



## **2013 LEGISLATIVE CHANGES AFFECTING CONDOMINIUMS, HOMEOWNERS ASSOCIATIONS, COOPERATIVES AND TIMESHARES**

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The Florida Legislature has passed several legislative bills that will have a big impact on Condos and HOAs. Most of these changes went into effect on July 1, 2013. We are providing this legal update as a service to BAM members and *IT IS NOT INTENDED AS LEGAL ADVICE*.

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### **GENERAL**

#### **Community Association Laws**

CS/CS/HB 73 – Residential Properties - Effective July 1, 2013

CS/CS/SB 120 – Condominiums - Effective July 1, 2013

CS/HB 7119 – Homeowners Association – Effective July 1, 2013

#### **Other Bills effecting Community Associations**

CS/HB 87 - Mortgage Foreclosures re Order to Show Cause – Effective July 1, 2013

CS/CS/HB 77 – Landlord Tenant - Effective July 1, 2013

SB 230 – Flag Etiquette - Effective July 1, 2013

CS/HB 267 – Real Property Liens and Conveyances - Effective October 1, 2013

CS/HB 903 - Adverse Possession- Effective October 1, 2013

CS/CS/CS/HB 999 - Environmental Regulation – Effective July 1, 2013

CS/SB 1770 – Property Insurance – Effective July 1, 2013

CS/CS/HB 7023 – Dept. of Agriculture & Consumer Services– Effective July 1, 2013

CS/HB 7025 - Timeshares – Effective July 1, 2013

SB 286 – Design Professionals – Effective July 1, 2013

**I. CONDOMINIUM ASSOCIATION OPERATIONS AND PROCEDURES**  
**HB 73, Relating to Residential Properties**  
**SB 120, Condominiums**

**Effective Date: July 1, 2013**

**ELEVATOR UPGRADES**

**§399.02(9), F.S. (amendment not included in the statute online yet)**

Upgrade does not have to be installed on elevators until the elevator is replaced or requires major modification.

***Practical Pointer*** This law will apply to elevators in condominium and multi-family residential buildings. The previous law required that the Phase II Firefighters' Service upgrades be completed by no later than July 1, 2015. Phase II Firefighters' Service upgrades change the panel so that firefighters can use a key-switch to operate the elevators. This change to the law will permit the owner of the elevator to delay making such upgrades until the elevator is replaced or requires major modification

**PURCHASE OF LAND AND RECREATION LEASES**

**§718.111(8), F.S. (amendment not included in the statute online yet)**

The power to purchase any land or recreation lease shall be subject to the same manner of approval as in Section 718.114 for the acquisition of leaseholds.

***Practical Pointer*** This change will allow an association to purchase any land or recreation lease by a vote or written consent of a majority of the total voting interests or as authorized by the declaration as provided in Section 718.113, Florida Statutes, which is the section dealing with material alterations and substantial additions.

**INSURANCE**

**§718.111(11)(g)2., F.S. (amendment not included in the statute online yet)**

Clarifies that a unit owner is responsible for the cost of reconstruction of any portions of the condominium property for which he or she is required to carry property insurance, or for which he or she is responsible under subsection (j); the cost of any such reconstruction work undertaken by the association is chargeable to the unit owner and enforceable as an assessment and may be collected in the manner provided for the collection of assessments pursuant to s. 718.116.

**§718.111(11)(j), F.S. (amendment not included in the statute online yet)**

Clarifies that the association is responsible for reconstruction of items that are insured by the association and which are damaged by an insurable event.

**Practical Pointer** In 2008, Section 718.111(11)(j) was amended to state that any portion of the condominium property that must be insured by the association which is damaged by a casualty shall be reconstructed by the association as a common expense. Therefore, it was clear in 2008 that the association's responsibility was only if the damage was from a casualty loss if the item in question was insured by the association but otherwise a unit owner maintenance, repair, and replacement responsibility was under the declaration.

In 2010's "glitch bill", Section 718.111(11) was amended because it was felt that the use of the term "casualty" was not correct, and the term should be changed to "property." However, there was a "glitch in the glitch bill" which some felt meant that the association would now be responsible for maintenance, repair and replacement due to wear and tear or some reason other than a casualty.

The change to Section 718.111(11)(j) corrects the 2010 glitch by clarifying that the association's responsibility for repair of items it insures is only for damage caused by an insurable event, even when provided otherwise in the declaration. Essentially the term used in 2008 "casualty" has now been changed to insurable event.

**OFFICIAL RECORDS**

**§718.111(12)(c), F.S. (amendment not included in the statute online yet)**

An association shall allow a member or his/her authorized representative to use a portable device, such as a smartphone, tablet, portable scanner, or other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing a copy of such records. The association may not charge a member or his/her authorized representative for the use of a portable device.

An association may print and distribute to parcel owners a directory containing the name, parcel address and telephone number of each parcel owner. However, an owner may exclude his or her telephone number from the directory by so requesting in writing to the association.

**PRACTICAL POINTER** The association's records inspection procedures and policies will need to be revised in light of changes to Section 718.111(12)(c), Florida Statutes, IF THE DECLARATION DOES NOT HAVE THE RECOMMENDED LANGUAGE TO INCORPORATE AMENDMENTS TO STATUTES WHICH READS AS FOLLOWS: "AS AMENDED FROM TIME TO TIME".

***PRACTICAL POINTER Now an Opt Out instead of Opt in*** - The association may now publish a directory that includes the owners' names, parcel addresses and telephone numbers. Those owners who do not want their telephone number published must notify the association in writing. Before the association publishes a member directory, it should make sure that it complies with the new law. If the association wishes to publish a directory, it should take affirmative action to notify all members of its intention to do so, so that members who do not wish to have their telephone numbers published know that they need to act in advance of the publication date.

## **FINANCIAL REPORTING**

### ***§718.111(13)(a), F.S. (amendment not included in the statute online yet)***

The thresholds for **Annual Auditing and Reporting of Association Finances** under s. 718.111(13) have been increased by \$100,000 at each level; and, the association size threshold triggering mandatory financial reporting beyond a cash receipts and expenditure report has been decreased from seventy-five to fifty units. (§ 2, CS/CS/HB 73)

Audited financial statements from \$400,000 to \$500,000;  
Reviewed financial statements from \$200,000 to \$300,000;  
Compiled financial statements from \$100,000 to \$150,000; and,

Additionally under SB 120 - Financial Reporting requirements may be waived by a vote of all unit owners, including the developer, from the date of incorporation through the end of the second fiscal year after the year of recording of the surveyor's certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurs first, rather than being tied to the date of recording of the declaration.

**Practical Pointer PRO DEVELOPER MORE FLEXIBILITY FOR FINANCIAL REPORTING WHILE THE DEVELOPER HAS CONTROL**

The developer's votes may be included in any vote for the **Waiver of Reserves** prior to developer transfer of control under s. 718.112(2)(f) through the end of the second fiscal year after the year of recording of the surveyor's certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurs first, rather than being tied to the date of recording of the declaration. (§ 5, CS/CS/SB 120)

## **BOARD MEMBER TERMS**

### ***§718.112(2)(d)2., F.S.***

Deletes the requirement for an owner vote before the board members may serve two-year terms.

Allows the two-year term language to be in either the association's articles of incorporation or bylaws.

**NOTE:** This would permit condominium boards to serve two-year staggered terms as long as provided in the articles or bylaws.

**PRACTICAL POINTER:** If the association's articles of incorporation or bylaws provide for two-year staggered terms but the association did not take an owner vote to ratify the two-year staggered terms pursuant to the previous version of the statute, the association should re-implement two-year staggered terms. The association should consult with counsel to determine the appropriate method for doing so.

### **BOARD MEMBER QUALIFICATIONS**

#### **§718.112(2)(d)2., F.S.**

A person who is delinquent in the payment of any monetary obligation due to the association is not eligible to be a candidate for the board and may not be listed on the ballot.

**NOTE:** This change makes the terminology consistent with other sections of the Condominium Act that use the term "monetary obligation." The previous law referred to the delinquency of a "fee, fine or special or regular assessment" as provided in Section 718.112(2)(n), Florida Statutes.

### **NOTICE OF MEETINGS**

#### **§718.112(2)(d)3., F.S.**

Clarifies that the requirement to broadcast notice at least four times every broadcast hour of each day that a posted notice is otherwise required only applies if the broadcast notice is used in lieu of a notice posted physically on the condominium property.

**NOTE:** The requirement to post notice at least four times every broadcast hour of each day is not applicable if the association still physically posts notice but uses closed-circuit television or an in-house channel as an extra way of giving notice. Broadcasting may replace physical posting of certain notices at a condominium.

### **DIRECTOR CERTIFICATION AND EDUCATIONAL CERTIFICATES**

#### **§718.112(2)(d)4.b., F.S.**

The association secretary must retain a director's written certification or educational certificate for five years after a director's election or for the duration of the director's uninterrupted tenure, whichever is longer.

**NOTE:** The previous law only required that the written certification or educational certificate be kept for five years after the director's election.

## **ELECTION OF DIRECTORS**

### ***Timeshare Condominiums***

#### **§718.112(2)(d)4., F.S.**

Section 718.112(2)(d)4., Florida Statutes, does not apply to timeshare condominium associations.

**NOTE:** The amendment clarifies that a timeshare condominium does not have to follow the condominium "two-notice" system. Also, the board certification and education requirements in Section 718.112(2)(d)4. will not apply to timeshare condominium directors. This amendment was also included in HB 7025 (Rep. Eagle), Relating to Timeshares (Chapter 2013-159, Laws of Florida, Effective Date: July 1, 2013).

### ***Condominiums***

#### **§718.112(2)(d)4.c., F.S.**

Any challenge to the election process must be commenced within sixty (60) days after the election results are announced.

## **RECALLS**

#### **§718.112(2)(j), F.S.**

If the board of directors fails to duly notice and hold the required board meeting after being served with a recall petition, or fails to file a petition for arbitration challenging the recall, the unit owner representative may file a petition for arbitration pursuant to Section 718.1255 challenging the board's failure to act. The petition must be filed within sixty (60) days after the expiration of the applicable 5 full business day period. The arbitrator's review of such a petition for arbitration is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

A board member who has been recalled may file a petition for arbitration pursuant to Section 718.1255 challenging the validity of the recall. The petition for arbitration must be filed within sixty (60) days after the recall is deemed certified.

The Division may not accept a petition for recall arbitration regardless of whether the recall was certified, when there are sixty (60) or fewer days until the scheduled reelection of the board members sought to be recalled or when sixty (60) or fewer days have elapsed since the election of the board members sought to be recalled.



**NOTE:** The statute still provides that if the board does not certify a recall, it shall file a petition for recall arbitration with the Division. However, the statute has now been amended to prohibit the Division from accepting a petition for recall arbitration when there are sixty (60) or fewer days until the scheduled reelection of the board members sought to be recalled. If the board does not file a petition for arbitration, the unit owner representative may file a petition for arbitration challenging the board's failure to act. However, the Division is prohibited from accepting jurisdiction of the unit owner representative's petition when there are sixty (60) days or fewer until the scheduled reelection of the board members sought to be recalled. Thus, the statute now sets up a procedure whereby the board's decision on whether to certify the recall may not be effectively challenged if there are sixty (60) days or fewer until the scheduled reelection of the board members sought to be recalled.

**PRACTICAL POINTER:** If there is an attempted recall of a board member, the board should discuss with counsel whether it would be appropriate to certify the recall and file a petition for recall arbitration.

## **HURRICANE PROTECTION INSTALLATION**

### **§718.113(5), F.S.**

The board of directors may install hurricane shutters, impact glass, code-compliant windows or doors or other types of code-compliant hurricane protection. A vote of the owners is not required if the maintenance, repair and replacement of such items are the responsibility of the association pursuant to the declaration of condominium. If hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install such items except upon approval by a majority vote of the voting interests.

The association is responsible for the maintenance, repair and replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by Section 718.113(5) if such property is the responsibility of the association pursuant to the declaration of condominium. If such items are the responsibility of the unit owners pursuant to the declaration, the unit owners are responsible for the maintenance, repair and replacement.

The board may operate hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to Section 718.113(5) without permission of the owners only if such operation is necessary to preserve and protect the condominium property or the association property. The installation, replacement, operation, repair and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedure set forth in Section 718.113(5) are not a material alteration to the common elements or association property.

The board may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a unit owner conforming to the specifications adopted by the board.

**NOTE:** The previous statute permitted the board to install hurricane shutters, impact glass, or code-compliant windows. The apparent intent of the change is to allow the board to install code-compliant doors or other types of code-compliant hurricane protection, in the same manner as is currently allowed with respect to hurricane shutters, impact glass, and code-compliant windows. The change also revises the terminology used ("hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliance hurricane protection") so that it is consistent throughout Section 718.113(5).

### **HURRICANE PROTECTION EXPENSES (common expenses)**

The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to Section 718.113(5) constitutes a common expense if the association is responsible for the maintenance, repair and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Otherwise, the cost of installation of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection is not a common expense and shall be charged individually to the unit owners based on the cost of installation of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection appurtenant to the unit.

A unit owner who has previously installed hurricane shutters in accordance with Section 718.113(5) that comply with the current applicable building code shall receive a credit when shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant hurricane protection that complies with the current applicable building code shall receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit. However, the unit owner remains responsible for the pro rata share of expenses for hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed on common elements and association property and remains responsible for the pro rata share of the expense of the replacement, operation, repair and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection.

**NOTE:** This change clarifies that owners receive a credit only when the same type of hurricane protection is installed. The change also revises the terminology used ("hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliance hurricane protection")



so that it is consistent throughout Section 718.115(1)(e), now include the expanded coverage for hurricane improvements (§ 5, CS/CS/HB 73).

## **SUSPENSION OF USE RIGHTS**

### **§718.303(3)(a), F.S.**

When an association suspends the right of a unit owner, or a unit owner's tenant, guest or invitee to use the common elements for failure to comply with any provision of the condominium documents, or reasonable rules of the association, such suspension does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

**NOTE:** The previous statute contained a "glitch" as it provided that these types of use rights may not be suspended for failure to pay a monetary obligation, but was silent on "bad behavior" suspensions. This change makes it clear that when the suspension of use rights is for the failure to comply with the condominium documents (i.e., for "bad behavior"), parking, elevators, utility services, common elements needed to access the unit, and limited common elements intended to be used only by that unit, may not be suspended. **Notably, the statute is still silent on the authority of the association to suspend cable television.**

## **PHASE CONDOMINIUMS**

### **§718.403(1), F.S.**

All phases must be added to the condominium within 7 years after the date of recording the original declaration of condominium submitting the initial phase to condominium ownership unless an amendment extending the 7-year period is approved by the unit owners.

An amendment extending the 7-year period requires the approval of the owners necessary to amend the declaration of condominium consistent with Section 718.110(1)(a). An extension of the 7-year period may be submitted for approval only during the last 3 years of the 7-year period.

An amendment extending the 7-year period must describe the time period within which all phases must be added to the condominium and such time period may not exceed 10 years after the date of recording the original declaration of condominium submitting the initial phase to condominium ownership.

An amendment extending the 7-year period is not an amendment subject to Section 718.110(4).

**NOTE:** The previous statute allowed a developer to add additional phases to a condominium, but only within the 7 years after the date of recording the declaration of condominium. This change

will allow a condominium developer to extend the 7-year period, but only if approved by the owners by the same vote necessary to amend the declaration.

Additionally, pursuant to SB 120, the final trigger for **Transfer of Control** under s. 718.301(1) has been modified to be 7 years after the date of recording of the surveyor's certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurs first, rather than being tied to the date of recording of the declaration. (§ 7, CS/CS/SB 120)

SB 120, The **Turnover Records** to be provided by a developer upon transfer of control per s. 718.301(4) now include a copy of the surveyor's certificate of substantial completion or the recorded instrument that transfer title to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurred first. (§ 7, CS/CS/SB 120)

B. Development:

(1) When a condominium is created and is not substantially complete at the time of creation, the time period for monies to be held in the **Registry of the Court** to ensure completion is now 5 years from the date of recordation, rather than 3 years. (§ 2, CS/CS/SB 120)

(2) An action to determine compliance with the ch. 718 requirements for **Proper Formation of a Condominium** must be brought within 3 years of the recording of the surveyor's certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurs first, rather than being tied to the date of recording of the declaration. (§ 3, CS/CS/SB 120)

## CREATING A CONDOMINIUM WITHIN A CONDOMINIUM

### §718.406, F.S.

Allows the creation of a condominium within an already existing condominium.

Provides definitions for "primary condominium", "primary condominium association", "primary condominium declaration", "secondary condominium", "secondary condominium association", "secondary condominium declaration" "secondary unit", and "subdivided parcel."

Unless otherwise provided in the primary condominium declaration, if a condominium parcel is a subdivided parcel, the secondary condominium association operating the secondary condominium shall act on behalf of the unit owners of secondary units in the secondary condominium and shall exercise all rights of the secondary unit owners in the primary condominium association, other than the right of possession of the secondary unit. The secondary condominium association shall designate a representative who shall cast the vote of the subdivided parcel in the primary condominium association and, if no person is designated by the secondary condominium association to cast such vote, the vote shall be cast by the president of the secondary condominium association or the designee of the president.

Unless otherwise provided in the primary condominium declaration as originally recorded, no secondary condominium may be created upon any condominium parcel in the primary condominium, and no amendment to the primary condominium declaration may permit secondary condominiums to be created upon parcels in the primary condominium, unless the record owners of a majority of the condominium parcels join in the execution of the amendment.

If the primary condominium declaration permits the creation of a secondary condominium and a condominium parcel in the primary condominium is being submitted for condominium ownership to create a secondary condominium upon the primary condominium parcel, the approval of the board of the primary condominium association is required. Unless otherwise provided in the primary condominium declaration, the owners of condominium parcels in the primary condominium that will not be part of the proposed secondary condominium and the holders of liens upon such primary condominium parcels shall not have approval rights regarding the creation of the secondary condominium or the contents of the secondary condominium declaration being submitted. The declaration of condominium for the secondary condominium must be executed by the board of the primary condominium association, the owner of the subdivided parcel, and all holders of liens on the subdivided parcel, and recorded in the public records.

The owner of a secondary unit is subject to both the primary condominium declaration and the secondary condominium declaration.

The primary condominium association may provide insurance for common elements and other improvements within the secondary condominium if provided in the primary condominium declaration in lieu of such insurance being provided by the secondary condominium association.

Unless otherwise provided in the primary condominium declaration, the board of the primary condominium association may adopt hurricane shutter or hurricane protection specifications for each building within which subdivided parcels are located and govern any subdivided parcels in the primary condominium.

Provides for other provisions dealing with notice of foreclosure actions, conflicts between the primary condominium declaration and secondary condominium declaration, and collection of common expenses.

**NOTE:** These are technical changes to the statute that will allow developers to create a "condominium within a condominium," which usually is limited to sophisticated commercial or mixed use development scenarios. In some cases, the developer will be able to create such projects unilaterally, and in other cases, it will require a vote of the unit owners. Specific Language for the **Creation of a Condominium within a Condominium Parcel** now exists under s. 718.406, via definitions of "primary condominium" and "secondary condominium," for creating a secondary condominium, governance provisions, resolution of conflicts between documents, and payment of common expenses. (§ 8, CS/CS/HB 73)

## CONDOMINIUM OMBUDSMAN

### §718.5011(2), F.S.

An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office.

## II. HOMEOWNERS ASSOCIATIONS (Chapter 720)

### HB 7119

### HB 73

**Effective Date: July 1, 2013**

A. **Electronic Copying of Association Records** under s. 720.303(5) now specifically authorizes the use of smart phones and other electronic devices. (§ 15, CS/CS/HB 73, § 2, CS/HB 7119)

B. **Official Records** of a homeowners association, per s. 718.303(5), must be maintained for at least 7 years. (§ 2, CS/HB 7119)

C. **Official Records** must be made available by the board within 45 miles of the community or within the county in which the association is located within 10 business days after receipt of a written request. In the alternative, the records can be made available electronically via the Internet, or via a computer screen, with prints available upon request. (§ 2, CS/HB 7119)

D. Employee costs associated with **Retrieving and Copying Records**, over and above 30 minutes may be imposed by the association, not to exceed personnel costs of \$20 per hour. (§ 2, CS/HB 7119)

E. Any **Reserve Accounts** established by the developer must be designated on the association budget. (§ 2, CS/HB 7119)

F. **Association Directories** can now include the name, address and telephone number of a unit owner (but a unit owner can exclude the telephone number via a written request), per s. 720.303(5)(c). (§ 15, CS/CS/HB 73)

G. The thresholds for **Annual Auditing and Reporting of Association Finances** under s. 720.303(7) have been increased by \$100,000 at each level. (§ 15, CS/CS/HB 73)

H. Failure of a board to hold a meeting to address a **Recall of Directors** or to file a recall petition enables a unit owner to file a petition for arbitration based upon the board's failure to act. A recalled board member may file an arbitration petition to challenge the validity of the recall. Time

frames are prescribed for filing the request for arbitration, and procedures for DBPR to follow are clarified. (§ 15, CS/CS/HB 73)

I. A **DBPR Reporting Requirement for Homeowners Associations** now exists per s. 720.303(13). By November 22, 2013, in the manner to be prescribed by DBPR, each community association manager or management firm (or the homeowners association if no manager has been employed), must file a report that contains the association's legal name, physical and mailing addresses, FEIN, total number of governed parcels, and total amount of revenues and expenses from the association's annual budget. If the association is still under developer control, the report also must identify the name and address of the developer and the total number of parcels then owned by the developer. DBPR is required to establish an Internet registration website for the submittal of the required information. DBPR is required to provide a summary report to the Legislature of the registrations by December 1, 2013. The statute is stated to expire on July 1, 2016. (§ 2, CS/HB 7119) **NOTE: Presumably, this statute is intended to require an annual registration submittal to DBPR, given the expiration of the statute in 2016, but there are no specific provisions so stating beyond the required submittal by November 22, 2013. This may be the first step towards regulating homeowners associations.**

J. **Officers and Directors Certification** of understanding and agreeing to abide by the association's governing documents has now been created in s. 720.3033. This conforms such statute to similar requirements enacted for condominiums in 2011. (§ 3, CS/HB 7119)

K. The homeowners association is now required to maintain **Insurance or Fidelity Bonding** for all persons who control or disburse association funds, per s. 720.3033(5). This is essentially the same requirement as already existing for condominium associations. (§ 3, CS/HB 7119)

L. The homeowners association, per s. 720.306(1), is now required to provide members with a **Copy of Recorded Amendments** to the governing documents within 30 days of the amendment. (§ 4, CS/HB 7119)

M. With regard to **Election of Directors**, the homeowners association is not required to allow for nominations from the floor if the election process in the governing documents provides for nominations prior to the meeting. An election is not required unless the number of candidates exceeds the number of vacancies. (§ 4, CS/HB 7119)

N. The required time frames for **Transfer of Control** of a homeowners association in s. 720.307 have been modified to be similar to the requirements for condominium associations. In addition to the existing 90% threshold or when the developer decides to transfer control, turnover is now triggered when (1) the developer abandons or deserts its responsibility to complete amenities or infrastructure (with there being a rebuttable presumption that 2 years of nonpayment of assessments by the developer constitutes abandonment), (2) the developer files a Chapter 7 bankruptcy petition, (3) the developer loses the property through foreclosure or deed-in-lieu of foreclosure UNLESS the successor owner has accepted an assignment of developer rights and

responsibilities first arising after the date of the assignment, or (4) a receiver is appointed for the developer and such receiver is not discharged for 30 days UNLESS the court determines within 30 days after the appointment that transfer of control would be detrimental to the association or its members. (§ 5, CS/HB 7119) **NOTE: It is unclear whether these changes have retroactive effect to associations existing as of the effective date of the changes (which will be July 1, 2013, if the bill is signed by Governor Scott).**

O. Members other than the developer are entitled to **Elect at Least One Director** if 50% of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to members (the same provision as contained in the condominium statutes). (§ 5, CS/HB 7119)

P. **Suspension of Use Rights** for violation of association governing documents under s. 720.305(2) cannot apply to common areas which provide access or utility services to the parcel. A suspension cannot prohibit the right of an owner to vehicular and pedestrian ingress to and egress from the parcel, and also cannot prohibit the right to park. (§ 16, CS/CS/HB 73)

Q. Changes in the provisions related to **Mortgagee Consents** to documents in s. 720.306(1)(d) were made to conform such statute to similar requirements for condominiums. (§ 17, CS/CS/HB 73)

R. A parcel owner now has the **Right to Speak** at a membership meeting without having had to file a written request to speak prior to the meeting. (§ 17, CS/CS/HB 73)

S. **Challenges to Election Process** must be commenced within 60 days after the election results are announced. (§ 17, CS/CS/HB 73)

T. Prior to transfer of control of a homeowners association, per s. 720.3075, it is now stated to be the public policy of the state of Florida that **Unilateral Amendments by the Developer** are subject to a test of reasonableness, which test prohibits unilateral amendments by the developer which are (1) arbitrary, capricious, or in bad faith; (2) destroy the general plan of development; (3) prejudice the rights of existing non-developer members to use and enjoy the benefits of common property; or (4) materially shift economic burdens from the developer to the existing non-developer members. (§ 6, CS/HB 7119) **NOTE: It is unclear whether these changes have retroactive effect on governing documents recorded prior to the effective date of these provisions (which will be July 1, 2013).**



## **II. MORTGAGE FORECLOSURES**

### **HB 87, Relating to Mortgage Foreclosures Chapter 2013-137, Laws of Florida** **Condo & HOA**

**Effective Date: June 7, 2013**

#### **ORDER TO SHOW CAUSE**

#### **§702.10(1), F.S.**

The changes to Section 702.10(1), Florida Statutes, include an important provision for associations that will allow associations in some cases to move stalled mortgage foreclosure cases by filing for an expedited order to show cause procedure.

Specifically, the changes provide that if a junior lienholder (including a condominium, cooperative or homeowners' association) requests an order to show cause be entered, the judge shall immediately review the request and the court file in chambers and without a hearing and, if the file meets the requirements of the statute, the judge shall promptly issue an order directed at the other parties to show cause why a final judgment of foreclosure should not be entered. However, as a practical tip – this does not always occur. There are many considerations to be made prior to the filing of the Order to Show Cause the procedure is not quite as simple. A form Judgment must be attached to the Order to Show Cause, which can be difficult to prepare since the Judgment pertains to the bank and not the Association. Basically, the Condo or HOA is not the Plaintiff.

The order to show cause procedure in Section 702.10(1), Florida Statutes, applies even if the residence is owner-occupied.

**NOTE:** The law already allows a bank to file such a request for an order to show cause. The bill extends this right to other lienholders, including condominium associations.

HB 87 also includes a number of other changes to the mortgage foreclosure process including: (1) mortgagees will have only one year to enforce a deficiency judgment; (2) the deficiency judgment (in the case of an owner-occupied residential property) may not exceed the difference between the judgment amount or, in the case of a short sale, the outstanding debt, and the fair market value of the property on the date of the sale; (3) requires the initial disclosure of a mortgagee's right to foreclose the mortgage note and the facts supporting that status, thereby ensuring the availability of documents necessary to the prosecution of the case; (4) provides for the finality of a mortgage foreclosure judgment by limiting claims to set aside or challenge a final judgment of foreclosure to monetary damages only, if, among other things, the property has been acquired for value by a person not affiliated with the foreclosing lender or the foreclosed owner; (5) provides that a mortgagee may not request that the owner in foreclosure make payments during the pendency of the foreclosure proceedings or vacate the premises if the home is owner-occupied; and (6) provides various means of adequate protection for the enforcement of lost, destroyed, or stolen instruments in foreclosure.

### **III. Other Bills Having an Impact on Community Associations:**

#### **A. Landlord-Tenant:**

(1) Per s. 83.64(1)(d), it is unlawful for a landlord to increase a tenant's rent or increase services, or to bring an action, or threaten to bring an action, for possession, because the landlord is retaliating against the tenant for, among other items, paying rent to a condominium, cooperative, or homeowners' association after demand from such association, as a result of the landlord having been deficient in payment of assessments to such association. (§ 15, CS/CS/HB 77)

#### **B. Flag Etiquette:**

(1) The Governor is now required to adopt protocols on the display of flags, which must include guidelines for proper display of the state flag and for the lowering of the flag to half-staff on appropriate occasions. These provisions will apply to community associations. (§ 1, SB 230)

#### **C. Hidden Liens:**

(1) A lien by a governmental entity or quasi-governmental entity that attaches to real property for an improvement, service, fine, or penalty (other than a lien for taxes, non-ad valorem or special assessments, or utilities) is valid and has legal effect against creditors or subsequent purchasers for a valuable consideration only if the lien is recorded in the public records of the county where the property is located. The recorded notice of lien must contain the name of the owner of record, a description or address of the property, and the tax or parcel identification number applicable to the property as of the date of recording. (§ 2, CS/HB 267)

#### **D. Adverse Possession:**

(1) Based upon recent situations where squatters attempted to use the adverse possession statutes to occupy abandoned residential homes, s. 95.18 was amended to prevent such occurrences and to make it a trespass to so occupy a home without having paid all outstanding taxes and special assessments. (§ 1, CS/HB 903)

#### **E. Permitting Regulations – Submerged Lands for Private Residences:**

(1) A lessee is now permitted to have a lease of sovereignty submerged lands, with no requirement for payment of any lease fees (except in the most extraordinary of circumstances) for (a) a private residential single-family docks to moor up to 4 boats or (b) a private residential multi-family docks capable of mooring boats up to the number of units in the multi-family project (§ 7, CS/CS/CS HB 999)

#### **F. Property Insurance on Residential Structures:**

(1) Policy limits on residential structures have been changed, such that residential structures having a dwelling replacement cost of \$900,000 as of January 1, 2015 will not be covered by Citizens. Such amount drops to \$800,000 as of January 1, 2016, and to \$700,000 as of January 1, 2017. (§ 7, CS/SB 1770).



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NOTES:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.