

ALERTS AND UPDATES

Florida's New Condominium and Homeowners' Associations Laws Take Effect

June 23, 2011

Legislative Amendments Affect Chapter 718 (Condominium Act) and Chapter 720 of the Florida Statutes

On June 21, 2011, Florida Gov. Rick Scott signed into law [House Bill 1195](#), which amends, among other things, various provisions of Chapters 718 and 720 of the Florida Statutes—the state laws relating to condominiums and homeowners' associations. Effective July 1, 2011, these changes cover issues, including official records; board requirements and meetings; collection of rent by an association; suspension of use rights; and condominium bulk buyers and bulk assignees. In addition, Governor Scott signed into law [House Bill 59](#), effective July 1, 2011, relating to service of process in condominiums and gated communities. The following is a summary of some of the legislation included in H.B. 1195 and H.B. 59.

Chapter 718 of the Florida Statutes (Condominium Act)

- ***Official Records.*** This legislation clarifies that owners are permitted to consent in writing to the disclosure of their protected contact information and provides that a condominium association is not liable for disclosure of protected contact information if the information is included in an official record of the association and is voluntarily provided by the owner and not requested by the association. In addition, the legislation clarifies that although personnel records of the condominium association or management company employees are not available for inspection by owners, the owners will be permitted to inspect employment agreements and budgetary and financial records that indicate the compensation paid to employees.
- ***Open Meetings.*** The legislation will now permit condominium boards to hold closed meetings that are not open to unit owners relating to "personnel" matters.
- ***Attachment of Rent.*** Last year, Chapter 718 of the Florida Statutes was amended to authorize a condominium association to require that a condominium unit owner's tenant pay rent directly to the condominium association if a unit owner is delinquent in paying monetary obligations to the condominium association. The current legislation clarifies that what was previously referred to as "future monetary obligations" includes all subsequent rent due from the tenant to the unit owner and must be paid to the condominium association until all delinquent accounts are paid in full. The legislation also provides a form demand letter required to be sent to tenants by the condominium association explaining the tenant's obligation to pay rent to the condominium association, and clarifies that the tenant is immune from any claim by the landlord/unit owner relating to the rent that is timely paid to the condominium association after the condominium association has made a written demand for rent from the tenant.

- **Director Certification.** Last year, Chapter 718 of the Florida Statutes was amended to require all newly elected or appointed directors to certify that they have read and will uphold the condominium association's documents within 90 days of being elected or appointed or, alternatively, the newly elected or appointed directors may take a course administered by an approved condominium educational provider. The legislation clarifies that the written certification or educational certificate is valid as long as the director serves on the board without interruption, and provides that if an educational certificate is provided in lieu of a written certification, then the directors must submit proof of educational course attendance that was completed within one year before or 90 days after the date of the election or appointment.
- **Suspensions.** Last year, Chapter 718 of the Florida Statutes was amended to authorize a condominium association to suspend the right of a unit owner to use the common elements, common facilities and other association property if the unit owner is more than 90 days delinquent in paying monetary obligations to the association until such unit owner has paid the required assessments, as well as to suspend the voting rights of a delinquent unit owner. The legislation allows suspension of common-element use rights for not only nonpayment but also for failure to comply with condominium documents, with a hearing required for suspension as a result of failure to comply with condominium documents but no hearing required for suspension as a result of delinquency. The legislation clarifies that if voting rights are suspended as a result of a delinquency, the suspended vote does not count toward quorum requirements or a vote required to approve an action. Although suspensions of use rights for nonpayment of assessments will not require a hearing, the board has to approve such suspensions at a properly noticed meeting.
- **Elections and Staggered Terms.** The legislation clarifies that board-member terms do not expire at the condominium association's annual meeting if all of the member terms would expire at the annual meeting but there are no candidates running for the board. In those instances where the board-member terms expire at the condominium association's annual meeting, the board members may stand for reelection unless prohibited by the bylaws, suggesting that term limits are permitted if so provided in the bylaws. The legislation also clarifies that a candidate for the board must be eligible to serve on the board at the time of the deadline for submitting a notice of intent (40 days prior to the election) in order for his or her name to be listed as a candidate on the election ballot or to serve on the board.
- **Termination of Condominium.** The legislation provides for partial termination of condominiums and that a plan of partial terminations is not an amendment to the declaration of condominium subject to Section 718.110(4) of the Florida Statutes if the ownership share of the common elements of the surviving units in the condominium remain in the same proportion as before the partial termination. Among other things, a plan of termination in a partial termination must indicate the units that remain after the partial termination. The procedure for distribution of proceeds and mortgagee participation was modified to reflect partial termination. The legislation also provides a procedure for termination of a condominium for economic waste or impossibility if the condominium includes units and timeshare estates where the improvements have been totally destroyed or demolished.

- **Hurricane Protection.** The legislation clarifies that in addition to hurricane shutters, impact-resistant or other code-compliant windows may be installed with the necessary board and unit owner approvals.
- **Membership Agreements.** The legislation allows an association to acquire leaseholds, memberships and other possessory or use interests in lands or facilities, such as country clubs; golf courses; marinas; and other recreational facilities by vote or written consent of a majority of the total voting interests, even if not specifically authorized by the declaration of condominium.
- **Bulk Buyers / Bulk Assignees.** Last year, Chapter 718 of the Florida Statutes was amended to include the Distressed Condominium Relief Act (the "Act"), which provides protections to bulk buyers and bulk assignees from assuming the original developer's liabilities and responsibilities, provided that the conveyance of unit is structured in accordance with and meets the statutory requirements. The legislation amends the definition of a "bulk buyer" and "bulk assignee" to mean a person who acquires more than seven condominium parcels in a "single condominium." The Act was amended to provide that a bulk assignee is not liable for warranties under the Condominium Act except "as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser," or for design, construction, development or repair work performed by or on behalf of the bulk assignee.

The Act now clarifies that if, at the time the bulk assignee acquires title to the condominium units and receives an assignment of developer rights, the original developer has not relinquished control of the board—for purposes of determining the timing of transfer of control—a condominium unit acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the unit is conveyed to an owner who is not a bulk assignee. The Act was amended to require filing with the Division of Florida Condominiums, Timeshares, and Mobile Homes as well as certain disclosures to purchasers and lessees if the bulk assignee or bulk buyer is offering more than seven units in a single condominium for sale or for lease for a term exceeding five years. However, a bulk assignee and bulk buyer are not required to comply with filing or disclosure requirements if all the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction. The Act was also amended to clarify that a mortgagee who acquires title of a condominium pursuant to a judgment of foreclosure is not a bulk assignee or developer, unless the mortgagee exercises any developer rights other than those specified in the Act.

- **Condominium Association Responsibility for Past-due Assessments.** The legislation clarifies that a condominium association that acquires title to a parcel through foreclosure of its lien for assessments is not liable for unpaid assessments and other amounts that came due before the association's acquisition of title in favor of any other condominium or homeowners' association that holds a superior lien interest on the unit.

Chapter 720 of the Florida Statutes

- **Official Records.** This legislation clarifies that owners are permitted to consent in writing to the disclosure of their protected contact information and provides that a homeowners' association is not liable for disclosure of protected contact information if the information is included in an official record of the association and is voluntarily provided

by the owner and not requested by the association. In addition, the legislation clarifies that although personnel records of the homeowners' association or management company are not available for inspection by owners, the owners will be permitted to inspect employment agreements and budgetary and financial records that indicate the compensation paid to employees.

- **Attachment of Rents.** Last year, Chapter 720 of the Florida Statutes was amended to authorize a homeowners' association to require that a parcel owner's tenant pay rent directly to the homeowners' association if a parcel owner is delinquent in paying monetary obligations to the homeowners' association. The current legislation clarifies that what was previously referred to as "future monetary obligations" includes all subsequent rent due from the tenant to the parcel owner and must be paid to the homeowners' association until all delinquent accounts are paid in full. The legislation also provides a form demand letter required to be sent to tenants by the homeowners' association that explains the tenant's obligation to pay rent to the homeowners' association, and clarifies that the tenant is immune from any claim by the landlord/unit owner relating to the rent which is timely paid to the homeowners' association after the homeowners' association has made a written demand for rent from the tenant.
- **Suspensions.** Last year, Chapter 720 of the Florida Statutes was amended to authorize a homeowners' association to suspend the right of a parcel owner to use the common areas, common facilities and other association property if the owner is more than 90 days delinquent in paying monetary obligations to the homeowners' association until such parcel owner has paid the required assessments, as well as to suspend the voting rights of a delinquent parcel owner. The legislation allows suspension of common-area use rights for not only nonpayment but also for failure to comply with the homeowners' association documents—with a hearing required for suspension as a result of failure to comply with homeowners' association documents, but no hearing required for suspension as a result of delinquency. The legislation clarifies that if voting rights are suspended as a result of a delinquency, the suspended vote does not count toward quorum requirements or a vote required to approve an action. Although suspensions of use rights for nonpayment of assessments will not require a hearing, the board has to approve such suspensions at a properly noticed meeting.
- **Eligibility to Serve on Board of Directors and Meetings.** The legislation includes provisions similar to the Condominium Act relating to board eligibility. An owner delinquent in payment of any monetary obligation to the homeowners' association for more than 90 days, as well as convicted felons who have not had their civil rights restored for at least five years, are not eligible to serve on the board. The legislation also removes the requirement for a petition of voting interests in order for owners to speak at a board meeting and now permits members of a homeowners' association to speak at meetings of the board with reference to all designated agenda items.
- **Homeowners' Association Responsibility for Past-due Assessments.** The legislation clarifies that a homeowners' association that acquires title to a parcel through foreclosure of its lien for assessments is not liable for unpaid assessments and other amounts that came due before the association's acquisition of title in favor of any other condominium or homeowners' association that holds a superior lien interest on the parcel.

- **Communication Services.** The legislation authorizes the board to enter into a bulk agreement for provision of communications services and Internet services, the cost of which will be deemed an operating cost of the association. However, if the homeowners' association documents do not provide for such services, the cost must be allocated among parcel owners equally as opposed to a percentage or other basis, even if the homeowners' association documents provide for other than equal sharing of operating costs. The legislation also contains provisions, similar to the Condominium Act, relating to the rights of certain parcel owners—including the hearing impaired and blind—to opt out of such services.

House Bill 59

House Bill 59 requires unannounced access and entry into a condominium and gated community to authorized process servers attempting to serve process on a defendant or witness who resides within or is known to be within the condominium or community.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [Jeffrey R. Margolis](#), [Barry D. Lapidis](#), any other [member](#) of the [Real Estate Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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