

HYMAN, SPECTOR & MARS, LLP

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2010 APPROVED LEGISLATION FLORIDA STATUTE 718 AND 720 UPDATE

SENATE BILL 1196

Governor Crist approved SB1196 as it was submitted. It was designed to provide relief to Florida Community Associations suffering in these economic times. The Bill addresses various aspects of Condominiums, Cooperatives and Homeowners Associations. The law will take effect on July 1, 2010. This update will highlight some of the operational changes for Condominiums and Homeowners Associations.

CONDOMINIUMS / CHAPTER 718

Official Records - Provisions relating to Official Records found in §718.111(12) were amended to limit individual director liability based upon the destruction or failure to maintain official records to cases only where there is intent to harm the association or one or more of its members. Absent such intent, there will not be individual director liability.

Language has been added to specifically remove liability from an association based upon a unit owner's misuse of information obtained from official records, which should ease the minds of many Boards that face the issue of owners with questionable intentions that seek information from the Association that will be distributed to unit owners.

Personnel records, including, disciplinary, payroll, health and insurance records, are no longer permitted to be distributed to owners, as well as e-mail addresses, telephone numbers, emergency contact information, and any other unit owner contact information other than the addresses to send notices. Again, in removing telephone numbers and email addresses from records that must be provided upon request, the association will be able to maintain additional contact information in a better effort to be able to reach owners without owners compromising their privacy. Finally, an association's electronic or computer security data, including passwords, software and operating systems, are exempt from unit owner access.

Common Expenses - §718.115(1)(d)1 was amended to enumerate as a common expense communication services, information services, and internet services obtained pursuant to a bulk contract.

Board Eligibility - §718.112(2)(d) was amended to prohibit co-owners of a unit in a condominium with more than 10 units to serve together unless they own more than one unit or there are not enough volunteers to fill all positions. This prohibition does not apply to timeshare condominiums. In the past, all candidates were required to complete a Candidate Certification Form prior to the election, this obligation has been removed, but elected directors must now provide the signed Certification form or take a state-approved education class within 90 days of election. If an elected Director does not provide the form or proof of education, the Director is deemed to be suspended until such time as compliance is achieved.

Bulk Purchasers - The "Distressed Condominium Relief Act was created in §718.701-708, which defines the terms of "bulk buyer" and "bulk assignee," as well as the obligations of bulk buyers and bulk assignees with respect to warranties, post-transition audits, converter reserves, transfer of control, disclosures to buyers, etc. The new language was designed to encourage investors to purchase units while providing an ability to limit their liability.



CONDOMINIUMS / CHAPTER 718 (CONT'D)

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Collections And Foreclosures – §718.116 alters the mortgagee liability cap from 6 months to 12 months after acquisition of title by foreclosure (or deed in lieu) but retains the 1% cap. This increase will assist associations that experience a high rate of bank foreclosures.

One of the most important operational provisions included in the amendment is the ability of the Association to collect rent. Upon an owner's delinquency, the association may provide a written demand to a tenant to pay rent directly to the association to satisfy the delinquency for that unit. The Landlord/owner must provide the tenant with a credit for any amounts paid to association. In addition, if the tenant does not comply and forward the rental monies, the association is also afforded the right to evict the tenant. It appears that this provision will render the current trend of appointing blanket receivers unnecessary, as the association has been given a powerful right of collection.

Violation Enforcement – §718.303 has been amended to permit the condominium to suspend the use rights of an owner that is more than 90 days past due. An association may NOT suspend the use rights of limited common elements, parking spaces, elevators and utilities, and may not impede access to or from the unit. Prior to suspending rights, the Board of Directors must vote to approve the suspension at a duly noticed board meeting and provide advance notification to the unit owner of the suspension. Finally, similar to a Homeowners Association, condominiums are now permitted to suspend the voting rights of owners that are at least 90 days delinquent. While there is no procedural language included, it is recommended that an association place all owners on notice of the intention to suspend voting rights prior to any owner meeting at which such rights will be suspended, providing owners that wish to participate the ability to bring their account current.

Amendments on Rentals – §718.110(13) has been amended to clarify that only amendments prohibiting unit owners from renting their units, altering permitted lease terms, and amendments relating to the restriction on the number of rentals during a specified period, applies only to those unit owners who consent to amendment and unit owners who acquire title to their units after effective date of amendment. Rental amendments that do not relate to these limited areas will apply to all owners, regardless of whether an owner individually approved the amendment.



Insurance – §627.714 has been created, and §718.111(11) has been amended to provide that HO-6 policies that are issued or renewed after July 1, 2010, must include at least \$2,000 in property loss assessment coverage with deductible of \$250 per property loss. Owners are no longer required to provide proof of hazard and liability insurance to the association and the association's right to "force place" insurance or force compliance with the statutory provision has been deleted. In addition, the Association is no longer required to be named as an additional named insured and loss payee on all HO-6 casualty insurance policies issued to owners. All references to "hazard" insurance and "casualty" insurance are changed to "property" insurance. The language regarding insurance of "improvements" that benefit fewer than all the owners has been struck.

The Association's Master insurance policy must be based on the "replacement cost" of the property to be insured, which must be determined at least once every 36 months. The heightened requirements for a Board meeting to approve the deductible have been removed, although the meeting still requires a 14 day notice sent to all owners.

Financial Reporting – §718.111(13) has been amended to increase the number of units from 50 to 75 to permit such associations, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures instead of financial statements. The DBPR has been directed to adopt rules, including standards, for presenting a summary of association reserves and a good faith estimate of the annual amount of money required for the association to fully fund reserves for each reserve item based on a straight-line accounting method. Note that this disclosure is not applicable to reserves funded via the pooling method. Once such rules and standards are promulgated, we will advise of same.

Fire Safety - §718.112 was amended to permit a full "opt-out" upon the affirmative vote of a majority of the entire membership for fire sprinkler retrofitting. Note that a reconsideration for the vote to opt-out will be permitted only once every three years at a special meeting, such meeting called by a petition of 10% of the voting interests. The deadline for associations that do not opt out has been extended to the end of 2019.

§633.0215 was amended to excuse buildings less than four stories in height that have exterior means of egress and exterior corridors from installing a manual fire alarm system

Finally, §553.509(2), and §399.02, were amended to permit a five (5) year delay to retrofit with a special access key for elevators in condominiums and cooperatives unless the elevator is replaced or requires major modification. Again, an association is permitted to "opt-out" of elevator operation by alternative power source upon the affirmative vote of majority of owners.

CHAPTER 720 / HOMEOWNERS ASSOCIATION

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Elections - §720.306(8) was amended to mirror the Condominium form of elections if such language is included in the Declaration for the association. If included in the governing documents, an association will proceed with a ballot and inner and outer envelope procedure in which an owners vote will be anonymous. The outer envelope will provide the owners information and address, while the inner envelope will contain the secret ballot.

Directors - §720.303(12) While the receipt of a salary or compensation is generally prohibited for directors, officers and committee members, but such compensation shall be permitted in the following circumstances: (1) if it is determined that there is a financial benefit of a lawful board action that will benefit all or a significant number of members; (2) the payment is reimbursement for out-of-pocket expenses (subject to pre-set guidelines by the association); (3) the payment is for recovery of insurance proceeds; (4) the governing documents permit salary or compensation; (5) a membership vote taken in advance approves the fee, salary or compensation; and finally, (6) a developer appointee is permitted to benefit financially from their role as a director or officer.

Budgets - §720.303(6) has been amended to require that the association disclose in their financial report to the owners the vote necessary to mandate reserves. If a budget does include 'voluntary reserves', the financial report must disclose that the funds may be utilized for non-reserve purposes and are not calculated by statutory method. "Statutory" reserves are those reserve accounts that are established by the developer or created by membership vote.

Fining and Suspension Of Use Rights - §720.305 has been amended to authorize fines and suspensions for members that are delinquent at least 90 days. Note that suspensions to relating to utilities and access to the parcel are not permitted, and the association must provide written notice to the person that is to be fined or suspended. The language has been amended to state that fines less than \$1,000 cannot become a lien, which suggests that liens will be permitted for fines that exceed \$1,000.

Special Assessments By Developer - §720.315 has been amended to prohibit the ability of a Developer, pre-turnover, to levy a special assessment without first obtaining the approval of a majority vote of non-developer interests. The vote must take place at duly-called meeting at which a quorum has been attained.

Official Records - §720.303(5) was amended to create a presumption in favor of an owner that the association willfully denied record access after 10 business days for submissions via certified mail, return receipt requested, but the language does not contemplate the failure of the association to acknowledge/sign for the certified letter. The association is now permitted to charge not only copy fees but also "reasonable costs" to reimburse either the association or a vendor for the lost employee time associated with the production of records.

Association personnel records are not subject to inspection, including disciplinary, payroll, health, and insurance records, and personal identifying data of members, including Social Security numbers, credit card numbers, and emergency contact information are no longer subject to inspection. The address utilized by the association for mailings is still included as part of the roster list and is subject to inspection. In removing the information above, the association will be able to maintain additional contact information in a better effort to be able to reach owners without owners compromising their privacy. In addition, any association passwords used to safeguard data and software and/or operating systems are not be subject to inspection.

Recreational Leaseholds/Property Rights - §720.31(6) includes language to allow an association to enter into agreements to acquire leaseholds, memberships or other possessory or use rights in lands and facilities. The declaration must fully describe the action or if not taken within 12 months of recording the declaration, the declaration must authorize said action as a material alteration/substantial improvement, or in the alternative, at least 75% of the members must vote in favor of the action.

Tenant Rent Collection - §720.3085(8) has been amended to provide an association to more actively assist in its own collection process. For rented homes, the association may provide a written demand to a tenant to pay rent to the association to satisfy the delinquency for that unit. The Landlord/owner must provide tenant with credit for any amounts paid to association. The association is also afforded the right to evict a tenant if they do not comply.



HYMAN, SPECTOR & MARS, LLP

Founded in 1978, Hyman, Spector & Mars, LLP, has grown into one of South Florida's most well regarded law firms within the selected practice areas on which its lawyers are focused. While retaining its longstanding concentrations in the areas of community association law, civil litigation, and real estate, the firm has evolved into a leading provider of specialized services to the international trade and transportation community and its insurers. In doing so, the firm has established landmark decisions in this area. Hyman, Spector & Mars, LLP has developed into a diversified law firm large enough to render a wide range of legal services. Steady growth, along with the addition of qualified lawyers within the firm's various practice areas, has allowed our firm to maintain the personalized approach to legal representation which is at the foundation of many long-term relationships with our clients.



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