

## 2015 End of Session Summary

Regulation of Community Association Management – HB 7037 defines new management tasks and professional standards, alters the legal relationship between managers and associations, and provides for statutory forms for releases of liens, 30-day pre-lien letters, and 30-day notice of intent to foreclose letters. In 1996 the Florida Supreme Court issued an opinion in which it identified several tasks and activities then being performed by managers which it found to be the unauthorized practice of law. Recently, a committee of the Florida Bar requested that the Florida Supreme Court revisit that issue in light of the major changes in the law (e.g. pre-lien letters). In response to that Bar request, managers approached the Legislature and asked that it legislatively identify those tasks and activities which it believed could legally be performed by managers. The Supreme Court has not yet issued its new opinion.

Under defining new management tasks, HB 7037 provides managers may, in addition to existing services: determine the number of days required for statutory notices; determine amounts due the association; collect amounts due the association prior to the filing of a civil action; calculate the votes required for a quorum; calculate the votes required to approve a proposition or amendment; complete forms related to the management of a community association that have been created by statute or by a state agency; draft meeting notices and agendas, calculate and preparing certificates of assessments and estoppel certificates; responding to requests for a certificate of assessment; negotiate monetary or performance terms of a contract subject to approval by an association; draft pre-arbitration demands; coordinate or performing maintenance for real or personal property and other routine services involved in the operation of a community association; and comply with the association's governing documents and the requirements of law as necessary to perform any of the foregoing.

HB 7037 amended Chapters 718, 719, and 720 to include statutory forms for releases of liens, 30-day pre-lien letters, and 30-day notice of intent to foreclose letters, and permits managers to prepare those documents.

HB 7037 also creates a new legal relationship between managers and community associations. The bill provides licensed managers and community association management firms will be deemed to be acting as agents on behalf of community associations. It provides licensed managers and community association management firms will be required to discharge their duties loyally, skillfully, and diligently; to deal honestly and fairly; and act in good faith; and with care and full disclosure. They must also account for all funds in their control. Additionally, it provides that contracts between licensed managers or community association management firms and community associations may still provide for community associations to indemnify and hold harmless managers for ordinary negligence resulting from the manager or management firm's acts or omissions that are the result of an instruction or direction of the community association. The new law also permits other negotiated indemnity or hold harmless provisions. However, the new law prohibits clauses which indemnify managers against acts or omissions which violate a criminal law; actions through which managers derive improper personal benefits, either directly or indirectly; gross negligence; recklessness; bad faith; maliciousness or, actions which are exercised in a manner which would exhibit wanton and willful disregard of human rights, safety, or property. The measure went into effect on July 1.

Omnibus Community Associations Bill – Each year one bill typically becomes the platform for the proposed amendments which will impact community associations. HB 807 impacts community associations by addressing the following subjects:

- Timeshares vs. Vacation Rentals: Various sections of Chapter 509, Florida Statutes were amended to specifically provide that timeshare projects are to be treated as their own category for purposes of regulating public lodging establishments. This will be of special interest to timeshare hotels.

- Marketable Record Title to Real Property Act (HOAs only): Various sections of Chapter 509, Florida Statutes were amended to specifically provide that timeshare projects are to be treated as their own category for purposes of regulating public lodging establishments. This will be of special interest to timeshare hotels.
- Repair and Rental of Abandoned Units (Condominiums only): Section 718.111(5) was amended to expand the existing right of condominium associations to access units by providing that they may now enter into abandoned units to: inspect the unit and adjoining common elements; to make repairs to the unit or to the common elements serving the unit, as needed; to repair the unit as mold or deterioration is present; to turn on the power for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. It provides the criteria for determining whether a unit is presumed to be abandoned and requires certain new notice requirements. Importantly, the association can now charge the abandoned units for all such costs and foreclose on the unit if the charges are not paid. Also importantly, associations are now statutorily permitted to request that a court appoint a receiver to lease abandoned units.
- Insurance-Repair Obligation Clarification (Condominiums only): Section 718.111(11)(j) was amended to clarify that, if damage is not covered by the associations insurance carrier because it was not caused by an insurable event, the obligation to repair and/or replace the damaged items will be determined by looking to the requirements provided for in the governing documents.
- Additional Provisions Relating to the Production of Owners' Directories (Condominiums, HOAs and Co-ops): 718.111(12)(c)5, 719.104(2)(c)5 and 720.303(5)5 were all amended to clarify that owners in a condominium, cooperative and homeowners' association can also voluntarily consent to the publication of other protected contact information when being used in an owner directory.
- Forced Relinquishment of Official Records And Property (Condominiums and Co-ops only): Sections 718.111(12)(f) and 719.104(2)(e) were added to provide that outgoing board or committee members must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. It authorizes the Division to impose a civil penalty against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.
- Electronic Participation at Board Meetings (Condominiums only): The bill provides that, in addition to use of speaker phones, condominium board or committee members may participate in a meeting by real time video conferencing, or similar real time electronic or video communication.
- Board Members' Right To Communicate by E-mail (Condominiums Only): Section 718.112(2)(c) now permits Members of the board of administration to use e-mail as a means of communication, so long as they do not cast votes via e-mail.
- Removal of Condominium Associations From The Chain of Title For Assessment Purposes (Condominiums only): To be consistent with similar language contained in Chapter 720 for HOAs, 718.116(1)(a) was amended to provide that condominium associations which acquire title to units through foreclosure or by deed in lieu of foreclosure are not considered to be previous owners for assessment purposes.
- Limitations on Attempts to Terminate Condominiums (Condominiums only): Section 718.117(9) was amended to provide that, a new attempt to terminate a condominium cannot be commenced within 180 days from the date that an earlier termination attempt failed.
- Elimination Of The Community Association Living Study Council (Condominiums, HOAs and Co-ops) At the request of a Community Association Living Study Council member (Rep Woods), Section 718.50151, was repealed, thereby eliminating that council. This was done as a result of the lack of interest by homeowners.
- Continuation of The Bulk Sales Buyer Act (Condominiums only): The automatic expiration ("sunset") of Section 718.707 was extended from July 1, 2015 to July 1, 2016 to permit interested parties to see if that law could be made permanent by adopting amendments which would be beneficial to both unit owners and developers.

- Financial Reporting for Cooperatives (Co-ops only): Section 719.104(4) was amended to be consistent with the financial reporting requirements for condominiums.
- Board Member Eligibility for Cooperatives (Co-ops only): Section 719.106(1)(a)2 was amended to be consistent with the board membership requirements for condominiums.
- Emergency Powers for Cooperative Associations (Co-ops only): Section 719.128 was created to grant Cooperative Associations the emergency powers already granted to Condominium Associations by Chapter 718.
- Handicap Accessibility for HOA Members to Board Meetings (HOAs only): Section 720.303(2)(a) was amended to provide that all meetings of the board must be held at a location that is accessible to a physically handicapped person if so requested by a physically handicapped person who has a right to attend the meeting.
- Handicap Accessibility for HOA Members to Members' Meetings (HOAs only): Section 720.306(1)(a) was amended to provide that all meetings of the members must be held at a location that is accessible to a physically handicapped person if so requested by a physically handicapped person who has a right to attend the meeting.
- Notice Of Homeowners' Association Amendments (HOAs only): Section 720.306(1)(b) allows associations to provide notice of adopted amendments by email, if the owner has given permission for electronic notice. Also, if the association had previously provided a copy of an amendment to the members before it was adopted, the association can then simply notify the owners that the amendment passed and supply them with the recording data and advise them that a copy of the amendment is available at no charge in lieu of providing another copy of the document.
- Emergency Powers for Homeowners' Associations (HOAs only) Section 720.316 was created to grant to Homeowner's Associations emergency powers which are consistent with the operation of an HOA.

The measure went into effect on July 1.

Residential vs. Commercial Condominiums – SB 440 was prepared in an attempt to eliminate the confusion as to what sections of Chapter 718 apply only to residential condominiums and those which also apply to timeshare, commercial, and vacation condominiums. The bill provides that the following requirements will no longer apply to vacation, timeshare, or commercial condominium associations: the requirement to respond to certified written inquiries, the prohibition against voting by general proxy, limitations on board member terms, the prohibition of co-owners of a unit serving on the board, legal and financial eligibility requirements for board members, the requirement that the board elections take place via written ballot or voting machine, the requirement that new board directors certify within 90 days that they have read the governing documents and bylaws, swear to uphold their responsibilities, etc., mandatory nonbinding arbitration, fire sprinkler opt-out provisions, opting out of the requirements of Section 553.509(2), Florida Statutes dealing with the Americans with Disabilities Act Standards for Accessible Design; and hurricane shutter specifications and hurricane protection provisions. The measure went into effect on July 1.

Regulation of Vacation Rentals - Three years ago, lobbyists from the vacation rental industry convinced the legislature to create Section 509.032 which prohibits local governments from being involved in regulating short term vacation rentals. Senator Thrasher, the sponsor of the legislation, heard from many residents in single-family home communities that they were having troubles with vacation homes but had no recourse because of this law. Accordingly, he filed a bill which would have given control back to local governments. The original version of SB 356 amended Section 509.032(b) to again permit local governments to regulate vacation rentals, including the duration of rentals. However, as finally adopted SB 356 does far less and now repeals the provision in s. 509.032(7), F.S., that prohibits local laws, ordinances, or regulations from restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy. The measure went into effect on July 1.

Notice of Subsurface Rights - As a result of some developers retaining subsurface rights when selling homes to unwary purchasers, HB 409 creates Section 689.29 which will now require sellers of new dwellings to provide written notification to prospective buyers of the seller's intent to retain subsurface rights prior to entering into any sales contract.

Alternative Flood Insurance - As a result of the adoption of the Federal Biggert-Waters Flood Insurance law, the reasonable availability of flood insurance for residential property through the National Flood Insurance Program (NFIP) became a critical question. SB 542 was adopted to assist Floridians to obtain alternative flood insurance coverage. Thankfully, the Biggert-Waters Flood Insurance law was further amended to eliminate the emergency nature of this matter. The bill added Section 627.715 to authorize insurers to offer personal lines residential flood insurance policies to off-set the anticipated loss of the availability of flood insurance through the NFIP. Please note that this bill does not apply to commercial or commercial residential policies. The measure went into effect on June 13.

Citizens Property Insurance Corporation – HB 1089 is part of an attempt to slowly but steadily reduce the role of Citizens as a major player in the Florida insurance arena. Section 627.351(6) was added to provide that, effective July 1, 2014, commercial lines residential condominiums are ineligible for coverage for wind-only coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Citizens Property Insurance Corporation – SB 1672 is another bill which is slowly but steadily reducing the role of Citizens as a major player in the Florida insurance arena. The bill amends Chapters 626 and 627 to direct Citizens to stop writing new commercial residential multi-peril policies in the coastal account effective July 1, 2014. Instead, Citizens may offer separate wind-only policies, and commercial residential policies excluding wind. Citizens may, however, continue to renew commercial residential multi-peril policies on a building that is insured by Citizens on June 30, 2014. The bill prohibits an insurance agent, managing general agent, adjuster, customer or service representative from accepting referral fees or compensation from an inspection or inspection company related to an inspection used to obtain insurance coverage or establish the insurance premium. The bill additionally prohibits a public adjuster, apprentice or associate from accepting a power of attorney that vests to the right to select the person that will perform repairs on an adjusted property. The measure went into effect on July 1.