

2015 LEGISLATIVE SESSION AND COMMUNITY ASSOCIATION BILLS

Part 1 of 2

The 2015 Florida Legislative Session was one of the most unusual in recent history. In a surprise move, the House of Representatives adjourned three days early in a dispute with the Senate over the budget and Medicaid expansion. As I walked around the Capitol that day, it was clear that the early adjournment *sine die* had caught everyone off guard, including legislators, veteran lobbyists and staffers. Although the House and Senate were able to put aside their differences and finish up their work on the budget during the special session, deep divisions remain which will likely set the tone for next year's session.

One of the benefits of the early adjournment was that some troublesome bills that could have passed during the last week ended up "dead." One of these was the "estoppel certificate" bill that would have re-written the laws dealing with estoppel certificates. CALL opposed the bills throughout the process. I spoke in opposition to the bills at committee meetings in the House and Senate. I also met with the House and Senate sponsors and members of the House and Senate committees that heard the bills. The bill changed throughout the process for the better, but in the end there were still significant concerns. The last version of the bill set caps on the amount that associations can charge for estoppel certificates, prohibited associations from collecting the fee in advance, and prohibited associations from collecting the fee if the certificate was not timely provided.



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Another bill that we lobbied against that also stalled early in the process was a bill that would have shortened the "statute of repose" from 10 years to 7 years. The statute of repose operates as an absolute bar to an owner's (including community associations) right to have its dispute regarding faulty construction resolved in the manner provided by law. The bill passed narrowly in its first committee in the House of Representatives, but we were able to raise enough concerns that the bill was never heard in any other committee or in the Senate.

On a positive note, some good bills passed this year, including HB 791 by Rep. Moraitis and Rep. Fitzenhagen, which encourages the use of electronic notice and electronic voting. This guide includes a summary of HB 791, and other bills of interest to community associations.

It is important that you are engaged in the legislative process. You can do that by staying informed about the bills that are filed in Tallahassee, and by reaching out to your local legislators to explain the needs of your community. The CALL website, www.callbp.com provides useful tools and information to enable you to be a strong advocate for your community. If you do not know your community's individual password for the CALL website, please contact call@bplegal.com.

HB 791 RELATING TO RESIDENTIAL PROPERTIES

Chapter 2015-97, Laws of Florida

Effective Date: July 1, 2015



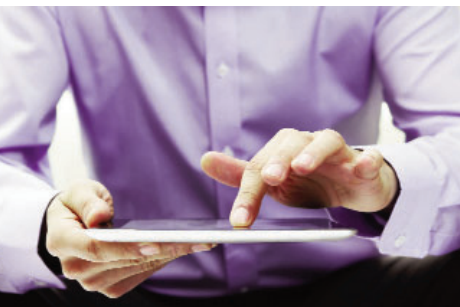
Representative
George Moraitis

Sponsors of HB 791



Representative
Heather Fitzhagen

DIGITAL OR ELECTRONIC TRANSMISSION OF PROXIES Condominiums, Cooperatives & Homeowners' Associations §617.0721, Florida Statutes



Notwithstanding any provision to the contrary in the articles of incorporation or bylaws, any copy, facsimile transmission, or other reliable reproduction of the original proxy may be substituted or used in lieu of the original proxy for any purpose for which the original proxy could be

used if the copy, facsimile transmission, or other reproduction is a complete reproduction of the entire proxy.

ELECTRONIC NOTICE TO OWNERS

Condominiums, Cooperatives & Homeowners' Associations §§718.112(2)(d)6, 719.106(1)(d)3, 720.303(2)(c)1, Florida Statutes

- The previous law provided that in order to send notice to owners electronically, the bylaws must provide for electronic notice and the owner must consent in writing.
- The new law removes the requirement that electronic notice be authorized by the bylaws.
- Therefore, as long as the owner consents in writing, the association can provide the owner with electronic notice of board meetings and membership meetings. This new law does not apply to meetings of members to recall board members or to committee meetings in condominiums or co-operatives. No similar exception exists in homeowners' associations.

ELECTRONIC VOTING

Condominiums, Cooperatives, & Homeowners' Associations §§718.128, 719.129, 720.317, Florida Statutes (NEW)

- Associations may conduct elections and other unit owner votes through an internet-based online voting system if a unit owner consents, in writing, to online voting and if the association provides each unit owner with:
 - A method to authenticate the unit owner's identity to the online voting system;
 - For elections to the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot (N/A for Homeowners' Associations);
 - A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.
- The online voting system must be:
 - Able to authenticate the unit owner's identity;
 - Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit;
 - Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote;

- For elections to the board, able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie an election ballot to a specific unit owner;
- Able to store and keep electronic votes accessible to election officials for recount, inspection and review purposes.
- A unit owner voting electronically shall be counted as being in attendance for purposes of a quorum.
- A substantive vote of the owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section. (This provision applies to condominiums and to co-operatives. It does not apply to homeowners' associations as Chapter 720 allows the use of general proxies.)
- In order to implement electronic voting, the board must adopt a resolution. The resolution must:
 - Provide notice to the unit owners of the opportunity to vote through an online voting system;
 - Establish reasonable procedures and deadlines for unit owners to consent, in writing, to online voting, and
 - Establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent.
 - Written notice of the board meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting, and evidence of compliance of the 14 day notice requirement must be made by affidavit executed by the person providing notice and filed with the official records of the association.
 - The owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board resolution.

FINES/ PENALTIES (PROCEDURE)

Condominiums, Cooperatives, & Homeowners' Associations §§718.303(3), 719.303(3), 720.305(2), Florida Statutes

- The new law clarifies that it is the board of administration of the association that is responsible for levying any fines.
- The committee formed to hear cases regarding potential fines may not include board members or persons residing in a board member's household. (Cooperatives - This is already the law in the Condominium and Homeowners' Association Act).
- The role of the fining committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.

APPLICATION OF PAYMENT/ASSESSMENTS

Condominiums & Cooperatives §718.116(3) and (5), 719.108(3), Florida Statutes

The application of payment provision, which requires any payments to be applied first to interest, then late fees, then to costs and reasonable attorney's fees, applies notwithstanding Section 673.3111, Florida Statutes, any purported accord and satisfaction,

or any restrictive endorsement, designation or instruction placed on or accompanying a payment.

Clarifies that the claim of lien secures administrative late fees (in addition to the unpaid assessment, interest, costs and attorney's fees). (Condominiums - This is already addressed in the Cooperative Act).

Homeowners' Associations: N/A

OFFICIAL RECORDS

Condominiums & Cooperatives

§§718.111(12), 719.104(2), Florida Statutes

- Amends the official records "catch-all" provision which previously provided that "all other records of the association...which are related to the operation of the association" are official records. The new law clarifies that these "other" records are "written" records.

SUSPENSION OF VOTING AND USE RIGHTS

Condominiums & Homeowners' Associations

§§718.303(5) and (7), 720.305(5) and (6), Florida Statutes

If an owner or member's voting rights have been suspended for any reason, the total number of voting interests in the association will be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose.

The suspension of voting rights or right to use common elements applies to a member and, when appropriate, the member's tenants, guests or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple parcels owned by a member.

Cooperatives: N/A



EXTENSION OF DISTRESSED CONDOMINIUM RELIEF ACT

Condominiums

§718.707, Florida Statutes

Extends the "Distressed Condominium Relief Act" also known as the "bulk buyer law" **until July 18, 2018**. Currently, the bulk buyer law is set to expire on July 1, 2016.

Cooperatives & Homeowners' Associations: N/A

INSURANCE

Condominiums

§718.111(11), Florida Statutes

Removes the provision that requires the association to be responsible for all "uninsured losses".

Clarifies that in the absence of an insurable event, the responsibility for the reconstruction, repair or replacement will be determined by the "maintenance" provisions of the declaration or bylaws.

Cooperatives & Homeowners' Associations: N/A

SHORT TITLE FOR CHAPTER 720, FLORIDA STATUTES

Homeowners' Associations

§720.3015, Florida Statutes

Provides a "short title" for Chapter 720, Florida Statutes.

Chapter 720 may be cited as the "Homeowners' Association Act."

Condominium & Cooperatives: N/A

DEFINITION OF GOVERNING DOCUMENTS

Homeowners' Associations

§720.301(8), Florida Statutes

Amends the definition of "governing documents" to include rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Condominium & Cooperatives: N/A

FINES (AMOUNT)

Homeowners' Associations

§720.305(2), Florida Statutes

A fine levied by a homeowners' association may exceed \$100 per violation if provided in the governing documents.

SUSPENSION OF USE RIGHTS

(VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS)

§720.305(2)(a), Florida Statutes

Amends the suspension of use rights provision to state that a suspension may not "prohibit" an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

Condominium & Cooperatives: N/A

AMENDMENTS

Homeowners' Associations

§720.306(1)(b), Florida Statutes

The failure to provide notice of recording a homeowners' association amendment does not affect the validity of the amendment.

Condominium & Cooperatives: N/A

BOARD MEMBER ELIGIBILITY

Homeowners' Associations

§720.306(9), Florida Statutes

- A person who is delinquent on the last day that he or she could nominate himself or herself to the board, is not eligible to be a candidate and may not be listed on the ballot.

- A person serving on the board who becomes 90 days delinquent in the payment of any monetary obligation shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law.

Condominium & Cooperatives: N/A



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2015 Legislative Session Update

Part 1 of 2

MISCELLANEOUS BILLS OF INTEREST

HB 33A (Representative Gaetz), Relating to Taxation (Chapter 2015-221, Laws of Florida, Effective Date: July 1, 2015)

Among other things, the new law amends Section 193.0235, Florida Statutes, regarding the definition of “common element” for purposes of ad valorem taxes and non-ad valorem assessments against subdivision property. The definition now includes property located within the same county as the subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision.

HB 87 (Representative Passidomo), Relating to Construction Defect Claims, (Chapter 2015-165, Laws of Florida, Effective Date: October 1, 2015)

The new law amends Chapter 558, Florida Statutes, dealing with construction defects, as follows:

- Amends the “legislative findings” to include that the law is intended to allow the parties to resolve the claim “through confidential settlement negotiations” without resort to further legal process.
- Amends the definition of “completion of a building or improvement” to mean the issuance of a certificate of occupancy, “whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction.”
- The law previously required the notice of claim to describe the claim “in reasonable detail sufficient to determine the general nature of each alleged construction defect and a description of the damage or loss resulting from the defect, if known.”
- The new law amends the notice of claim requirement to require that the claim describe in reasonable detail the nature of each alleged construction defect and, if known, the damage or loss resulting from the defect. It further provides that the claim must be based upon at least a “visual inspection” and the notice must identify the *location* of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant is not required to perform destructive or other testing before providing the notice of claim.
- The written response to the notice of claim by the contractor must include one or more of the offers or statements specified in Section 558.004(5)(a)-(e) as

chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the information required for that offer or statement.

- Amends the provision dealing with providing notice to the person’s insurer and states that such notice shall not constitute a claim for insurance purposes “unless the terms of the policy specify otherwise.”
- With regard to exchanging information when a claim has been filed, the law has been amended to remove “any documents detailing the design drawings or specifications.” The law adds “maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of claim and any resulting damages.” The new law also allows a party to assert any claim of privilege with respect to any of the disclosure obligations specified in Chapter 558.

HB 715 (Representative Raschein), Relating to Eligibility for Coverage by Citizens Property Insurance Corporation (Chapter 2015-94, Laws of Florida, Effective Date: July 1, 2015)

The prior law prohibited Citizens Property Insurance Corporation (Citizens) from insuring major structures that were newly-constructed or substantially-improved if located seaward of the coastal construction control line or within the Coastal Barrier Resources System. The new law retains the prohibition on Citizens eligibility for *new* construction. However, with regard to major structures that are rebuilt, repaired, restored or remodeled, the prohibition applies if the total square footage of the finished area is increased by more than 25%. Therefore, Citizens may insure substantially improved structures if the total square footage of finished area is not increased by more than 25%.

HB 779 (Representative Jones), Relating to Rental Agreements (Chapter 2015-96, Laws of Florida, Effective Date: June 2, 2015)

The new law provides that a bona fide tenant must be given at least 30 days’ notice before eviction from a foreclosed home. The 30 days begins to run when the Notice of Tenant Termination is delivered to the tenant. The new law does not apply if the tenant is the mortgagor, child, spouse, domestic partner, or parent of the mortgagor in the foreclosed home.

Legislative Update Continued in Next Issue