

PART
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2015 LEGISLATIVE SESSION AND COMMUNITY ASSOCIATION BILLS

HB 643 RELATING TO CONDOMINIUM TERMINATIONS

Chapter 2015-175, Laws of Florida
Effective Date: June 16, 2015



Sponsors of HB 643

**Representative
Chris Sprowls**



**Representative
James "J.W." Grant**

Condominiums §718.117, Florida Statutes

The new law makes changes to the laws regarding condominium terminations. Currently, the law allows an "optional termination" if 80% or more of the members vote in favor of termination, and no more than 10% reject the termination. The new law, among other things, provides:

- The total voting interests of the condominium must include all voting interests when considering a plan of termination, and a voting interest may not be suspended for any reason when voting on termination.
- If 10 percent or more of the total voting interests of the condominium reject a plan of termination, another plan of termination may not be considered for 18 months after the date of the rejection.
- An optional termination vote may not take place until 5 years after the recording of the declaration of condominium, unless there is no objection to the termination.
- If members of the board are elected by a bulk owner, unit owners other than the bulk owner may elect at least 1/3 of the members of the board before the approval of any plan of termination.
- If a "bulk buyer" owns 80% or more of the voting interests in a residential condominium association, the plan of termination is subject to the following:
 - If the former units are offered for lease to the public after termination, each unit owner in occupancy immediately before the termination may lease his or her former unit 12 months on the same terms as similar unit types are being offered to the public;
 - A "homestead" unit owner is entitled an additional payment for relocation costs in an amount equal to 1% of the termination proceeds;
 - All owners other than the bulk owner must be compensated at least 100% of the fair market value of their units, as determined no earlier than 90 days before the date that the plan of termination is recorded by an independent appraiser selected by the termination trustee;
 - For an original purchaser from the developer whose unit is

"homestead" or is an "owner occupied-operating business", and who is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit, the fair market value shall be at least the purchase price paid for the unit.

- The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination.
- If the unit owner is current in the payment of assessments and other monetary obligations to the association and any mortgage encumbering the unit, the *lesser of* the mortgage balance or the termination proceeds shall be deemed to have satisfied the first mortgage in full.
- The plan of termination must disclose: (1) the identity of the person or entity that owns or controls 50 percent or more of the units, and if an artificial entity, a disclosure of the natural person or persons who manage or control the entity and the natural person who owns or controls 20 percent of the artificial entity that constitute the bulk owner; (2) the units acquired by any bulk owner, the date each unit was acquired, and the total compensation paid to each prior unit owner by the bulk owner; (3) the relationship of any board member to the bulk owner or any person affiliated with the bulk owner.
- The termination proceeds allocated to a unit may be offset by the following, including attorney's fees and costs:
 - All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the association;
 - All costs of clearing title to the owner's unit;
 - All costs of removing the owner from the unit if the owner fails to vacate the unit as required by the termination plan;
 - All costs related to the breach of the plan;
 - All costs related to the removal and storage of personal property remaining in a unit;
 - All costs related to the appointment of a receiver or attorney *ad litem* acting for the owner if the owner is unable to be located.

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- The plan of termination may be voted on at a meeting of the unit owners, or by written action. If the vote is at a meeting, the owners may vote to reject the plan in person or by proxy, or by delivering a written objection to the association at or before the meeting. If the termination is approved by written consent or joinder without a meeting, a unit owner may deliver a written objection within 20 days after the date that the association notifies the nonconsenting owners that the plan of termination has been approved by written action.
- The new law includes additional provisions regarding the use of the common elements after termination; the withdrawal of a termination plan before the sale of the condominium property; scrivener's errors in the plan of termination; valuation of the

- common elements; and obligations of lienholders.
- A unit owner or lienholder may contest a plan of termination by initiating a petition for mandatory non-binding arbitration pursuant to Section 718.1255, Florida Statutes. The unit owner or lienholder may only contest: (1) the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners; (2) that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by law; and (3) that the required vote to approve the plan was not obtained.
- The arbitrator will have the authority to void the plan or grant other relief. The arbitrator shall automatically void the plan if the required disclosures are omitted, misleading, incomplete, or inaccurate.

Cooperative and Homeowners' Associations: N/A

HB 71

RELATING TO SERVICE ANIMALS

Chapter 2015-131, Laws of Florida

Effective Date: July 1, 2015

Sponsor of HB 71

**Representative
Jimmie T. Smith**



§413.08, Florida Statutes

- Amends the definitions for "individual with a disability" to mean a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual.
- Amends the definition for "major life activity" to mean a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- Adds a definition for "physical or mental impairment" to mean a (1) physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; or (2) a mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, such as an intellectual or developmental disability, organic brain syndrome, traumatic brain injury, post traumatic stress disorder, or an emotional or mental illness.
- Extends the term "public accommodation" to include timeshares that are transient public lodging establishments, but exempts air carriers covered by the Air Carrier Access Act of 1986.
- Amends the definition of a "service animal" to mean an animal that is trained to do work or perform tasks for an individual with a disability. The work done or tasks performed must be directly related to the individual's disability. It also limits the term "service animal" to a dog or miniature horse.
- Requires public accommodations to modify their policies to permit the use of service animals.
- While a public accommodation may ask if the animal is required because of a disability, they are **not** allowed to ask about the specific nature or extent of the individual's disability. A public accommodation may ask if an animal is a service animal required because of a disability and what work or tasks the animal has been trained to perform.
- Specifies that a service animal is to be kept under the control of its handler, and must have a harness, leash, or other tether, unless the handler is unable because of a disability to use a harness, leash, or tether, or it would interfere with the service animal's safe, effective performance of work or tasks, in which case, the service animal must be otherwise under the handler's control by means of voice control, signals, or other effective means.
- Authorizes a public accommodation to remove the service animal if it is out of control and the animal's handler does not take effective action to control it, the animal is not housebroken, or the animal's behavior poses a direct threat to the health and safety of others.
- Interfering with the right of a disabled individual with a service animal to access a public accommodation is a second degree misdemeanor, and the criminal penalty has been revised to include 30 hours of community service for an organization that serves individuals with disabilities.
- A person who knowingly and willfully misrepresents himself or herself, through conduct or verbal or written notice, as using a service animal or being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, and must perform 30 hours of community service for an organization that serves individuals with disabilities or with another entity or organization at the discretion of the court, to be completed in not more than 6 months.
- With respect to housing accommodations (such as community associations), the law states that it does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another Florida law with regard to other assistance animals.

MORE MISCELLANEOUS BILLS OF INTEREST



SB 1094 (Senator Brandes), Relating to Peril of Flood (Chapter 2015-69, Laws of Florida, Effective Date: July 1, 2015)

The legislation makes several changes to Florida Statutes pertaining to the peril of flood and flood insurance and is a continuation and update of last year's legislation which was adopted to encourage new flood policies as an alternative to the National Flood Insurance Program (NFIP). Note that the law does not apply to commercial or commercial residential policies, and therefore, a condominium association would have to continue to obtain flood insurance through the NFIP. Some of the changes include requirements with respect to a local government's comprehensive plan's coastal management element, and requirements of surveyors and mappers with respect to elevation certificates submitted to the Division of Emergency Management. The new law also allows insurers to sell flexible flood insurance, which differs from standard or preferred coverage. Flexible flood insurance must include one or more of the following: (1) an agreement that flood coverage is in a specified amount, such as the amount of the outstanding mortgage; (2) a deductible authorized under Section 627.701, including in an amount authorized for hurricanes; (3) a requirement that flood loss be adjusted in accordance with Section 627.7011(3) or adjusted only on the basis of the actual cash value of the property; (4) a restriction limiting flood coverage to the principal building; (5) a provision including or excluding coverage for additional living expenses; and (6) a provision excluding coverage for personal property or contents. The new law also removes language that specifies a supplemental flood insurance policy does not include flood coverage for the purpose of excess coverage over any other flood insurance policy. Removing this language from law allows supplemental flood insurance to provide coverage in excess of other coverage. The section also clarifies that deductibles for flood coverage and flood insurance policy limits must be prominently noted on a policy's title page.



HB 307 (Representative Latvala), Relating to Mobile Homes (Chapter 2015-90, Laws of Florida, Effective Date: July 1, 2015)

HB 307 makes several changes to the Florida Mobile Home Act, Chapter 723, Florida Statutes, which regulates residential tenancies for mobile home parks. This comprehensive legislation was drafted with input from both the owners of mobile home parks, and the residents. Specifically, the new law:

- Adds a number of new definitions to Chapter 723 including electronic transmission, homeowners' association, homeowners' committee, mediation, mobile home lot, offering circular.
- Requires the Division of Florida Condominiums, Timeshares, and Mobile Homes to approve training and educational programs by approved providers for board members of mobile home owners' associations and mobile home owners.
- Requires mobile home owners to comply with all building permits and construction requirements for construction on the mobile home and lot and be responsible for any fines imposed by the local government for noncompliance.
- Requires the mobile home owner to require that persons on the premises with the mobile home owner's consent to conduct themselves in a manner that does not unreasonably disturb

other residents of the park.

- Provides that a mobile home owner's right to a 90-day notice of a lot rental increase, reduction in services or utilities, or change in the rules and regulations may **not** be waived.
- A written request must be sent to the park owner by the negotiating committee to discuss those matters addressed in the 90-day notice, and may include a listing of any other issue, with supporting documentation, that the committee intends to raise and discuss at the meeting. The meeting shall take place no later than 60 days before the effective date of the change.
- Renewal provisions in automatically renewable leases are not assumable unless otherwise provided in the mobile home lot rental agreement or unless the transferee is the home owner's spouse. The right to assume the lease by a spouse may be exercised only one time during the term of the lease.
- A member of the board of the Florida Mobile Home Relocation Corporation must be removed by the Secretary of the Department of Business and Professional Regulation if requested by the association that originally nominated the board member. The new law also provides for procedures for the nomination and appointment of a replacement.
- The new law also establishes specific requirements for homeowners' association's bylaws including quorum, voting and proxy requirements; board of directors' and committee meetings; the right of owners to attend and speak at meetings; board member vacancies; term of directors; fiduciary duty of officers and directors; member meetings; minutes of meetings; manner of sharing assessments; annual budget; amendment of articles of incorporation and bylaws; recall of board members; and alternative dispute resolution including binding arbitration of recall disputes.
- Requires that within 90 days of being elected or appointed to the board, a newly elected or appointed director must certify by "an affidavit" that he or she has read the association's current articles of incorporation, bylaws, and the mobile home park's prospectus, rental agreement, rules, regulations and written policies and will to uphold such documents and will faithfully discharge his or her fiduciary responsibility to the association members. In lieu of the written certification, the board member may submit a certificate of having satisfactorily completed the educational curriculum approved by the division within 1 year before or 90 days after the date of election or appointment.
- Requires the association to maintain certain official records and provide access to members, and if access is not provided, the member is entitled to minimum damages if the association's failure to comply was willful.

SB 766 (Senator Hukill), Relating to Surveillance by a Drone (Chapter 2015-26, Laws of Florida, Effective Date: July 1, 2015)

The law prohibits a person, state agency or political subdivision from using a drone to capture the image of a privately owned property or anyone on the property with the intent to conduct surveillance, if reasonable expectations of privacy exist. Those that wish to use drone technology in this manner must have written consent from people on the property. The law contains some limited exceptions to the prohibition. For instance, a person or entity engaged in a business or profession licensed by the state, may use a drone to perform reasonable tasks within the scope of his or her license. Additionally, tax collectors may use drones for assessing property for ad valorem taxes, and a drone may be used to capture images by or for an electric, water, or natural gas utility.



2015 Legislative Session Update

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COMMUNITY ASSOCIATION
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RECOMMENDED ACTION STEPS

After the 2015 Legislative Session

1. Include a fax number and email address in the Annual Meeting Notices to allow owners to return their signed proxy by fax or email.
2. Create or update the association's consent form for owners to authorize receiving notice electronically. The form should be sent to all owners and included in new owner packages.
3. Determine whether there is support for electronic voting and if so, begin the process by researching internet based electronic voting platforms that meet the requirements of Florida law and obtaining consents from owners to vote electronically.
4. Review and update the association's fining procedure to ensure that it is consistent with the requirements of the statute.
5. Adopt a records retention policy for non-written records such as meeting and security recordings.
6. Consider amending the governing documents to allow fines of more than \$100 per violation (Homeowners' Associations only).
7. Associations should review their condominium documents regarding maintenance responsibilities to ensure that they are consistent with their intent and the law.
8. Ask your association attorney to perform an audit of your governing documents to confirm whether you have incorporated legislative changes or whether amendments to your governing documents are needed to benefit from these legislative changes.

Interested in a more in depth look at the 2015 Legislative changes? If so, request the 2015 Becker & Poliakoff and CALL Legislative Guide by going to www.CallBP.com or <http://bit.ly/1PQ8Zwa>