

## **2015 LEGISLATION AFFECTING CONDOMINIUM ASSOCIATIONS:**

### **Voting by Members- Section 617.0721, Florida Statutes (HB 791)**

Copies, facsimiles or other reliable reproductions of proxies may be substituted for original proxies as long as it is a complete copy or reproduction of the proxy. *This is a clarification.* **(Effective July 1, 2015)**

### **Insurance- 718.111(11)(j), Florida Statutes (HB 791)**

In the absence of an insured event, the maintenance provisions of the declaration of condominium will control. *This is a clarification.* **(Effective July 1, 2015)**

### **Official Records- 718.111(12)(a)(15), Florida Statutes (HB 791)**

The catch all provision of the official record statute was amended to provide that all written records of the association not specifically included in the statute which are related to the operation of the association are part of the association's official records. **(Effective July 1, 2015)**

### **Notice by Electronic Transmission- 718.112, Florida Statutes (HB 791)**

Notice of any board, unit owner (except unit owner meetings to recall the board) and committee meetings may be provided by electronic transmission if the owner consents in writing to receive notice in such manner. *The authority to electronically send notices is not required to be in the association's bylaws as the statute previously required.* **(Effective July 1, 2015)**

### **Electronic Voting- 718.128, Florida Statutes (HB 791)**

An association (other than a timeshare association) may conduct elections and other votes of the membership through an internet based online voting system if a unit owner consents in writing to vote in such manner. However, the online voting system must meet the technical specifications of the statute, and it must ensure the secrecy and integrity of election ballots. Electronic voting applies to an association whose board authorizes an online voting system by board resolution. Written notice of any meeting where the board will consider a resolution for electronic voting must be mailed, delivered or electronically transmitted to the unit owners, and posted on the property, at least 14 days in advance of the meeting. Evidence of compliance with the 14 day notice must be made by an affidavit by the person providing the notice. **(Effective July 1, 2015)**

### **Collection of Assessments- 718.116(5)(b), Florida Statutes (HB 791)**

Any partial payment is applied first to any interest accrued, then to any administrative late fee, then to any costs, then to reasonable attorney fees, and then to the delinquent

assessment, and any purported accord and satisfaction, or restrictive endorsement, designation or instruction placed on or accompanying a payment shall not be binding on the association. *This is intended to clarify existing law, and it is in response to a recent case that applied accord and satisfaction law to partial payments received by a condominium association.* **(Effective July 1, 2015)**

**Fining/Compliance Committee- 718.303(3), Florida Statutes (HB 791)**

The amount of a proposed fine shall be determined by the board, but no fine or suspension may be imposed by the board unless the board first provides at least 14 days' written notice and an opportunity for a hearing before a committee of other unit owners who are neither board members nor persons residing in a board member's household to the unit owner and, if applicable, its occupant, licensee, or invitee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. *The statute was previously silent on whether the board or the committee determined the amount of the fine.* **(Effective July 1, 2015)**

**Suspension of Use and Voting Rights- 718.303(7), Florida Statutes (HB 791)**

The association may suspend the voting rights of an owner, and the rights of an owner and, when appropriate, the owner's tenants, guests, or invitees, to use the common elements, common facilities and association property (except for common elements needed to access the unit, utility services, parking spaces and elevators), if the owner is more than 90 days delinquent in the payment of any fee, fine or other monetary obligation to the association, even if the owner is current with respect to other units that he/she owns. **(Effective July 1, 2015)**

**Distressed Condominium Act- 718.707, Florida Statutes (HB 791)**

A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2018. The timeframe during which a person must have acquired such parcels was extended from July 1, 2016 to July 1, 2018. **(Effective July 1, 2015)**

**Termination of Condominium- 718.117, Florida Statutes (HB 643)**

Termination must be approved by at least 80% of the unit owners (unless the declaration provides for a lower percentage) and, if 10% or more of the unit owners reject termination, a subsequent plan of termination cannot be considered for 18 months. Suspension of voting rights is not permitted in any vote considering the termination of a condominium. If a bulk owner owns 80% or more of the units in the condominium, the plan of termination is subject to special requirements in the interest of the non-bulk owners, including, without limitation, that such non-bulk owners must be compensated 100% of the fair market value for their units. Fair market value is defined in the statute and does not take purchases after bankruptcy or foreclosure into consideration. Bulk owners must be identified, personally, in the plan of termination. If the board has been elected by the bulk owner, a new election for 1/3 of the board by owners, other than the bulk owner, must take place in order for the termination plan to move forward. A unit owner or lienor may contest the plan of termination by filing for

arbitration with the Division of Florida Condominiums, Timeshares and Mobile Homes within 90 days after the date the termination plan is recorded. **(Effective June 16, 2015)**

#### **Construction Defects- Chapter 558, Florida Statutes (HB 87)**

The Notice of Claim under the new legislation must be based upon at least a visual inspection by the claimant or its agents and must identify the location of each construction defect sufficiently so the responding parties can locate the defect without undue burden. However, the claimant does not have any obligation to perform actual testing for the Notice of Claim. The statute provides for the option for either a claimant or a party against whom a claim is made, at their own expense, to obtain the other party's photographs and videos of the construction defects identified in the Notice of Claim and all maintenance records and other documents related to the discovery, investigation, causation and extent of the defects identified in the Notice of Claim, and any resulting damages. However, a party may still assert a claim of privilege which is recognized under Florida law with respect to any of the disclosure obligations. Insurance companies have a role in the process of construction defect claim resolution through confidential settlement negotiations. The definition of "completion of a building or improvement" now includes a temporary certificate of occupancy or an equivalent authorization. **(Effective October 1, 2015)**

#### **Termination of Lease After Foreclosure- Chapter 83, Florida Statutes (HB 779)**

If a tenant is occupying a unit that is acquired by foreclosure, the tenant must vacate the premise after 30 days following the date of the acquirer's delivery of a written notice to the tenant terminating occupancy. **(Effective June 2, 2015)**

#### **Citizens Property Insurance- Sections 627.351, 627.712(1) and 627.351, Florida Statutes (HB 715)**

Any major structure, as defined in Section 161.54(6)(a), that is newly constructed or is rebuilt, repaired, remodeled or restored to increase the total square footage of finished area by more than 25%, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by Citizens if it is seaward of the coastal construction line or is within the Coastal Barrier Resources System. **(Effective July 1, 2015)**

#### **Service Animals- Section 413.08, Florida Statutes (HB 71)**

*This law does not relate to fair housing issues. It only relates to service animals in places of public accommodations, i.e. restaurants.* It provides for penalties with respect to persons falsely claiming a need for a service animal. It also provides that a service animal must perform work or tasks and the animal cannot solely be for emotional support. It also contains procedural restrictions concerning the use of service animals in places of public accommodations. **(Effective July 1, 2015)**

*NOTE- This outline is summary in nature, and it is not intended to provide legal advice. If you have questions regarding the information set forth herein, please contact legal counsel.*