements” subject to certain restrictions. This provision already applied to electric vehicle charging stations, and the Legislature simply amended to codify that it applies to natural gas vehicle stations, as well.
- Board may install electric vehicle charging/natural gas fueling stations to common elements without the need for owner vote and such installation does not constitute a “material alteration” or “substantial improvement” under Fla. Stat. 718.110(4).

**4. Liens: 718.121, Florida Statutes**

- Costs of labor or materials for installation of electric vehicle charging/natural gas fueling stations may not form the basis for a lien against an association.

**5. Alternative Dispute Resolution: Section 718.1255, Florida Statutes**

- Now permits parties to a condominium dispute to go to nonbinding arbitration OR presuit mediation as a condition precedent to filing a court action. Prior statute language only gave the option of going to arbitration.

**6. Association Emergency Powers: Section 718.1265, Florida Statutes**

- Several changes to address issues and problems that came to light during COVID-19 pandemic. Now, statute specifically includes states of emergency caused by “contagion,” permits boards to notice conduct board/membership/committee meetings using remote technology.
- Permits boards to close off or restrict access to certain common elements during state of emergency, provided no such restrictions are to an owner’s/tenant’s/guest’s access for ingress/egress into unit OR when necessary, in connection with the sale, lease, or transfer of the unit (i.e., to real estate agents/brokers).

7. **Fining/Suspension Powers: Section 718.303, Florida Statutes**

- Changed the date when fines levied by Board are due from 5 days from the date of the committee meeting at which such fine was approved to 5 days from the date notice of the fine is sent to owner/tenant/licensee/invitee.

8. **Division Authority/jurisdiction: Section 718.501, Florida Statutes**

- Expanded the authority of the Division to include investigation of complaints regarding associations' maintenance of official records (previously, Division was, arguably only authorized to investigate complaints regarding unit owner access to records.)

**B. HOMEOWNERS ASSOCIATIONS**

1. **Definitions: Section 720.301, Florida Statutes**

- Removed an HOAs Rules and Regulations from the definition of "Governing documents" under the statute.

2. **Association Powers and Duties/Board Meetings/Official Records: Section 720.303, Florida Statutes**

- Board Meetings: 720.303(2): Added language permitting an HOA Board to, in addition to meeting notices by other lawful means, also "by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on [its] website or a [] [mobile device] application..." provided the notice complies with the minimum time periods and other requirements for posting meeting notices. Any rule adopted MUST include a requirement that meeting notices are sent to the email addresses of owner/members who provided same to the HOA for purpose of sending notices, and it MUST include a hyperlink in the email to the website or application where the notice is posted.

3. **Official Records: 720.303(4)**

- Added requirement that ballots, sign-in sheets, proxies, and ALL other records pertaining to voting be maintained for one year after meeting at which a vote occurred (previously, such voting materials were considered part of the official records to be kept for seven (7) years).
- Added that information obtained in a gated community in connection with guests visiting owners/residents is not accessible to owners via an inspection request.

**4. Budgets: 720.303(6)**

- Added that reserves are only mandatory if approved by a majority of the total voting interests OR if the Governing documents obligate the creation of reserves.
- Added requirement that if the association is responsible for repair and maintenance of capital improvements that might result in a special assessment against the owners if budget does not provide for fully funded reserves, then each financial statement must contain disclosure language in conspicuous type/font that owners may elect to provide for fully funded reserves by majority vote pursuant to Section 720.303(6).

**5. Recalls: 720.303(10)**

- Amended to allow recall disputes to be filed in court OR submitted to arbitration (previously, arbitration was sole means to adjudicate HOA recall disputes).

**6. Member Obligations; Remedies, Fines, Suspensions: Section 720.305, Florida Statutes**

- Changed due date from 5 days from date of committee meeting to 5 days from date notice of committee approved fine is sent to the owner, occupant, licensee, or invitee.

**7. Membership Meetings, Voting and Election Procedures. Section 720.306, Florida Statutes**

- Meeting Notice: 720.306(1)(g): Changed requirement that notices be sent to address on property appraiser's website to, instead, require notices be sent to the mailing address in the HOA's official records.

**8. Amendments—Rental Restrictions: 720.306(1)(h)**

- New provision added mirroring language of Condominium Act, providing that any governing document or amendment to governing document adopted after July 1, 2021 that "prohibits or regulates rental agreements, applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing document or amendment."

- Importantly, an exception was included in this provision which permits an association to amend its governing documents to prohibit or regulate rental agreements with terms of less than 6 months, and that an amendment may prohibit rental of a parcel more than 3 times in a calendar year.
- Additionally, statute specifically stated that a change of ownership does not occur (such that an amendment regulating rentals would be applicable) to transfers where a parcel owner conveys parcel to affiliated entity, when “beneficial” ownership does not change, or when an heir becomes the parcel owner.

**9. Prohibited clauses in governing documents: Section 720.3075, Florida Statutes**

- Added that HOAs may, by board action, eliminate discriminatory clauses in governing documents.

**10. Emergency Powers: Section 720.316**

- Added same emergency powers to HOAs as for condominium associations discuss above.

**C. COOPERATIVE ASSOCIATIONS**

**1. Official Records: Section 719.104(2)(c)**

- Added language to specifically prohibit an association from requiring an owner/renter to demonstrate a purpose for a records inspection.

**2. Virtual Board Meetings: Section 719.106(1)(b)(5)**

- Allows boards and committees to hold meetings by remote communication, such as video conferencing, consistent with Chapter 718.

**3. Recalls: Section 719.106(1)(f)(4)**

- Similar to condominiums and homeowners associations, allows recall disputes to be filed directly in court as well as through DBPR arbitration.

**4. Discriminatory Restrictions: Section 719.106(3)**

- Cooperative associations may remove illegal discriminatory restrictions contained in their governing documents by board vote only.

5. **Emergency Powers: Section 719.128**

- Added same emergency powers for cooperatives as for condominium associations and homeowners associations discussed above.

II. **SENATE BILL 56**

- Before changing the method of delivery of invoices or statements of accounts to unit owners, associations must deliver written notice to each unit owner at least thirty (30) days prior to the date on which the association sends such invoices or statements by the new delivery method. Owners must affirmatively acknowledge his or her understanding that the association will be changing its delivery method before such change is implemented for any particular owner. Such acknowledgment may be made either electronically or in writing. This applies to condominiums, homeowners associations and cooperatives.
- Provides that an association's "pre-lien" collection practice shall now require associations to first send a delinquent owner a "notice of late assessment," specifying the amount due on the owner's account and providing the owner thirty (30) days to pay that amount before any further collection action and before any attorneys' fees for collection are charged to the owner. Creates a rebuttable presumption that the "courtesy" notice was mailed if a Board member, officer, agent or licensed community association manager provides a sworn affidavit attesting to such mailing. The statute also contains a form for the notice that must be used for such purposes. Applies to condominiums, cooperatives and homeowners associations.
- **For condominiums and cooperatives**, changes the time frames for notices of intent to lien and intent to foreclose from thirty (30) days to forty five (45) days. This makes both statutes now consistent with Chapter 720 governing homeowners associations.

III. **SENATE BILL 1966**

A. **CONDOMINIUMS AND COOPERATIVE ASSOCIATIONS**

- Requires that the Board must adopt the annual budget at least fourteen (14) days prior to the beginning of the Association's fiscal year. Failure to do so will be deemed to be a minor violation, and the previous year's budget will continue until a new budget is adopted properly.

**B. CONDOMINIUM ASSOCIATIONS**

- Revises the Condominium Act to provide that a candidate for the board of directors who is delinquent in the payment of “any assessment” shall not be eligible to be a candidate for the board. Previously, the statute provided that a person who is delinquent in the payment of “any monetary amount” owed to the association would not be eligible to be a candidate. Now, for condominiums, the candidate must be delinquent in the payment of an actual assessment (i.e., not a fine or other non-assessment fee).

**IV. SENATE BILL 2006 (PROHIBITION ON PROOF OF VACCINATION)**

- Provides that any business entity, including condominium associations, cooperative associations and homeowners associations, may not require patrons or customers to provide any documentation certifying Covid-19 vaccination in order to gain access to or entry upon the association’s property (i.e., recreational facilities, amenities, common areas).

**V. SENATE BILL 72 (COVID-19 LIABILITY LAW)**

- Protects corporations, including community associations, from civil liability for any claim relating to Covid-19 under certain circumstances.
- Plaintiff in any such claim is required to submit an affidavit, signed by a licensed physician, attesting to the physician’s belief, within a reasonable degree of medical certainty, that plaintiff’s Covid-related damages, injury or death occurred as a result of the association’s actions or omissions.
- The association is required to use its good faith efforts to substantially comply with the controlling governmental issued health standards or guidelines that were available at the time the cause of action arose. The court would be required to determine, as a matter of law, whether the association made such a good faith effort.
- If the court determines that the association made such a good faith effort, the association would be completely immune from any civil liability. Further, if more than one set of standards or guidance was controlling or available at the time the cause of action arose, the association’s good faith effort to substantially comply with any one of such standards or guidelines would be enough to provide complete immunity from civil liability.

- Even if the court determined that the association did not make such good faith effort, plaintiff would still have to prove the association was grossly negligent by clear and convincing evidence, in order to establish their Covid-related claim.
- Plaintiffs must commence a civil action for Covid-related claims within one (1) year after the cause of action accrued or within one (1) year of the effective date of the law, if the cause of action accrued before the law was in effect.
- Effective date was upon signing by governor and not July 1, 2021.

**VI. HOUSE BILL 649**

**1. ASSOCIATION AD VALOREM TAX STANDING**

- Provides that condominiums and cooperative associations shall have standing to challenge ad valorem tax increases on behalf of their members if approved by the board of directors. **Does not apply to homeowners associations.**

**VII. HOUSE BILL 463**

**1. HOMEOWNERS ASSOCIATION SWIMMING POOLS**

- Swimming pools serving a homeowners association, or other property associations, which have fewer than thirty two (32) lots, and are not operated as a public lodging establishment, shall be exempt from supervision under the state health department with the exception of supervision that is necessary to insure water quality as well as compliance with applicable provisions of Chapter 514, Fla. Stat.