

ALERTS AND UPDATES

Florida's New Condominium and Homeowners' Associations Laws

June 7, 2010

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

On June 1, 2010, Gov. Charlie Crist signed into law Senate Bill 1196, which amends, among other things, portions of Chapter 718 (Condominium Act) and Chapter 720 of the Florida Statutes. The following is a brief summary of some of the legislation included in Senate Bill 1196. Unless otherwise noted in the bill, these changes become effective on July 1, 2010.

Chapter 718, Florida Statutes (Condominium Act)

Distressed Condominium Relief Act (the "Act")

The Distressed Condominium Relief Act protects bulk buyers or bulk assignees from assuming the developer's liabilities and responsibilities, provided that the conveyance of units is structured in accordance with the statutory requirements. The "Condominium Bulk Buyer Law," as it has been referred to, removes what have been considered barriers to condominium bulk buyer acquisitions, and investors wishing to purchase more than seven condominium units will no longer be subject to accepting the original developer's liabilities. For instance, under the Act, a bulk assignee is not responsible for:

- the warranties of the developer
- the obligation to fund the developer's converter reserves or warranties
- the obligation to fund the developer's assessment or budgetary deficits
- the obligation to provide an audit during the time period in which the developer controlled the association

The Act specifies when a bulk buyer or bulk assignee is mandated to turn over control of the condominium association and what documentation is required to be given to the association at turnover. The Act also specifies what documentation and information a bulk buyer or bulk assignee must provide for purchasers of units.

In order to take advantage of the Act: (1) all statutory requirements must followed, and (2) the bulk buyer or bulk assignee must acquire title to the units prior to July 1, 2012.

Tenant's Payment of Assessments (or Maintenance) in the Event of a Unit Owner's Failure to Do So

If a condominium-unit owner is 90 days or more delinquent in paying monetary obligations to the condominium association, the bill authorizes the condominium association to require that the condominium-unit owner's tenant, in lieu of paying rent to the unit owner, pay the rent directly to the condominium association to cover a unit owner's delinquent monetary obligations to the condominium association.

Delinquent Assessments (Maintenance) and Use of Common Areas

In addition to authorizing fines, a condominium association is authorized to suspend the right of a unit owner to use the common elements, common facilities or other association property until such unit owner has paid the required assessments (maintenance), as well as suspend the voting rights of the delinquent unit owner.

Insurance

Some of the changes made to the Condominium Act's insurance requirements include:

Each condominium-unit owner's insurance policy must conform to the requirements of the new Section 627.714 of the Florida Statutes, which provides that for policies issued or renewed on or after July 1, 2010, a residential condominium-unit owner's policy must include loss-assessment coverage of at least \$2,000, for all assessments made as a result of the same direct loss to the common elements of the condominium, regardless of the number of assessments with a deductible of no more than \$250. In addition, the maximum amount of any condominium-unit owner's loss-assessment coverage that can be assessed for any loss is equal to the condominium-unit owner's loss-assessment coverage limit.

The law changes terminology used in the Condominium Act by deleting the terms "hazard" and "casualty" in referring to insurance required to be maintained by a condominium association and replaces those terms with the term "property." The law also clarifies that adequate property insurance must be based on the "replacement cost" of the property to be insured, as opposed to the "full insurable value" of the property.

The law clarifies that the property excluded from the condominium association's insurance coverage (*i.e.*, the personal property within the unit or limited common elements; floor, wall, and ceiling coverings; electrical fixtures; appliances; water heaters; water filters; built-in cabinets and countertops; and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; or replacements of any of the foregoing) is property located within the boundaries of the unit and serve only such unit. The law further clarifies that the excluded property is the responsibility of the condominium-unit owner and the condominium-unit owner's insurance.

The condominium association is no longer required to be named as an additional insured and loss payee on all insurance policies issued to condominium-unit owners.

Official Records

The bill adds the following to the list of condominium association records that are not to be disclosed to condominium-unit owners:

- email addresses, telephone numbers and emergency contact information
- any addresses of a condominium-unit owner other than as provided to fulfill the condominium association's notice requirements
- personnel records of condominium association employees
- any electronic security measure that is used by the condominium association to safeguard data
- the software and operating system used by the condominium association

The bill clarifies that a condominium association is not responsible for a condominium-unit owner's use or misuse of information provided by the condominium association, except for information that the condominium association has a duty not to disclose.

Bylaws

The bill clarifies who is eligible to be a member of the condominium association's board of directors. Additionally, the new law requires that all newly elected or appointed directors must certify to the secretary of the condominium association that they have read and will uphold the condominium association's documents within 90 days after being elected. Alternatively, the newly elected or appointed directors must take a course administered by an approved condominium educational provider.

Fire Sprinkler System

The bill states that a condominium association cannot be required to retrofit its fire sprinkler system before the end of 2019 (instead of 2014). There are further requirements if the association has not retrofitted or voted to forego retrofitting by December 31, 2016.

Condominium Unit Buyer's Deposits

The bill clarifies that deposits paid to a condominium developer by a condominium-unit buyer may be held in one escrow account, as opposed to two escrow accounts (one for deposits up to 10 percent of the purchase price and one for deposits in excess of 10 percent of the purchase price). If one account is used, however, then separate accounting records for each buyer must be maintained for (a) the first 10 percent of the deposit and (b) deposit amounts in excess of 10 percent of the purchase price.

Chapter 720, Florida Statutes (Homeowners' Associations)

Official Records

In order to create a rebuttable presumption that a homeowners' association (HOA) failed to provide access to the official records within 10 business days as required by law, the request for records must be sent to the HOA by certified mail, return receipt requested.

The bill adds the following to the list of HOA records that are not to be disclosed to homeowners to include:

- Social Security numbers
- driver's license numbers
- credit card numbers
- electronic mailing addresses
- telephone numbers and emergency contact information
- any addresses for a parcel owner other than as provided for HOA notice requirements

- other personal identifying information of any person, excluding the person's name, parcel designation, mailing address and property address; any electronic security measure that is used by the HOA to safeguard data, including passwords; and the software and operating system used by the HOA

Budgets

The bill clarifies that upon the approval of the majority of the voting interests in the HOA, homeowners are permitted to terminate reserve accounts. The notice requirement for financial reports when no reserve accounts have been established has been revised. Additionally, there is now an additional disclosure for financial reports if reserve accounts have been established, and the accounting requirements for pooled reserve accounts has been amended.

Board of Directors

Directors, officers or committee members may not receive any salary or compensation from the HOA for the performance of their duties and may not benefit in any other way financially from service to the HOA; however, this does not apply to a developer or its representative.

Use of Common Areas and Liens

The bill clarifies when the HOA can suspend the right of a homeowner and his/her guest to use the common areas and facilities; however, the right to access a home cannot be suspended. The bill also states that a fine of more than \$1,000 can become a lien on a homeowner's property.

Board Vacancies

The bill establishes new procedures to fill vacancies on the HOA's board of directors.

Tenant's Payment of Assessments (Maintenance) in the Event of a Homeowner's Failure to Do So

If a homeowner is 90 days or more delinquent in paying monetary obligations to the HOA, the bill authorizes the HOA to require that a homeowner's tenant, in lieu of paying rent to the homeowner, pay the rent directly to the HOA to cover a homeowner's delinquent monetary obligations to the HOA.

Special Assessments

Before turnover, the developer cannot impose a special assessment, except if approved by a majority of non-developer owners.

For Further Information

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