



2021

**HIGHLIGHTS OF 2021 LEGISLATION
AFFECTING CONDOMINIUM ASSOCIATIONS,
COOPERATIVE ASSOCIATIONS
AND HOMEOWNERS ASSOCIATIONS**

TO: ALL COMMUNITY ASSOCIATION CLIENTS

This memorandum is furnished without charge to our community association clients.

The information in this update is a summary of recent legislation. It is intended to provide general information and is not intended as legal advice to your particular community association. You are urged to contact your association's attorney regarding the specific applicability of this information to your association.

At the end of each paragraph, we state in brackets [] the effective date, the applicable Statute being changed or created, and the House Bill creating the change.

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[References to the "Statute" refer to the applicable statute being amended. References to the "Division" refer to the Division of Florida Condominiums, Timeshares and Mobile Homes.]

I. CHANGES TO CHAPTER 718 AFFECTING CONDOMINIUM ASSOCIATIONS:

Eligibility of Candidate to Run for the Board: The Statute previously provided that the person who is delinquent in payment of any "monetary obligation" to the association is not eligible to be a candidate for the board and may not be listed on the election ballot. The term "monetary obligation" could include money obligations like fines. In 2021, the Statute was changed to provide that a person who is delinquent in payment of any "assessment" is not eligible to be a candidate and may not be listed on the ballot. A person is delinquent if payment of assessments is not made on the due date specified

in the governing documents or if a due date is not specified in the governing documents, the due date is the first day of the assessment. [Effective July 1, 2021; applicable Statute F.S. 718.112(2)(d); Bill reference SB 1966]

Application Fee for Approval of Sale or Lease of Unit: The transfer fee (application fee) the association may charge in connection with approval of a sale or lease was raised from \$100.00 dollars to \$150.00 dollars. Further, the Statute provides that the fee must be adjusted every 5 years equal to increases in the Consumer Price Index (CPI). The Statute provides that the Division is required to recalculate the fees and publish the fee. [Effective July 1, 2021; applicable Statute F.S. 718.112(2)(i); Bill reference SB 630]

Requirement of Sending Statutory Late Notice Before the Association Can Recover Attorneys' Fees: The legislature has imposed an additional step in the collections process, which must presumably be done before the matter is sent to the attorney for collection. An association may not require payment of attorneys' fees related to past due assessments without first delivering thirty(30) days written notice of late assessment to the unit owner which specifies the amount to the association provides the unit owner with an opportunity to pay the amount without assessment of attorneys' fees. The notice of late assessment must be sent by U.S. mail to the unit owner at his or her last address, and if such address is not the unit address, the notice must be sent to the unit address. The association can document that the notice was sent by having a board member, officer or agent of the association or manager providing a sworn affidavit attesting to such mailing. The Statute contains a specific form of the notice which must be sent. [Effective July 1, 2021; applicable Statute F.S. 718.121; 718.116 and 718.111; Bill reference SB 56]

Director Term Limitations – Clarification of 8 Year Limitation: Much confusion and aggravation occurred as a result of that 2018 statutory change on director term limitations. In 2018, Chapter 718 was amended to provide that directors may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing 2/3 of all votes cast in an election or unless there are not enough eligible candidates to fill the vacancies at the time of vacancy. Originally the change was most commonly thought to apply prospectively -- meaning time of director service before the 2018 effective date would not count towards the limitation. Thereafter, the Division rendered a decision stating that director service before the 2018 change would apply towards the limitation. This Division declaratory statement was most commonly thought to be legally incorrect. The Division thereafter backtracked and stated that director service before the 2018 change would not count. The legislature has, in 2021, cleared up the problem. The Statute is amended in 2021 to provide that only board service that occurs on or after July 1, 2018 (when the 8 year limit Statute was adopted) may be used when calculating the statutory 8 year term limit. [Effective July 1, 2021; applicable Statute F.S. 718.112(2)(d); Bill reference SB 630]

Annual Budget: The Statute is amended to provide that the Board shall adopt the annual budget at least 14 days prior to the start of the association’s fiscal year. In the event the Board fails to timely adopt the budget a second time, it shall be deemed (classified as) a minor violation by the Division of Florida Condominiums and the prior year’s budget shall continue in effect until a new budget is adopted. [Effective July 1, 2021; applicable Statute F.S. 718.112(2)(f); Bill reference SB 1966]

Subrogation Suits Against Condo Association: When the insurance company for an individual unit owner pays insurance proceeds to an owner for interior damages, the insurance company will sometimes “subrogate” and file litigation against the association. The term “subrogate” means the insurance company pursues the claims a unit owner would otherwise have. However, in many instances, these subrogation lawsuits are not meritorious -- meaning the association did not breach a duty regarding maintenance, repair or replacement of common elements – however, the cost to defend the litigation exceeds. The association for business purposes often ends up paying what would otherwise be a weak claim. In 2021, Florida Statutes were amended to limit this right of subrogation by the insurer for a unit. The amended Statute provides if a condominium association’s insurance policy does not provide rights of subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner may not provide rights of subrogation against the condominium association. [Effective July 1, 2021; applicable Statute F.S. 627.714(4); Bill reference SB 630]

Director Conflicts of Interest – Hiring a “Service Provider”: Chapter 718 provided that an association may not employ or contract with a service provider that is owned or operated by a director or any person who has a financial relationship with a director or officer or a relative of the director or officer. This particular statutory prohibition on hiring service providers has been removed. However, the association should be sure to comply with other statutes regarding approval of such contracts and potential conflict scenarios. [Effective July 1, 2021; applicable Statute F.S. 718.112(2)(p); Bill reference SB 630]

Official Records: The condominium official records Statute requires that bids for work to be performed are official records and must be maintained by the association and made available to owners. The Statute has been amended to provide that bids for work to be performed are only required to be kept as official records for one(1) year after receipt of the bid.

The Statute was amended to clarify that a unit owner cannot be required to demonstrate any purpose or state any reason for inspection of records.

The Statute was amended to allow an association to make records available through an application (an “app”) that can be downloaded on a smart phone. This should help ease the burden on the association for providing access to records. [Effective July 1, 2021; applicable Statute F.S. 718.111(12); Bill reference SB 630]

Eliminate a Discriminatory Restriction in Governing Documents: Older condominium documents will sometimes have a discriminatory restriction which needs to be eliminated. The most common example is an older condominium (1960's or 1970's era) which is not a 55 and over community, having a prohibition on children. Chapter 718 was amended to allow a condo association by a vote of the Board of Directors or unit owners, to extinguish improper discriminatory restrictions including those based on race, national origin, religion, gender or physical disability. Presumably this will bolster the ability of a condo association (which is not a 55 and over community) to remove or nullify old language prohibiting children. [Effective July 1, 2021; applicable Statutes F.S. 718.112(1)(c) and 712.065; Bill reference SB 630]

Notice of Members' Meetings: Chapter 718 has been amended to provide and clarify that written notice of a members' meeting other than the annual meeting must be mailed or delivered and posted on the condominium or association property within the time frame specified in the bylaws, and if the bylaws do not specify a time frame, then notice must be provided at least 14 days before the meeting. [Effective July 1, 2021; applicable Statute F.S. 718.112(2)(d); Bill reference SB 630]

Notice of Annual Meeting and Election: The Statute was amended such that the second notice of annual meeting must be sent not less than 14 days nor more than 34 days before the election. [Effective July 1, 2021; applicable Statute F.S. 718.112(2)(d); Bill reference SB 630]

Recall of Directors: If a unit owner or director seeks to challenge the board's decision in accepting or rejecting a recall, the unit owner or board member may file either an arbitration petition for recall arbitration with the Division or file an action in court. Originally, the unit owner or director was limited to filing a recall arbitration action with the Division. [Effective July 1, 2021; applicable Statute F.S. 718.112(2)(j); Bill reference SB 630]

Electric Vehicle Charging Stations and Natural Gas Fueling Stations for Vehicles: Chapter 718 previously provided a right under certain circumstances for a unit owner to install an electrical vehicle fueling station. The Statute has been amended in several respects. The Statute is amended to give the same right for a unit owner to install facilities for a "natural gas fuel vehicle" -- meaning the right for the unit owner to install a fueling station, etc. Further, the unit owner previously had the right to install such a station only within the boundaries of a "limited common element" parking space. The Statute has now been amended to give rights for such a station within both a limited common element parking space "or exclusively designated" parking area. The meaning of "exclusively designated" will subject to further analysis – whether this means parking spaces which are not limited common elements but which are assigned for exclusive use by unit owners.

Further, the Statute is amended to allow a condominium association to make available, install and operate an electric vehicle charging station or natural gas charging station on the common elements and establish the charges, manner of charges, and the payment for use of such charging station. The Statute is amended to provide that the installation of such electric vehicle or natural gas fuel stations does not constitute a material alteration of the common elements or association property. [Effective July 1, 2021; applicable Statutes F.S. 718.113(8) and 718.121; Bill reference SB 630]

Association Remedies for Violation of Governing Documents or Rules: For many years the remedy a condominium association must pursue for a unit owner violating the governing documents or rules, is filing arbitration with the Division of Florida Condominiums. To contrast with homeowners associations, the HOA sends a specific statutory form demand letter offering pre-suit mediation of the dispute with a mediator; then if the lot owner refuses to participate in mediation or the mediation does not resolve the dispute; the HOA can file an action in court. Chapter 718 has been amended to provide that a condominium association can either file arbitration with the Division or can pursue pre-suit mediation under the HOA procedure, and thereafter file a court action. This course of action involving pre-suit mediation however is not available for election disputes and recall disputes. [Effective July 1, 2021; applicable Statute F.S. 718.1255; Bill reference SB 630]

Emergency Powers: During the Coronavirus pandemic, condominium associations have relied upon Florida Statute 718.1265 for authority to conduct board meetings, and even annual meetings via Zoom or conference call. The Statute is amended to support the association conducting meetings via Zoom when a State of Emergency is declared.

However, there are also limitations placed on an association. The Statute provides that an association may not prohibit unit owners, tenants, guest, agents or invitees of a unit owner from accessing the unit and the common elements and limited common elements appurtenant to the unit for purposes of ingress to an egress from the unit. An exception would be when a governmental directive is issued prohibiting access to the unit. [Effective July 1, 2021; applicable Statute F.S. 718.1265; Bill reference SB 630]

Fines: The fining Statute was amended to provide that fines are due 5 days after notice of the fine is provided to the unit owner, tenant, licensee or invitee of the unit owner. Note there is a specific procedure for approval of fines involving a board meeting, notice of a fining committee meeting, and a fining committee meeting. [Effective July 1, 2021; applicable Statute F.S. 718.303; Bill reference SB 630]

Multicondominium Associations: A multicondominium association is an association which operates more than one condominium. Each of the condominiums will typically have its own declaration of condominium. The Statute was amended to clarify that the condominiums can adopt a consolidated or combined declaration of condominium for all the condominiums. The actual condominiums would not be merged, there would just be

a single declaration of condominium. [Effective July 1, 2021; applicable Statute F.S. 718.405; Bill reference SB 630]

Challenge of Property Taxes: The legislature has adopted amendments allowing a condominium association or cooperative association to petition the county “value adjustment board” to challenge the property tax appraisal for units. The Statute is also changed to allow the Association to seek judicial review in court of a property appraiser’s valuation of units. There are requirements for how the association must communicate with the unit owners regarding such matters. [Effective July 1, 2021; applicable Statutes F.S. 194.011 and F.S. 194.181; Bill reference HB 649]

Procedure for Collection of Assessments: Chapter 718 is amended to increase time periods for the notice of lien letter and notice of intent to foreclose letter -- from 30 days to 45 days. Before the condo association can record a claim of lien against the unit, a statutory notice must be sent 45 days before the lien can be recorded. Before the association can bring a foreclosure action on a recorded claim of lien, 45 days notice must be mailed. [Effective July 1, 2021; applicable Statutes F.S. 718.116 and 718.121; Bill reference SB 56]

Method for Association to Send Out Invoices of Assessments or Statements of Account: If a condo association sends out an invoice for assessments or a statement of account, the invoice for assessments or a statement of account must be delivered to the unit owner by U.S. mail or electronic transmission. Before changing the method of delivery (of the invoice or statement), the association must deliver a written notice of change to each unit owner at least thirty(30) days before the association sends the invoice or statement under the new delivery method. The unit owner must affirmatively acknowledge in writing his or her understanding that the change will occur. The acknowledgements are required to be maintained as part of the official records, but the acknowledgements are not accessible by other unit owners. [Effective July 1, 2021; applicable Statutes F.S. 718.121 and 718.111; Bill reference SB 56]

II. CHANGES TO CHAPTER 719 AFFECTING COOPERATIVE ASSOCIATIONS:

Requirement of Late Notice Before the Association Can Recover Attorneys’ Fees: The cooperative Statute has been amended the same as the condominium Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statute F.S. 719.108; Bill reference SB 56]

Collection of Assessments: Chapter 719 is amended to increase time periods for the notice of lien letter and notice of intent to foreclose letter – increasing from 30 days to 45 days. The cooperative Statute has been amended the same as the condominium Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statute F.S. 719.108; Bill reference SB 56]

Annual Budget: The cooperative Statute has been amended the same as the condominium statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statute F.S. 719.106(1)(j); Bill reference SB 1966]

Definition of Cooperative Unit as Parcel of “Real Property”: With cooperatives, there has been the tension or confusion whether a cooperative unit constitutes a parcel of “real property” (land) like a condominium unit or a piece of “personal property”. Chapter 719 is amended to clarify that an interest in a cooperative unit is an interest in real property. This may make long term financing of cooperative units easier. [Effective July 1, 2021; applicable Statute F.S. 719.103(25); Bill reference SB 630]

Official Records: The cooperative official records Statute has been amended the same as the condominium official records Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statute F.S. 719.106; Bill reference SB 630]

Eliminate a Discriminatory Restriction in Governing Documents: The cooperative Statute has been amended the same as the condominium Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statute F.S. 719.106; Bill reference SB 630]

Association Remedies for Violation of Governing Documents or Rules: The cooperative Statute has been amended the same as the condominium Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statute F.S. 719.106; Bill reference SB 630]

Attendance of Directors or Committee Members and Meetings Via Telephone or Video Conferencing: The Statute was clarified to provide that a director or committee member participating in a meeting via telephone, video or similar real time communication counts towards a quorum and the director or committee member may vote as if physically present. [Effective July 1, 2021; applicable Statute F.S. 719.106(1); Bill reference SB 630]

Recall of Directors: The cooperative Statute has been amended the same as the condominium Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statute F.S. 719.106(1)(f); Bill reference SB 630]

Emergency Powers: The cooperative Statute has been amended the same as the condominium Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statute F.S. 719.128; Bill reference SB 630]

Challenge of Property Taxes: The legislature has adopted amendments allowing a cooperative association to petition the county “value adjustment board” to challenge the

property tax appraisal for units. The cooperative Statute has been amended the same as the condominium Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statutes F.S. 194.011 and F.S. 194.181; Bill reference HB 649]

Method for Association to Send Out Invoices of Assessments or Statements of Account: The cooperative Statute has been amended the same as the condominium Statute. Please see the above summary regarding condominiums. [Effective July 1, 2021; applicable Statutes F.S. 719.104 and 719.108; Bill reference SB 56]

III. CHANGES TO CHAPTER 720 AFFECTING HOMEOWNERS ASSOCIATIONS:

Requirement of Late Notice Before the Association Can Recover Attorneys' Fees: The legislature has imposed an additional step in the collections process, which must presumably be done before the matter is sent to the attorney for collection. An association may not require payment of attorneys' fees related to past due assessments without first delivering thirty(30) days written notice of late assessment to the unit owner which specifies the amount to the association provides the lot owner with an opportunity to pay the amount without assessment of attorneys' fees. The notice of late assessment must be sent by U.S. mail to the lot owner at his or her last address, and if such address is not the unit address, the notice must be sent to the unit address. The association can document that the notice was sent by having a board member, officer or agent of the association or manager providing a sworn affidavit attesting to such mailing. The Statute contains a specific form of the notice which must be sent. [Effective July 1, 2021; applicable Statute F.S. 720.3085; Bill reference SB 56]

Amendments Restricting Leasing and Rentals: Many years ago, Chapter 718 governing condominiums was amended regarding restrictions on leasing -- to provide that amendments restricting leasing and rentals applies only to those owners who vote for the amendment and those owners who take title after the effective date of the amendment.

In 2021, the Florida legislature has similarly amended Chapter 720 governing homeowners associations. The Statute is amended to provide that after July 1, 2021, any amendment to HOA governing documents that prohibits or regulates rental agreements applies only to: (1) those lot owners who acquire title after the effective date of the amendment; or (2) those lot owners who consent to the amendment. The Statute clarifies when a title transfer of a lot is deemed to occur – such that the lot becomes subject to the rental restriction. The Statute carves out an exception that an HOA may amend to prohibit leases of less than six (6) months and may prohibit more than three (3) rentals in a calendar year and such amendments would apply to all lot owners. [Effective July 1, 2021; applicable Statute F.S. 720.303(6)(1)(h); Bill reference SB 630]

Definition of Governing Documents – does not include Rules and Regulations:

Chapter 720 was amended several years ago to state that the term “governing documents” including rules and regulations. Since HOA governing documents are required by Chapter 720 to be recorded in the public records, many homeowners associations recorded rules and regulations in the public records. The Statute has been amended in 2021 to provide that HOA rules and regulations are not “governing documents.” [Effective July 1, 2021; applicable Statute F.S. 720.301(8); Bill reference SB 630]

Reserves which are Subject to Statutory Limitations: For many years Chapter 720 has provided that an HOA could be required to fund and use reserves in a restricted manner in the Statute IF: (1) the developer of the community initially established the reserves OR (2) the HOA lot owners voted to provide for reserves under the Statute. The language regarding reserves initially provided by the developer was confusing – an example confusion is that many HOAs were created in the 1980s or 1990s which was 20-30 years before the HOA reserve statute was created.

That language regarding reserves “initially established by the developer” has now been removed. Now if the lot owners vote by approval of a majority of the total voting interest of the lot owners, to provide for reserves under the statutory method, then such reserves must be maintained in the restrictive fashion per the Statute.

Writer’s commentary – HOAs should be cautious to not have a lot owner vote to establish reserves – you don’t want unwittingly be drawn into having to maintain reserves in a restrictive fashion like a condo.

Also if the HOA does not maintain “statutory reserves” or such reserves are not fully funded, the Statute requires the year end financial report to contain certain disclosure statements in capitalized letters. [Effective July 1, 2021; applicable Statute F.S. 720.303(6); Bill reference SB 630]

Notice of Board of Directors Meetings: In addition to the normal posting or otherwise giving notice of board meetings, the Statute is amended to allow a board to provide electronic notice of board meetings through a website or an application that can be downloaded. [Effective July 1, 2021; applicable Statute F.S. 720.303(2)(c); Bill reference SB 630]

Official Records: The Statute is amended to provide that ballots, sign in sheets, voting proxies and all other papers and electronic records relating to voting by lot owners must be maintained for at least one(1) year after the date of the election, vote or meeting. [Effective July 1, 2021; applicable Statute F.S. 720.303(4); Bill reference SB 630]

There are certain records which are inaccessible to lot owners. The Statute is amended to clarify that information an association obtains in a gated community in connection with guests' visits are inaccessible to lot owners. [Effective July 1, 2021; applicable Statute F.S. 720.303(5); Bill reference SB 630]

Recall of Directors: If a lot owner or director seeks to challenge the board's decision in accepting or rejecting a recall, the lot owner or board member may file either a petition with the Division for recall arbitration or file an action in court. Originally, the lot owner or director was limited to filing an action with the Division. [Effective July 1, 2021; applicable Statute F.S. 720.303(10); Bill reference SB 630]

Fines: The fining Statute was amended to provide that fines are due five (5) days after notice of the fine is provided to the unit owner, tenant, licensee or invitee of the unit owner. Note there is a specific procedure for approval of fines involving a board meeting, notice of a fining committee meeting, and a fining committee meeting. [Effective July 1, 2021; applicable Statute F.S. 720.305; Bill reference SB 630]

Notice of Lot Owner Meetings: Chapter 720 previously provided that notice of members' meetings must be mailed to the lot owner's mailing address on the property appraiser's website. That language has been eliminated. Notice of members' meetings must be mailed to the lot owners address as stated in the official records of the association. [Effective July 1, 2021; applicable Statute F.S. 720.306(1)(g); Bill reference SB 630]

Election Challenges: The Statute has been changed to allow challenges to the validity of an election to be filed via a court action in addition to an arbitration action with the Division. [Effective July 1, 2021; applicable Statute F.S. 720.306(9); Bill reference SB 630]

Eliminate a Discriminatory Restriction in Governing Documents: Older governing documents will sometimes have a discriminatory restriction which needs to be eliminated. The most common example is an older condominium (1960's or 1970's era) which is not a 55 and over community having a prohibition on children. Chapter 720 was amended to allow an HOA by a vote of the Board of Directors or unit owners, to extinguish improper discriminatory restrictions including those based on race, national origin, religion, gender or physical disability. Presumably this will bolster the ability of a condo association (which is not a 55 and over community) to remove or nullify old language prohibiting children. [Effective July 1, 2021; applicable Statutes F.S. 720.316 and 712.065; Bill reference SB 630]

Emergency Powers: During the Coronavirus pandemic, HOAs have relied upon Florida Statute 720.316 for authority to conduct board meetings, and even annual meetings via Zoom or conference call. The Statute is amended to support the association conducting meetings via Zoom when a State of Emergency is declared.

However, there are also limitations placed on an association. The Statute provides that an association may not prohibit lot owners, tenants, guest, agents or invitees of a lot owner from accessing the lot and the common area for purposes of ingress to an egress from the lot. An exception would be when a governmental directive is issued prohibiting access to the lot. [Effective July 1, 2021; applicable Statute F.S. 720.316; Bill reference SB 630]

Method for Association to Send Out Invoices of Assessments or Statements of

Account: If an HOA sends out an invoice for assessments or a statement of account, the invoice for assessments or a statement of account must be delivered to the unit owner by U.S. mail or electronic transmission. Before changing the method of delivery (of the invoice or statement), the association must deliver a written notice of change to each unit owner at least thirty (30) days before the association sends the invoice or statement under the new delivery method. The lot owner must affirmatively acknowledge in writing his or her understanding that the change will occur. The acknowledgements are required to be maintained as part of the official records, but the acknowledgements are not accessible by other unit owners. [Effective July 1, 2021; applicable Statutes F.S. 720.303(4) and 720.3085; Bill reference SB 56]

IV. CHANGES AFFECTING ALL TYPES OF COMMUNITY ASSOCIATIONS:

Applicability of Not-For-Profit Corporation Law to Community Associations: Most condominiums, cooperatives, and homeowners associations are not-for-profit corporations created under Chapter 617 of the Florida Statutes. If Chapter 718 applicable to condominiums, Chapter 719 applicable to cooperatives, and Chapter 720 applicable to homeowners associations, do not specifically address an aspect of corporate operation, attorneys and associations will look to Chapter 617 to see if Chapter 617 addresses the issue. Chapter 617 has been amended to just clarify that Chapter 718, Chapter 719 or Chapter 720 will supersede if there is a conflict with Chapter 617. [Effective July 1, 2021; applicable Statutes F.S. 617.0725, 617.0825, and 617.1703; Bill reference SB 602]

Civil Liability Limitations for Coronavirus Claims: The legislature adopted Statute intended to limit the liability of “business entities” from civil court actions based on coronavirus claims. The Statute includes within the definition, not-for-profit corporations created under Chapter 617 of the Florida Statutes which would include most community associations which are 617 corporations. [Effective July 1, 2021; applicable Statute F.S. 768.38; Bill reference SB 72]

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[06/27/21]