



Gold Coast Professional Schools, Inc.

2019 LEGAL UPDATE

This course is approved by the DBPR Council of Community Association Managers for 4 hours of continuing education credit in the areas of:

Legal Update (LU)

Online Course Approval # 9629213

Course Reference Material

[Exhibit 1 - Chart of Legislation](#)

[Exhibit 2 - Condominium Conflicts of Interest](#)

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1 **FOREWORD**

2
3 Included in this text is legislation affecting community associations, which was enacted
4 into law as a result of the 2018 session. We have not discussed local government
5 ordinances or rules. We advise CAMs to consult with association attorneys to ensure
6 that they receive information on county and municipal ordinances and rules, and on
7 court cases that may affect community associations.
8

9 In most cases, we have summarized the change in statute, F.A.C., or Opinion. You will
10 note that we have included the reference for each area, as appropriate. We have
11 grouped the change by type of association or issue. Within each type of association, we
12 have then grouped the change by bill number. We also provide a summary chart that
13 tells you the subject matter(s) of each bill or action. See [Exhibit 1 - Chart of Legislation](#)
14

15 **EXPLANATION OF TERMS**

16
17 The state of Florida is governed by its constitution, Florida statutes, and the Florida
18 Administrative Code, which are published regulations by state agencies, such as the
19 Department of Business and Professional Regulations.
20

21 The state of Florida has a permanent collection of state laws organized by subject area
22 into a code made up of titles, chapters, parts, and sections. The Florida statutes are
23 updated annually by laws that create, amend, transfer, or repeal statutory material. Each
24 Florida statute is referred to as a chapter, from Chapter 1 to Chapter 1013. For example,
25 Chapter 718 is the statute titled, "The Condominium Act." The total compilation of
26 chapters is published in the Laws of Florida and codified as Florida statutes. Each
27 chapter is referred to as a Florida statute (F.S.).
28

29 Legislators propose changes, additions, and deletions to existing statutes during the
30 legislative session. Legislation is originated in the Florida House of Representatives or
31 Florida Senate. HB is the abbreviation for house bill. SB is the abbreviation for senate
32 bill. A bill, once passed by both the house and senate, and signed by the governor, is
33 referred to as a chapter by year of passage, as an example, Chapter 2018-96. The first 4
34 digits refer to the year the bill was enacted (passed by the legislature and signed by the
35 governor), the digits (96) following the hyphen indicates that it was the 96th bill to pass in
36 the 2018 legislative session.
37

38 To avoid confusion, the term chapter, as used in this course, will refer to the newly
39 enacted bill. A statute will be referred as F.S. or by name, except when quoting directly
40 from the statute when it is referred to as a chapter. Statutes are divided into sections and
41 subsections. Sections are abbreviated **s.**, for example 718.111. Subsections are
42 abbreviated **ss.**, such as 718.111(12).

DBPR

HB 29 [CHAPTER 2018-007] - EFFECTIVE JULY 1, 2018

Licensure of Armed Forces Members in Good Standing and Their Spouses or Surviving Spouses

Summary

Chapter 2018-007 amends section 455.02 [Business & Professional Regulations; General Provisions] which applies to the licensure of armed forces members in good standing, their spouse and surviving spouses. F.S. 455 applies to all professions governed by DBPR.

F.S. 455.02(7)(1) now reads:

Any member of the United States Armed Forces now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any of the boards or programs listed in s. 20.165 and was entitled to practice or engage in his or her profession or occupation in the state shall be kept in good standing by the applicable board or program, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the United States Armed Forces on active duty and for a period of 2 years after discharge from active duty. A member, during active duty and for a period of 2 years after discharge from active duty, engaged in his or her licensed profession or occupation in the private sector for profit in this state **must complete all license renewal provisions except remitting the license renewal fee, which shall be waived by the department.** [emphasis added]

Commentary

The amendment changes the statute to require that the armed forces member must now meet all licensure renewal requirements except payment of the license renewal fee. There now appears to be a contradiction in the statute because there was no change in the statutory language stating that the member must be kept in good standing without registering, paying dues or fees, or performing any other act. The statute's maintaining the member in good standing "without registering or performing any other act" appears to contradict the new requirement to meet all licensure renewal requirements except paying dues or fees.

F.S. 455.02(7)(2), now reads:

A spouse of a member of the United States Armed Forces who is married to a member during a period of active duty, or a surviving spouse of a member who, at the time of death, was serving on active duty, who is in good standing with any of the boards or programs listed in s. 20.165 shall be kept in good standing by the applicable board or program as described in subsection (1) and shall be exempt from licensure renewal provisions, but only in cases of his or her absence from the state because of his or her spouse's duties with the United States Armed Forces. **The department or the appropriate board or program shall waive any license renewal fee for such spouse when he or she is present in this state because of such member's active duty and**

1 **for a surviving spouse of a member who at the time of death was serving on active**
2 **duty and died within the 2 years preceding the date of renewal. [Emphasis added]**
3

4 **Commentary**

5
6 *The amendment changes the statute to require that the armed forces member's spouse*
7 *or surviving spouse now meet all licensure renewal requirements except payment of the*
8 *license renewal fee. There appears to be a contradiction in the statute because there*
9 *was no change in the statutory language stating that the spouse or surviving spouse*
10 *must be exempt from licensure renewal provisions if they were absent from the state*
11 *because of their spouse's duties with the United States Armed Forces.*

12
13 *The amendment waives the license renewal fee, but not any other licensure*
14 *requirements, if the spouse is present in the state because of the member's active duty.*
15 *The amendment waives the license renewal fee for a surviving spouse of an armed*
16 *forces member who was on active duty at the time of their death and whose death*
17 *occurred within 2 years preceding the date of renewal.*
18

19 **COMMUNITY ASSOCIATIONS**

20 **HB 841 [CHAPTER 2018-96] - EFFECTIVE JULY 1, 2018**

21 **Community Associations**

22 **Summary**

23 *This bill, relating to condominiums, cooperatives, and homeowners associations amends*
24 *official records, notice of meetings, term limits, recalls, fining, electric vehicle charging*
25 *stations, material alteration votes, condominium bulk buyers, and amendments.*
26

27 **Condominiums/Cooperatives/HOAs**

28
29 The Condominium, Cooperative, and Homeowners Acts are now consistent in requiring
30 that an association make association records available to a unit owner within 10 days
31 after receipt of a written request by the board or its designee. That is, the records of a
32 condominium, cooperative, or HOA must be made available to a member within **10**
33 working days after receipt of a written request by the board or its designee.
34

35 F.S. 719.106(1)(c) (cooperatives) and F.S. 720.303(2) (HOAs) were amended to provide
36 that directors of the board may use e-mail as a means of communication but may not
37 cast a vote on an association matter via e-mail. Condominium, Cooperative, and HOA
38 Acts now have the same language regarding the use of e-mail, by directors, for
39 communication. The Acts do **not** permit voting via email.
40
41
42
43

1 **Condominiums**

2 **Condominium Official Records - General**

3 F.S. 718.111(12)(a) and (b)

4 Electronic records relating to voting by unit owners have been added to the list of
5 records that must be maintained for 1 year from the date of the election, vote, or meeting
6 to which the document relates.

7 The following official records must be **permanently** maintained from the inception of the
8 association:

- 9
- 10 • A copy of the plans, permits, warranties, and other items provided by the developer
11 pursuant to s. 718.301(4)
 - 12 • A copy of the recorded declaration of condominium of each condominium operated
13 by the association and each amendment to each declaration
 - 14 • A copy of the recorded bylaws of the association and each amendment to the bylaws
 - 15 • A certified copy of the articles of incorporation of the association, or other documents
16 creating the association, and each amendment thereto
 - 17 • A copy of the current rules of the association
 - 18 • A book or books that contain the **minutes** of all meetings of the association, the
19 board of administration, and the unit owners

20 Other revisions include (changes in bold): **All other official records** must be maintained
21 within the state for at least 7 years, **unless otherwise provided by general law.**

22 **Condominium Official Records – Websites**

23 F.S. 718.111(12)(g)

24 The **2017** legislature passed an amendment requiring, by July 1, 2018, an association
25 with a 150 or more units that does not manage timeshare units to create a website,
26 dedicated to the association's activities and on which required notices, records, and
27 documents were to be posted. The **2018** legislature amended the revised statute,
28 changing the deadline to **January 1, 2019**, and requires an association **managing** a
29 condominium with 150 or more units which does not **contain** timeshare units to post
30 digital copies of the documents specified in subparagraph 2 of F.S. 718.111(12)(g) on its
31 website.

32 Amendments relating to the types of documents required to be posted on the website
33 are as follows:

- 34
- 35 • A **list** of all executory contracts or documents. The prior statute required the posting
36 of a list of any management agreement, lease, or other contract. **A copy of the
37 actual agreement, lease, or contract is no longer required.** An executory contract
38 is a contract that stipulates that the parties have duties to perform at a future date
39 before it becomes fully executed.
 - 40 • After bidding for related materials, equipment, or services has closed, a list of the
41 bids received by the association within the past year must be posted. Additionally,
42 the association has a choice to post summaries of bids that exceed \$500 for 1 year
43 or to post complete copies of the bids.

- 1 • Any monthly income or expense statement to be considered at a meeting must be
 2 posted. The requirement to post any proposed financial report to be considered at a
 3 meeting has been removed. This suggests that the association may not need to post
 4 aging reports, for instance, that are to be reviewed at board meetings.
- 5 • Any contract or document regarding a conflict of interest or possible conflict of
 6 interest as provided in ss. 468.436(2)(b)6. and 718.3027(3). Those conflicts of
 7 interest are:
- 8 ○ Contracting by a community association manager or firm, on behalf of an
 9 association, with any entity in which the CAM or CAB has a financial interest that
 10 is not disclosed
 - 11 ○ Upon the board voting against a proposed activity by a director, officer, or relative
 12 of the director or officer, failure of the director, officer, or relative of the director or
 13 officer to notify the board in writing of their intention not to pursue the proposed
 14 activity or to withdraw from office.

15
 16 The statute continues to provide that the association or its agent (for instance, the CAM)
 17 is not liable for disclosing information that is protected or restricted unless the disclosure
 18 was made with a knowing or intentional disregard of said information. The following
 19 statement has been added:

20
 21 **The failure of the association to post information is not in and of itself sufficient to**
 22 **invalidate any action or decision of the association's board or its committees.**

23 **Condominium Financial Reporting**

24
 25
 26 F.S. 718.111(13)

27
 28 The statute was amended as follows (changes in bold):

29
 30 If the division determines that the association failed to mail or hand deliver a copy of the
 31 most recent financial report to the unit owner, the division shall provide written notice to
 32 the association that the association must mail or hand deliver a copy of the most recent
 33 financial report to the unit owner and the division within 5 business days after it receives
 34 such notice from the division. An association that fails to comply with the division's
 35 request may not waive the financial reporting requirement provided in paragraph (d) of
 36 F.S. 718.111(13) **for the fiscal year in which the unit owner's request was made and**
 37 **the following fiscal year** (a maximum of two years).

38
 39 Prior to the amendment, the duration of the loss of the association's authority to waive
 40 financial reporting requirements was unstated.

41 **Condominium Meeting Notices of Regular or Special Condominium** 42 **Assessments**

43
 44
 45 F.S. 718.112(2)(c) and (d)

46
 47 The statute was amended to require that notice of any meeting in which regular or
 48 special assessments against unit owners are to be considered must specifically state
 49 that assessments will be considered and provide the estimated cost and description of
 50 the purposes for such assessments. The amendment replaced previous wording that
 51 required the notice to state the nature of the assessment. The word nature has been
 52 deleted.

1 The statute was amended to provide that a unit owner who consents to receiving notices
2 by electronic transmission is solely responsible for removing or bypassing filters that
3 block receipt of mass e-mails sent to members on behalf of the association in the course
4 of giving electronic notices.

5
6 The statute was additionally amended to provide the association the authority to adopt a
7 rule creating a procedure for conspicuously posting the meeting notice and the agenda
8 on a website for at least the minimum period of time for which a notice of a meeting is
9 required to be physically posted on the condominium property. The rule must include a
10 requirement that the association send an electronic notice in the same manner as a
11 notice for a meeting of the members. The electronic notice must include a hyperlink to
12 the website where the notice is posted, to unit owners whose e-mail addresses are
13 included in the association's official records.

14
15 **Note:** Posting on the website is not in lieu of posting on the physical property. It is in
16 addition to posting on the physical property.

17 18 **Condominium Bylaws – Number of Required Directors**

19
20 F.S. 718.112(2)(d)

21
22 The statute was amended to provide clarification and was not a substantive change. It
23 now reads:

24
25 In the absence of such a provision, the board of administration shall be
26 composed of five directors, unless the condominium has five or fewer units. The
27 board shall consist of not fewer than three directors in condominiums with five or
28 fewer units that are not-for-profit corporations.

29 30 **Condominium Board of Director Terms of Office**

31
32 F.S. 718.112(2)(d)

33
34 Language stating that directors may serve longer than 1 year if permitted by the bylaws
35 or articles of incorporation, **replaced** the limitation that directors may serve 2-year terms.

36
37 The amendment changed the total years a director may serve, if permitted by the bylaws
38 or articles of incorporation, to a maximum of 8 consecutive years, unless approved by an
39 affirmative vote of unit owners representing two-thirds of all votes cast in the election, or
40 unless there are not enough eligible candidates to fill the vacancies on the board at the
41 time of the vacancy. The prior language limited the maximum period a director could
42 serve on the board to 4 consecutive 2-year terms, unless approved by an affirmative
43 vote of two-thirds of the total voting interests, or unless there are not enough eligible
44 candidates to fill the vacancies on the board at the time of the vacancy.

45
46 **A term limited director may still be elected and serve, if they submit a notice to**
47 **run and are listed on the ballot, and if they receive two-thirds of all votes cast in**
48 **the election, or unless there are not sufficient eligible candidates.** The amended
49 statute does not place a limit on the maximum number of years in a term. Hypothetically,
50 if an association's bylaws or articles of incorporation provided for a term of office of any
51 number of years, from 1 to a maximum of 8, it would conform to the statute.

1 The DBPR has not provided administrative rules or other guidelines as to whether this
2 new provision applies to directors who have served 8 consecutive years prior to the
3 amendment or if it is applied prospectively to begin at the next election. However, on
4 September 12, 2018, DFCTSMH issued a Declaratory Statement (DS 2018-035), in
5 response to a request from the Apollo Condominium Association on Marco Island. It
6 concludes:

7
8 *“Pursuant to the amendments made to section 718.112(2)(d)2., Florida Statutes,*
9 *if at the time of the next scheduled election the current board member [director]*
10 *has served on the association board for eight consecutive years, that board*
11 *member [director] would be ineligible to serve unless there are fewer eligible*
12 *candidates than vacant seats on the board or unless that candidate is approved*
13 *by an affirmative vote of unit owners representing two-thirds of all votes cast in*
14 *the election.”*

15
16 Whether this is applicable to all condominiums is not clear. An association should
17 consult with its attorney for guidance.

18
19 The statutory amendment does not address the possibility that a director, who is seeking
20 to extend their tenure beyond the 4 consecutive 2-year terms maximum, could simply
21 resign for a brief time and then be reappointed by the remaining directors to fill the
22 vacancy.

23
24 This section of the statute does not apply to timeshare condominiums.

25 26 **Condominium Recalls**

27
28 F.S. 718.112(2)(j) (changes in bold)

29
30 The statute was amended to require that, **upon the conclusion of the board meeting**
31 required to be held within 5 full business days after receipt of recall agreements in
32 writing by a majority of voting interests, **provided that the recall is facially valid**, a
33 recalled director must turn over to the board within 10 full business days any and all
34 records and property of the association in their possession. A document (the recall) has
35 facial validity if it appears to meet the requirements of an applicable statute or rule.

36
37 Additionally, the amendment added a provision stating that, if the board, at the
38 conclusion of the meeting, determines that the recall is not facially valid, the unit owner
39 representative may file a petition to the DBPR challenging the board’s determination on
40 facial validity.

41
42 Previous language stating that the unit owner representative could file a petition
43 challenging the board if it did not file the required petition was removed.

44
45 The amendment added the following language regarding the right of a recalled director
46 to file a petition challenging their recall:

47
48 The petition may challenge the facial validity of the written agreement or ballots filed or
49 the substantial compliance with the procedural requirements for the recall. If the
50 arbitrator determines the recall was invalid, the petitioning director shall immediately be
51 reinstated, and the recall is null and void. A director who is successful in challenging a
52 recall is entitled to recover reasonable attorney fees and costs from the respondents.

1 The arbitrator may award reasonable attorney fees and costs to the respondents if they
2 prevail, if the arbitrator makes a finding that the petitioner's claim is frivolous.

4 **Condominium Material Alterations**

6 F.S. 718.113(2)(a) and (b) (changes in bold)

8 The added language was intended as a clarification:

9 If the declaration as originally recorded or as amended under the procedures provided
10 therein does not specify the procedure for approval of material alterations or substantial
11 additions, 75 percent of the eligible TVI must approve the alterations or additions **before**
12 **the material alterations or substantial additions are commenced.**

13 Separate amendments with the same language apply to the common elements of
14 condominiums operated by multicondominium associations and real property of
15 associations operated by multicondominium associations.

17 The amendment does not state whether members may "ratify" a material alteration or
18 betterment made by the board without an owner vote in advance of the change.

20 The previous statutes applied to associations existing on October 1, 2008. The revised
21 language applies to associations existing on **July 1, 2018.**

23 **Electric Vehicles in Condominiums**

25 **F.S. 718.113(8)**

27 A new provision regarding electric vehicle charging stations, was created as follows:

29 The legislature finds that the use of electric vehicles conserves and protects the
30 state's environmental resources, provides significant economic savings to drivers,
31 and serves an important public interest. The participation of condominium
32 associations is essential to the state's efforts to conserve and protect the state's
33 environmental resources and provide economic savings to drivers. Therefore, the
34 installation of an electric vehicle charging station shall be governed as follows:

- 36 • A declaration of condominium or restrictive covenant, nor the board, may not prohibit
37 or be enforced to prohibit any unit owner from installing an electric vehicle charging
38 station within the boundaries of the unit owner's limited common element parking
39 area, as defined in s. 320.01. F.S. 320.01 defines an electric vehicle as a motor
40 vehicle that is powered by an electric motor that draws current from rechargeable
41 storage batteries, fuel cells, or other sources of electrical current.
- 42 • The installation of charging stations is subject to the following provisions:
 - 43 ○ The installation may not cause irreparable damage to the condominium property.
 - 44 ○ The electricity for the electric vehicle charging station must be separately
45 metered and payable by the unit owner installing such charging station.
 - 46 ○ The unit owner who is installing an electric vehicle charging station is responsible
47 for the costs of installation, operation, maintenance, and repair, including, but not
48 limited to, hazard and liability insurance. The association may enforce payment
49 of such costs pursuant to s. 718.116.

- 1 ○ If the unit owner or his or her successor decides there is no longer a need for the
2 electronic vehicle charging station, such person is responsible for the cost of
3 removal of the electronic vehicle charging station. The association may enforce
4 payment of such costs pursuant to s. 718.116.
- 5 • The association may require the unit owner to:
- 6 ○ Comply with bona fide safety requirements, consistent with applicable building
7 codes or recognized safety standards, for the protection of persons and property.
- 8 ○ Comply with reasonable architectural standards adopted by the association that
9 govern the dimensions, placement, or external appearance of the electric vehicle
10 charging station, provided that such standards may not prohibit the installation of
11 such charging station or substantially increase the cost thereof.
- 12 ○ Engage the services of a licensed and registered electrical contractor or engineer
13 familiar with the installation and core requirements of an electric vehicle charging
14 station.
- 15 ○ Provide a certificate of insurance naming the association as an additional insured
16 on the owner's insurance policy for any claim related to the installation,
17 maintenance, or use of the electric vehicle charging station within 14 days after
18 receiving the association's approval to install such charging station.
- 19 ○ Reimburse the association for the actual cost of any increased insurance
20 premium amount attributable to the electric vehicle charging station within 14
21 days after receiving the association's insurance premium invoice.
- 22 • The association provides an implied easement across the common elements of the
23 condominium property to the unit owner for purposes of the installation of the electric
24 vehicle charging station and the furnishing of electrical power, including any
25 necessary equipment, to such charging station, subject to the requirements of this
26 subsection.

27
28 The statute does not identify who is responsible for costs the association may incur if it
29 needs to upgrade the condominium's electrical system to accommodate an increased
30 demand for electricity.

31 32 **Condominium Liens Related to Installation of an Electric Vehicle**

33
34 F.S. 718.121

35
36 The statute was amended to add the following language:

37
38 Labor performed on or materials furnished for the installation of an electric vehicle
39 charging station pursuant to F.S. 718.113(8) may not be the basis for filing a lien under
40 Part I of F.S. 713 against the association, but such a lien may be filed against the unit
41 owner.

42 43 **Condominium Conflicts of Interest**

44
45 F.S. 718.3026(3) and 718.3027(2) (See [Exhibit 2 - Condominium Conflicts of Interest](#))

46
47 This legislation **deleted** F.S. 718.3026(3) and consolidated the discussion of conflicts of
48 interest in F.S. 718.3027. It adds language relating to a proposal to engage in an activity
49 that is a conflict of interest as defined by F.S. 718.3027(1) by a director, officer, or a
50 relative of a director or officer:

- 1 • The association shall comply with the requirements of s. 617.0832, and the
2 disclosures required by s. 617.0832 must be entered into the written minutes of the
3 meeting.
- 4 • Approval of the contract or other transaction requires an affirmative vote of two-thirds
5 of all other (other than the director with the conflict of interest) directors present.
- 6 • At the next regular or special meeting of the members, the existence of the contract
7 or other transaction shall be disclosed to the members.
- 8 • Upon motion of any member, the contract or transaction shall be brought up for a
9 vote and may be canceled by a majority vote of the members present.
- 10 • If the contract is canceled, the association is only liable for the reasonable value of
11 the goods and services provided up to the time of cancellation and is not liable for
12 any termination fee, liquidated damages, or other form of penalty for such
13 cancellation.

14 **Condominium Fining and Suspension Procedures**

15 F.S. 718.303(3)(b)

16 The statute was amended as follows:

- 17 • It now requires a proposed fine or suspension to be **confirmed or rejected** by a
18 committee of at least 3 members appointed by the board. The committee members
19 cannot be officers, directors, or employees of the association, or the spouse, parent,
20 child, brother, or sister of an officer, director, or employee. Prior to the amendment,
21 persons residing in a director's residence were prohibited from serving on the
22 committee. This is no longer the case.
- 23 • The proposed fine or suspension must be approved by a majority vote of the
24 committee.
- 25 • If the proposed fine or suspension is approved by the committee, the fine payment is
26 due 5 days after the date of the committee meeting at which the fine is approved.
- 27 • The association must provide written notice of such fine or suspension by mail or
28 hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee
29 of the unit owner.

30 **Note:** The requirement that the fine is due within 5 days of the committee meeting at
31 which the fine was imposed may be unreasonable. Although the statute now permits
32 household members to be on the committee, this may create a *perceived* conflict of
33 interest that the board should avoid.

34 **Condominium Bulk Buyer**

35 F.S. 718.707

36 The statute was amended to remove its termination or sunset date of July 1, 2018. The
37 statute is now permanent.

1 Cooperatives

2 Cooperative Official Records

3 F.S. 719.104(2)(a) and (b)

4 The statute was amended as follows:

- 5 • Strikes in s. 719.104(2)(a)4, the requirement to retain minutes for a “~~period of not~~
- 6 ~~less than 7 years.~~”
- 7 • Strikes in s. 719.104(2)(a)9 the requirement to maintain all accounting records for a
- 8 ~~“period not less than 7 years.”~~
- 9 • Requires electronic records related to voting by unit owners to be maintained in the
- 10 official records for 1 year from the date of election, vote, or meeting to which the
- 11 document related.
- 12 • Extends the time in which records of the association are required to be made
- 13 available to a unit owner after receipt of a written request by the board or its
- 14 designee from **5** days to **10** days.

15 **Note:** s. 719.104(2)(b) states, in part, “The official records must be maintained within the

16 state for at least 7 years. ...” It appears that the requirement on the period to retain

17 minutes and financial records has not changed for cooperatives. However, some

18 attorneys have opined that minutes (and possibly financial records) must be maintained

19 from the inception of the cooperative. We strongly recommend that you consult with the

20 association attorney on this issue.

21 Cooperative Director Eligibility

22 F.S. 719.106(1)(a)

23 The statute was amended to prohibit co-owners in a residential cooperative association

24 of more than 10 units to serve as directors of the board at the same time, unless the co-

25 owners own more than one unit, or unless there are not enough eligible candidates to fill

26 the vacancies on the board at the time of the vacancy.

27 F.S. 719.106(1)(m)

28 The statute added the following provision:

29 A director or officer more than 90 days delinquent in the payment of any monetary

30 obligation due the association shall be deemed to have abandoned the office, creating a

31 vacancy in the office to be filled according to law.

32 Cooperative Meeting Notices

33 F.S. 719.106(1)(c) and (1)(d)

34 The statute was amended as follows:

- 35 • Requires that a notice of any meeting in which regular or special assessments
- 36 against unit owners are to be considered must specifically state that assessments
- 37 will be considered and provide the estimated cost and description of the purpose for

- 1 such assessments. The prior statute required a description of the nature of the
2 assessment, which was deleted.
- 3 • Permits cooperative associations, by rule, to adopt a procedure for conspicuously
4 posting a meeting notice and the agenda on a website serving the cooperative
5 association for at least the minimum period of time for which a notice of a meeting is
6 also required to be physically posted on the cooperative property. Any rule adopted
7 shall, in addition to other matters, include a requirement that the association send an
8 electronic notice in the same manner as a notice for a meeting of the members,
9 which must include a hyperlink to the website where the notice is posted, to unit
10 owners whose e-mail addresses are included in the association's official records.
 - 11 • Includes a statement that a unit owner who consents to receiving notices by
12 electronic transmission is solely responsible for removing or bypassing filters that
13 may block receipt of mass e-mails sent to members on behalf of the association in
14 the course of giving electronic notices.

15
16 **Note:** Posting on the website is not in lieu of posting on the physical property. It is in
17 addition to posting on the physical property.

18 **Cooperative Common Expenses for Communication Services**

19 **F.S. 719.107(1)(b)**

20
21 The amendment allows an association to enter into bulk service contracts, if so provided
22 in the bylaws, for communication services defined in F.S. 202, and that the costs of such
23 contracts are deemed a common expense.

24
25 F.S. 202 defines communication services as:

26
27 The transmission, conveyance, or routing of voice, data, audio, video, or any
28 other information or signals, including video services, to a point, or between or
29 among points, by or through any electronic, radio, satellite, cable, optical,
30 microwave, or other medium or method now in existence or hereafter devised,
31 regardless of the protocol used for such transmission or conveyance. The term
32 includes such transmission, conveyance, or routing in which computer
33 processing applications are used to act on the form, code, or protocol of the
34 content for purposes of transmission, conveyance, or routing without regard to
35 whether such service is referred to as voice-over-Internet-protocol services or is
36 classified by the Federal Communications Commission as enhanced or value-
37 added.

38
39 Prior to the amendment, a cooperative association was only permitted to enter into a
40 bulk service contract for an antenna television system or a duly franchised cable
41 television service.

42
43 The amendment also provided that communication services, information services or
44 internet services may be cancelled in the same manner as the statute provided, prior to
45 the amendment, for community antenna systems or duly franchised cable television
46 services. Cancellation requires a vote of a majority of the voting interests present at the
47 next regular or special meeting of the association.

1 Cooperative Fining and Suspension Procedure

2
3 F.S. 719.303(3)

4
5 The statute was amended as follows:

- 6
- 7 • It now requires a proposed fine or suspension to be confirmed or rejected by a
 - 8 committee of at least 3 members appointed by the board who are not officers,
 - 9 directors, or employees of the association, or the spouse, parent, child, brother, or
 - 10 sister of an officer, director, or employee. Prior to the amendment, persons residing
 - 11 in a director's residence were prohibited from serving on the committee.
 - 12 • The proposed fine or suspension must be approved by a majority vote of the
 - 13 committee.
 - 14 • If the proposed fine or suspension is approved by the committee, the fine payment is
 - 15 due 5 days after the date of the committee meeting at which the fine is approved.
 - 16 • The association must provide written notice of such fine or suspension by mail or
 - 17 hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee
 - 18 of the unit owner

19
20 **Note:** The requirement that the fine is due within 5 days of the committee meeting at

21 which the fine was imposed may be unreasonable. Although the statute now permits

22 household members to be on the committee, this may create a *perceived* conflict of

23 interest that the board should avoid.

24 25 Homeowners Associations

26 27 HOA Electronic Notice of Meetings

28
29 F.S. 720.303(2)(c) and 720.306(1)(e)

30
31 The statute was amended to clarify (new language in bold) that the association may

32 provide notice of meetings by electronic transmission **to any member who has**

33 **provided a facsimile number or e-mail address to the association to be used for**

34 **such purposes.** A member must consent in writing to receiving notice by electronic

35 transmission.

36 37 HOA Fining and Suspension Procedure

38
39 F.S. 720.305(2)

40
41 The previous statute required that a fine or suspension may not be levied by the board

42 without a minimum 14 days' notice to the person sought to be fined or suspended. The

43 amended statute changes the notice requirement by replacing person with parcel owner

44 and, if applicable, any occupant, licensee, or invitee of the parcel owner.

45
46 Additionally, the statute is amended to require that if the proposed fine or suspension

47 levied by the board is approved by the committee, the fine payment is due 5 days after

48 the date of the committee meeting at which the fine was approved. Prior to the

49 amendment, the statute did not have a required time period for payment.

50
51 **Note:** The requirement that the fine is due within 5 days of the committee meeting at

52 which the fine was imposed may be unreasonable. Although the statute now permits

1 household members to be on the committee, this may create a *perceived* conflict of
2 interest that the board should avoid.

3 4 **HOA Amendments to Governing Documents**

5
6 F.S. 720.306(1)(e)

7
8 The amendment created requirements, for the first time, relating to amending an
9 association's governing documents: They are:

- 10
11 • A proposal to amend the governing documents must contain the full text of the
12 provision to be amended and may not be revised or amended by reference solely to
13 the title or number.
- 14 • Proposed new language must be underlined and proposed deleted language must
15 be stricken. If the proposed change is so extensive that underlining and striking
16 through language would hinder, rather than assist, the understanding of the
17 proposed amendment, a notation must be inserted immediately preceding the
18 proposed amendment in substantially the following form: "Substantial rewording. See
19 governing documents for current text."
- 20 • An amendment to a governing document is effective when recorded in the public
21 records of the county in which the community is located.
- 22 • An immaterial error or omission in the amendment process does not invalidate an
23 otherwise properly adopted amendment.
- 24 • A notice required under this section must be mailed or delivered to the address
25 identified as the parcel owner's mailing address on the property appraiser's website
26 for the county in which the parcel is located, or electronically transmitted in a manner
27 authorized by the association if the parcel owner has consented, in writing, to receive
28 notice by electronic transmission.

29
30 Prior to this amendment, an association seeking to amend its documents had to comply
31 solely with provisions governing amendments, if any, in its existing documents.

32
33 An important change is the requirement to mail or deliver the proposal to the mailing
34 address identified on the property appraiser's website for the county in which the parcel
35 is located. The association can no longer rely on its official records or the mailing
36 address provided by the owner.

37
38 **Note:** Some attorneys have opined that s. 720.306(1)(e) broadens the definition of
39 "governing documents" to include rules and regulations. In such a case, rules and
40 regulations, and any amendments thereto, would be required to be filed in the public
41 records. We suggest that HOAs record current rules and regulations, and, thereafter,
42 record any amendments to these documents. HOAs should also consult with the
43 association attorney regarding this issue.

44 45 **HOA Elections**

46
47 F.S. 720.306(9)

48
49 The statute was amended to read as follows:

50
51 If an election is not required because there are either an equal number or fewer
52 qualified candidates than vacancies exist, and if nominations from the floor are

1 not required pursuant to this section or the bylaws, write-in nominations are not
2 permitted, and such qualified candidates shall commence service on the board of
3 directors, regardless of whether a quorum is attained at the annual meeting.
4

5 HOA Application of Payments

6
7 F.S. 720.3085

8
9 The statute was amended to clarify that the application of payment, as described in the
10 statute, applies, regardless of any purported accord and satisfaction, or any restrictive
11 endorsement, designation, or instruction placed on or accompanying a payment. For
12 example, if a payment was received by the association with the notation “paid in full” on
13 the check, the association could deposit the check without concern that it could not
14 legally pursue recovery of any remaining outstanding amount.

15
16 **Note:** This was a glitch fix that had been previously been made to the Condominium and
17 Cooperative Acts.
18

19 HB 617 [2018-55] – EFFECTIVE OCTOBER 1, 2018

20 21 Covenants and Restrictions

22
23 F.S. 712.001 was amended to create a new title, the “Marketable Record Title Act”
24 (MRTA). The statute, prior to its amendment, required the extinguishment of the title of
25 homeowners associations after 30 years from the date of its recording. A title is a legal
26 deed or document constituting evidence of a right to ownership of property.
27 Extinguishment is the annulment of a legal document, such as a title or a covenant. The
28 legal document that is extinguished by the statute is the HOA covenant (declaration),
29 which once it occurred would make it impossible for the association to function. The
30 amendment provides a method to prevent its extinguishment or in other words, revitalize
31 its covenant.
32

33 F.S. 712.01 was amended to define and redefine terms including:

- 34
- 35 • **Community covenant or restriction:** Any agreement or limitation contained in a
36 document recorded in the public records of the county in which a parcel is located
37 which:
 - 38 ○ Subjects the parcel to any use restriction that may be enforced by a property
39 owners’ association; or
 - 40 ○ Authorizes a property owners’ association to impose a charge or assessment
41 against the parcel or the parcel owner.
 - 42
 - 43 • **Person:** Includes the singular or plural, natural or corporate, private or
44 governmental, including the state and any political subdivision or agency thereof as
45 the context for the use thereof requires or denotes and including any property
46 owners’ association.
 - 47
 - 48 • **Property owners’ association:** A *homeowners association* as defined in s.
49 720.301, a corporation or other entity responsible for the operation of property in
50 which the voting membership is made up of the owners of the property or their
51 agents, or a combination thereof, and in which membership is a mandatory condition
52 of property ownership, or an association of parcel owners that is authorized to

1 enforce a community covenant or restriction use restrictions that is are imposed on
 2 the parcels.

3

4 • **Root of title:** Any title transaction purporting to create or transfer the estate claimed
 5 by any person that is the last title transaction to have been recorded at least 30 years
 6 before the time when marketability is being determined. The effective date of the root
 7 of title is the date on which it was recorded.

8

9 • **Parcel:** Any real property that is subject to any covenant or restriction of a property
 10 owners' association.

11

12 • **Covenant or restriction:** Any agreement or limitation contained in a document
 13 recorded in the public records of the county in which a parcel is located which
 14 subjects the parcel to any use or other restriction or obligation.

15

16 The amendment's effect on HOAs is limited to those associations that include a
 17 provision in their covenant or restrictions terminating or extinguishing the association's
 18 covenant or restriction, and, in effect, the association, after 30 years from the date its
 19 title was recorded. The amendment provides a homeowners association with the right to
 20 protect itself from extinguishment **by filing for record**, at any time during the 30-year
 21 period immediately following the effective date of the root of title (the date the title was
 22 recorded), a written notice in accordance with s. 712.06. Filing for record is the act of
 23 submitting a document to the clerk of court for the court's immediate consideration.

24

25 Specifically, the association is required to file either:

26

- 27 • A written notice in accordance with s. 712.06
- 28 • A summary notice in substantial form and content as required under s. 720.3032(2)
- 29 or
- 30 • An amendment to a community covenant or restriction that is indexed under the legal
 31 name of the property owners' association and references the recording information of
 32 the covenant or restriction to be preserved. Failure of a summary notice or
 33 amendment to be indexed to the current owners of the affected property does not
 34 affect the validity of the notice or vitiate the effect of the filing of such notice.

35

36 **The amendment eliminates the requirement of obtaining the approval of at least**
 37 **two-thirds of the members to preserve the association's covenant or restriction.**

38

39 720.303 was amended to read:

40

41 At the first board meeting, excluding the organizational meeting, which follows
 42 the annual meeting of the members, the board shall consider the desirability of
 43 filing notices to preserve the covenants or restrictions affecting the community or
 44 association from extinguishment under the Marketable Record Title Act, F.S.
 45 712, and to authorize and direct the appropriate officer to file notice in
 46 accordance with s. 720.3032.

47

48 F.S. 720.3032, is now titled, Notice of association information; preservation from
 49 Marketable Record Title Act. It now requires:

50

51 Any property owners' association desiring to preserve covenants from potential
 52 termination after 30 years by operation of F.S. 712 may record in the official records
 53 of each county in which the community is located a notice specifying:

- 1 • The legal name of the association
- 2 • The mailing and physical addresses of the association
- 3 • The names of the affected subdivision plats and condominiums or, if not applicable,
- 4 the common name of the community
- 5 • The name, address, and telephone number for the current community association
- 6 management company or community association manager, if any
- 7 • Indication as to whether the association desires to preserve the covenants or
- 8 restrictions affecting the community or association from extinguishment under the
- 9 Marketable Record Title Act, F.S. 712
- 10 • A listing by name and recording information of those covenants or restrictions
- 11 affecting the community that the association desires to be preserved from
- 12 extinguishment
- 13 • The legal description of the community affected by the covenants or restrictions,
- 14 which may be satisfied by a reference to a recorded plat
- 15 • The signature of a duly authorized officer of the association, acknowledged in the
- 16 same manner as deeds are acknowledged for record
- 17

18 Recording a document in substantially the following form satisfies the notice obligation
 19 and constitutes a summary notice as specified in s. 712.05(2)(b) sufficient to preserve
 20 and protect the referenced covenants and restrictions from extinguishment under the
 21 Marketable Record Title Act, F.S. 712:

22
 23 Notice of (name of association) under s. 720.3032, Florida Statutes, and notice to
 24 preserve and protect covenants and restrictions from extinguishment under the
 25 Marketable Record Title Act, F.S. 712, Florida Statutes.

26
 27 Instructions to recorder: Please index both the legal name of the association and
 28 the names shown in item 3.

- 29
- 30 1. Legal name of association:
- 31 2. Mailing and physical addresses of association:
- 32 3. Names of the subdivision plats, or, if none, common name of community:
- 33 4. Name, address, and telephone number for management company, if any:
- 34 5. This notice does _____ does not _____ constitute a notice to preserve
- 35 and protect covenants or restrictions from extinguishment under the
- 36 Marketable Record Title Act.
- 37 6. The following covenants or restrictions affecting the community which the
- 38 association desires to be preserved from extinguishment:
- 39 (Name of instrument)
- 40 (Official Records Book where recorded & page)
- 41 (List of instruments)
- 42 (List of recording information)
- 43 7. The legal description of the community affected by the listed covenants or
- 44 restrictions is: (Legal description, which may be satisfied by reference to a
- 45 recorded plat). This notice is filed on behalf of (Name of association) as of
- 46 (Date).
- 47 (Name of association)
- 48 By:
- 49 (Name of individual officer)
- 50 (Title of officer)
- 51 (Notary acknowledgment)

1 A copy of the notice, as filed, must be included as part of the next notice of meeting or
2 other mailing sent to all members.

3
4 The original signed notice must be recorded in the official records of the clerk of the
5 circuit court or other recorder for the county.

6
7 The amended statute also created a process for non-HOA communities, with some
8 exceptions, to revitalize their covenants or restrictions.

9 10 **LEGISLATION AND ACTIONS RELATED TO COMMUNITY** 11 **ASSOCIATIONS**

12 13 **HB 539 [CHAPTER 2018-51] – EFFECTIVE JULY 1, 2018**

14 15 **Requirements for Alarm Confirmation**

16
17 F.S. 489.529 was amended to revise requirements for alarm confirmation to include
18 additional methods by which an alarm monitoring company may confirm a residential or
19 commercial intrusion/burglary alarm signal and to require that two attempts be made to
20 confirm an alarm signal.

21
22 All residential or commercial intrusion/burglary alarms that have central monitoring are
23 required to have the alarm monitoring company attempt to confirm the alarm signal by
24 call, text message, or other electronic means made to the owner, occupant, or an
25 authorized designee associated with the premises generating the alarm signal, before
26 alarm monitor personnel contacts a law enforcement agency for alarm dispatch.

27
28 The section of the amended statute relevant to community association, reads:

29
30 The alarm monitoring company must attempt to confirm the alarm signal **a**
31 **second time** via communication with the owner, occupant, or an authorized
32 designee associated with the premises if the first attempt to confirm is
33 unsuccessful. However, alarm signal confirmation is not required if the
34 intrusion/burglary alarm has a properly operating visual or auditory sensor that
35 enables the alarm monitoring personnel to verify the alarm signal.

36 37 **HB 1011 [2018-63] – EFFECTIVE JANUARY 1, 2019**

38 39 **Homeowner's Insurance Policy Disclosures**

40
41 Chapter 2018-63 amended 627.7011, Homeowners' policies; offer of replacement cost
42 coverage and law and ordinance coverage.

43
44 Subsection (4) was amended to read:

45
46 An insurer that issues a homeowner's insurance policy must include with the
47 policy documents at initial issuance and every renewal in bold type no smaller
48 than 18 points the following statement:

1 “LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN
2 IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. PLEASE
3 DISCUSS WITH YOUR INSURANCE AGENT.”

4
5 “FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE
6 PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER’S INSURANCE
7 POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING
8 FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE
9 FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE
10 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD.
11 PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD
12 INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.”

13
14 The intent of this subsection is to encourage policyholders to purchase sufficient
15 coverage to protect them in case events excluded from the standard homeowner’s
16 policy, such as law and ordinance enforcement and flood, combine with covered events
17 to produce damage or loss to the insured property. The intent is also to encourage
18 policyholders to discuss these issues with their insurance agent.

20 **HB 631 [2018-094] - EFFECTIVE JULY 1, 2018**

22 **Possession of Real Property**

24 F.S. 66.021 has been amended to read:

- 26 • A person with a superior right to possession of real property may maintain an action
27 of ejectment to recover possession of the property.
- 28 • Circuit courts have exclusive jurisdiction in an action of ejectment.
- 29 • A plaintiff may not be required to provide any presuit notice or presuit demand to a
30 defendant as a condition to maintaining an action under this section.

31
32 An action for ejectment is a lawsuit brought to remove a party who is occupying real
33 property. This is not the same as an unlawful detainer (eviction) suit against a non-
34 paying or unsatisfactory tenant. It is a suit against someone who has tried to claim title to
35 the property. For community associations, it would apply to legal actions to eject
36 squatters from association owned property.

37
38 F.S. 82.01 was amended to provide the following definitions:

- 40 • **Forcible entry:** Entering into and taking possession of real property with force, in a
41 manner that is not peaceable, easy, or open, even if such entry is authorized by a
42 person entitled to possession of the real property and the possession is only
43 temporary or applies only to a portion of the real property.
- 44
45 • **Real property:** Land or any existing permanent or temporary building or structure
46 thereon, and any attachments generally held out for the use of persons in
47 possession of the real property.
- 48
49 • **Record titleholder:** A person who holds title to real property as evidenced by an
50 instrument recorded in the public records of the county in which the real property is
51 located.

- 1 • **Unlawful detention:** Possessing real property, even if the possession is temporary
2 or applies only to a portion of the real property, without the consent of a person
3 entitled to possession of the real property or after the withdrawal of consent by such
4 person.
5
- 6 • **Unlawful entry:** The entry into and possessing of real property, even if the
7 possession is temporary or for a portion of the real property, when such entry is not
8 authorized by law or consented to by a person entitled to possession of the real
9 property.

10 F.S. 82.03 was amended to provide the following remedies:
11
12

- 13 • A person entitled to possession of real property, including **constructive possession**
14 by a record titleholder, has a cause of action against a person who obtained
15 possession of that real property by forcible entry, unlawful entry, or unlawful
16 detention and may recover possession and damages. The person entitled to
17 possession is not required to notify the prospective defendant before filing the action.
18 Constructive possession is a legal fiction to describe a situation where an individual
19 has actual control over chattels or real property without actually having physical
20 control of the same assets. At law, a person with constructive possession stands in
21 the same legal position as a person with actual possession.
- 22 • If the court finds that the entry or detention by the defendant is willful and knowingly
23 wrongful, the court must award the plaintiff damages equal to double the reasonable
24 rental value of the real property from the beginning of the forcible entry, unlawful
25 entry, or unlawful detention until possession is delivered to the plaintiff. The plaintiff
26 may also recover other damages, including, but not limited to, damages for waste.
- 27 • Actions for possession and damages may be **bifurcated**. Bifurcation is a judge's
28 ability in law to divide a trial into two parts so as to render a judgment on a set of
29 legal issues without looking at all aspects. Frequently, civil cases are bifurcated into
30 separate liability and damages proceedings.
- 31 • All actions under this chapter must be brought by **summary procedure** as provided
32 in s. 51.011, and the court shall advance the cause on the calendar. A summary
33 proceeding is a court action in which the formal court procedures are dispensed with.
34 A summary proceeding is often used in landlord-tenant law.
35

36 F.S. 82.04 was amended to provide that the court is limited to determining only the right
37 of possession and any damages. The court may not determine the question of title
38 unless it is necessary to determine the right of possession or the record titleholder.
39

40 **Public Use of Beaches**

41
42 This amendment applies to associations with beaches.
43

44 F.S. 63.05 was amended to provide a process whereby a governmental entity may seek
45 recreational public use of a beach above the mean high-water line located on private
46 property. It requires that a governmental entity that seeks to affirm the existence of a
47 recreational customary use on private property must follow the specific procedures
48 described in the statute.
49

50 Mean high water is the average height of the high waters over a 19-year period. The
51 mean high-water line is the intersection of the tidal plane of mean high water with the
52 shore.

1 The amendment provides that the owner of each parcel of property subject to judicial
2 determination of whether their property may be used by the public has rights of notice of
3 legal filings and public hearings and the right, as a defendant, to contest the action by
4 the governmental entity.

5

6 The statute does not apply to a governmental entity with an ordinance or rule that was
7 adopted and in effect on or before January 1, 2016.

8

9 **SB 566 [2018-83] – EFFECTIVE JULY 1, 2018**

10

11 **Residential Properties Unlawfully Detained (Occupied) by a** 12 **Transient Occupant**

13

14 This amended statute is relevant to community associations with transient occupants. A
15 transient occupant is a person whose residency in a dwelling, intended for residential
16 use, has occurred for a brief length of time, is not pursuant to a lease, and whose
17 occupancy was intended as transient (temporary) in nature. More specifically, it governs
18 a transient occupant who **unlawfully detains** a residential property. Unlawful detention
19 means possessing real property, even if the possession is temporary or applies only to a
20 portion of the real property, without the consent of a person entitled to possession of the
21 real property or after the withdrawal of consent by such person.

22

23 The amended statute also applies to squatters who intend their occupancy to be
24 transient. A squatter is a person who unlawfully occupies an uninhabited building or
25 unused land. A squatter may intend their occupancy to be transient or permanent.

26

27 F.S. 82.045 was amended so that a person who cannot produce documentation,
28 correspondence, or identification cards sent or issued by a government agency,
29 including, but not limited to, the Department of Highway Safety and Motor Vehicles or
30 the supervisor of elections, which show that the person used the property address as an
31 address of record with the agency within the previous 12 months, establishes a person
32 as a transient occupant.

33

34 The amendment removes the requirement that a person not receive mail at the property
35 to be established as a transient person.

36

37 The amended statute identifies the events that terminate a transient occupancy as
38 follows:

39

- 40 • The occupant begins to reside elsewhere,
- 41 • The occupant surrenders the key to the dwelling, or
- 42 • The occupant leaves the dwelling when directed by a law enforcement officer in
43 receipt of an affidavit under subsection (3), the party entitled to possession, or a
44 court.

45

46 It also provides, in general, 10 days from the date of termination for the former
47 transient occupant to recover their personal belongings from the residence.
48 Additionally, the amendment allows the former transient occupant to bring a civil
49 action for damages or the recovery of the property if the person entitled to possession
50 of the dwelling unreasonably withholds access to the former occupant's personal
51 belongings.

1 **HB 529 [CHAPTER 2018-152] – EFFECTIVE JULY 1, 2018 AND EXPIRES**
2 **JULY 1, 2021**

3
4 **Florida Fire Prevention Code - Doorstep Refuse and Recycling**
5 **Collection Containers**

6
7 F.S. 633.202, was amended as follows:

8 In apartment occupancies¹ with **enclosed corridors served by interior or exterior exit**
9 **stairs**, doorstep refuse and recycling collection containers, which stand upright on their
10 own and do not leak liquids when standing upright, must be allowed in **exit access**
11 **corridors** when all of the following conditions exist:

- 12
13 • The maximum doorstep refuse and recycling collection container size does not
14 exceed 13 gallons.
15 • Waste, which is in a doorstep refuse and recycling collection container, is not placed
16 in the exit access corridors for single periods exceeding 5 hours.
17 • Doorstep refuse and recycling collection containers do not occupy the exit access
18 corridors for single periods exceeding 12 hours.
19 • Doorstep refuse and recycling collection containers do not reduce the means of
20 egress width below that required under NFPA Life Safety Code 101:31, as adopted
21 under the Florida Fire Prevention Code.
22 • Management staff have written policies and procedures in place and enforce them to
23 ensure compliance, and, upon request, provide a copy of such policies and
24 procedures to the authority having jurisdiction.

25
26 Additionally, in apartment occupancies with **open-air corridors or balconies served by**
27 **exterior exit stairs**, doorstep refuse and recycling collection containers, which stand
28 upright on their own and do not leak liquids when standing upright, must be allowed in
29 **exit access corridors** when all of the following conditions exist:

- 30
31 • The maximum doorstep refuse and recycling collection container size does not
32 exceed 27 gallons.
33 • Waste, which is in a doorstep refuse and recycling collection container, is not placed
34 in the exit access corridors for single periods exceeding 5 hours.
35 • Doorstep refuse and recycling collection containers do not reduce the means of
36 egress width below that required under National Fire Protection Association (NFPA)
37 Life Safety Code 101:31, as adopted under the Florida Fire Prevention Code.
38 • Management staff have written policies and procedures in place and enforce them to
39 ensure compliance, and, upon request, provide a copy of such policies and
40 procedures to the authority having jurisdiction.
41 • The authority having jurisdiction may approve alternative containers and storage
42 arrangements that are demonstrated to provide an equivalent level of safety.

43
44 The authority having jurisdiction, typically a municipal or county fire department, may
45 approve alternative containers and storage arrangements that are demonstrated to
46 provide an equivalent level of safety. The amended statutes provide a phase-in period
47 until December 31, 2020, to achieve compliance.

¹ Building codes use the term "occupancy" to refer to the use, or intended use, of a building, or portion of a building for the shelter or support of persons, animals, or property.

SB 220 [2018-015] – EFFECTIVE OCTOBER 1, 2018

Bankruptcy and Foreclosures

F.S. 702.12 was amended as follows:

- A lienholder [such as a community association], in an action to foreclose a mortgage, may submit any document the defendant filed under penalty of perjury in the defendant's **bankruptcy** case for use as an admission by the defendant and
- A rebuttable presumption² that the defendant has waived any defense to the **foreclosure** is created if a lienholder submits documents filed in the defendant's **bankruptcy** case which:
 - Evidence the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure
 - Have not been withdrawn by the defendant and
 - Show that a final order has been entered in the defendant's bankruptcy case that discharges the defendant's debts or confirms the defendant's repayment plan that provides for the surrender of the property.

The statute does not preclude the defendant, in a foreclosure action, from raising a defense based upon the lienholder's action or inaction **subsequent** to the filing of the document filed in the bankruptcy case that evidenced the defendant's intention to surrender the mortgaged property to the lienholder.

The amended statute applies to any foreclosure action filed on or after October 1, 2018.

HB 875 [2018-097] – EFFECTIVE JULY 1, 2018

Construction Defect Cases

The amendment to F.S. 95.11, applies to community associations with respect to construction defect cases. A construction defect is a deficiency in the design or construction of a building or structure resulting from a failure to design or construct in a reasonably workmanlike manner, and/or in accordance with a buyer's reasonable expectation.

The amended statute now allows **counterclaims, crossclaims, and third-party claims** that arise out of a pleading by the association to be commenced **up to 1 year** after the pleading, even if such claims would otherwise be time barred.

- **Pleading:** The beginning stage of a lawsuit in which parties formally submit their claims and defenses
- **Counterclaim:** A claim by a defendant, such as a contractor, opposing the claim of the plaintiff and seeking some relief from the plaintiff for the defendant

² A rebuttable presumption is a legal term meaning an assumption that is taken to be true unless someone comes forward to contest it and prove otherwise. A rebuttable presumption can be overturned only if the evidence contradicting it is true and if a reasonable person of average intelligence could logically conclude from the evidence that the presumption is no longer valid.

- 1 • **Crossclaim:** A claim brought by one defendant against another in the same
2 proceeding. For example, the contractor accuses their subcontractor of being at fault
3 for the defect
4
- 5 • **Third-party claim:** A claim made by a defendant seeking to compel a person, not
6 party to the original legal lawsuit, to either perform a specific action or be prohibited
7 from performing a specific action. For example, the contractor brings a third-party
8 claim seeking to compel an architect to redesign the plans used by the contractor
9 that resulted in the defective structure.

10
11 The 1-year extension does not apply if a building permit has been duly issued and if a
12 local enforcement agency, state enforcement agency, or special inspector has issued a
13 final certificate of occupancy or certificate of completion.
14

15 The amendment applies to any legal action beginning on or after July 1, 2018 regardless
16 of when the cause of action occurred, if the action is commenced before July 1, 2019.
17

18 **HB 7087 [2018-118] – EFFECTIVE JULY 1, 2018**

19 **Taxation**

20 **Tax Assessment of Multiple Parcel Building**

21
22 F.S. 193.0237 was created:
23

- 24 • To specify requirements for property appraisers in allocating the value of **land**, upon
25 which a multiple parcel building is located, among the parcels
- 26 • To provide that a condominium, timeshare, or cooperative may be created within a
27 parcel in a multiple parcel building
- 28 • To specify the method of allocation of land value to the assessed value of parcels
29 containing condominiums and of parcels containing cooperatives.
30
31
32

33 A multiple parcel building is a building, other than a building consisting entirely of a
34 single condominium, timeshare, or cooperative, which contains separate parcels that are
35 vertically located, in whole or in part, on or over the same land.
36

37 A parcel is a portion of a multiple parcel building which is identified in a recorded
38 instrument by a legal description that is sufficient for record ownership and conveyance
39 by deed separately from any other portion of the building.
40

41 **Abatement of Taxes for Owners of Homestead Properties Damaged by** 42 **Hurricanes and Tropical Storms**

43
44 F.S. 793.155 applies to owners of units or parcels within a community association, not to
45 the association.
46

47 F.S. 193.155 was amended to allow an owner of a homestead property that was
48 significantly damaged or destroyed, on or after January 1, 2017, to elect, during the
49 following calendar year to deem the property to have been abandoned, as of the date of
50 the named tropical storm or hurricane. The owner will therefore not be required to pay
51 property tax for the damaged or destroyed property. The election is available only if the
52

1 owner establishes a new homestead as of January 1 of the second year immediately
2 following the storm or hurricane.

3
4 The following are the requirements for a residence to be a homestead property:

- 5
6 • The resident must have legal or beneficial title³ to the home on January 1 of the year
7 the exemption is claimed,
8 • The property must be the owner's permanent residence, and
9 • The owner must apply for the homestead exemption in person at the property
10 appraiser's office in the county where the home is located between January 1 and
11 March 1 of the year in which homestead exemption is sought.
12

13 **HB 1383 [2018-160] – EFFECTIVE JULY 1, 2018**

14 **Tax Deed Sales**

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16 A tax deed is a form of title given in the event property is sold to satisfy taxes. It carries
17 no warranties and does not guarantee clear title. A tax lien certificate is a certificate of
18 claim against property that has a lien placed upon it as a result of unpaid property taxes.
19 The tax lien certificate enables the certificate holder to collect unpaid taxes plus the
20 prevailing rate of interest applicable to such certificates, which can range from 8 to more
21 than 30%, depending on the jurisdiction. This amendment applies to associations in
22 which a certificate holder seeks to force a sale of a delinquent member's unit or parcel. A
23 forced sale is an involuntary transaction that occurs in the form and at the time specified
24 by law for the purpose of applying the proceeds to satisfy debts, such as a mortgage or
25 a tax lien, incurred by the owner of the property.
26

27
28 F.S. 197.502 was amended as follows:

- 29
30 • The certificate holder is required to pay all of the costs required to bring the property
31 to sale as provided in ss. 197.532 and 197.542, including property information
32 searches, and mailing costs, as well as the costs of resale, if applicable.
33 • If the certificate holder fails to pay the costs to bring the property to sale within 30
34 days after notice from the clerk, the tax collector shall cancel the tax deed
35 application.
36 • All taxes and costs associated with a cancelled tax deed application shall earn
37 interest at the bid rate of the certificate on which the tax deed application was based,
38 and
39 • Failure to pay such costs of resale, if applicable, within 30 days after notice from the
40 clerk shall result in the clerk's entering the land on a list entitled "lands available for
41 taxes."
42 • For purposes of determining who must be noticed and provided the required
43 information, the tax collector must contract with a title company or an abstract
44 company to provide a property information report.
45 • Upon receiving the tax deed application from the tax collector, the clerk shall record
46 a notice of tax deed application in the official records, which constitutes notice of the
47 pendency of a tax deed application with respect to the property and remains effective
48 for 1 year from the date of recording.

³ An interest held by a beneficiary of a trust in the trust property, the legal title of which is held by the trustee.

1 **SUMMARY**

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3 In 1866, Gideon John Tucker, Surrogate of New York, in an 1866 will case decision,
4 wrote, "No man's life, liberty, or property are safe while the legislature is in session."

5

6 As CAMs, we can and should participate in the legislative process, through membership
7 in political and civic organizations, or on our own initiative, to prevent any possibility of
8 the quotation becoming applicable to the state of Florida, especially as it affects laws
9 relating to community associations.

FINAL EXAM

1. A member of the armed forces is on active duty. They have a CAM license and want to keep it active. What must they do?
 - a. Pay any required license renewal fees
 - b. Complete legal update continuing education only
 - c. Meet all required licensure renewal, except remitting the license renewal fee
 - d. A member of the armed forces is exempt from meeting all licensure renewal requirements.

Ref. HB 29; Licensure of Armed Forces Members

2. Johnny Jones, an owner at the Golden Arms Condominium, sends a letter to the manager asking to review the minutes from last month's meeting. Within what period after Mr. Jones' written request must Golden Arms provide access to the minutes?
 - a. 5 working days
 - b. 10 working days
 - c. 10 calendar days
 - d. 15 calendar day

Ref. HB 841, Condominiums/Cooperatives/HOAs

3. Which of the following records must condominiums permanently maintain from the inception of the association?
 - a. Minutes
 - b. Annual financial reports
 - c. Copies of bids for capital projects
 - d. Ballots for annual election

Ref: HB 841, Condominium Official Records

4. By which date must condominium associations managing 150 or more units create a website on which certain records are posted?
 - a. October 1, 2019
 - b. July 1, 2019
 - c. October 1, 2018
 - d. January 1, 2019

Ref: HB 841, Condominium Official Records – Websites

5. A condominium director may now serve a maximum of 8 consecutive years, unless which of the following occurs?
 - a. Three-fourths of all owners vote to retain the director in office.
 - b. The condominium bylaws provide for longer consecutive years of service.
 - c. There are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.
 - d. A majority of unit owners voting at the election vote to retain the director in office.

Ref: HB 841, Condominium Board Director Terms of Office

6. A cooperative board wishes to fine a member because he failed to obtain association approval to install a satellite dish on common property. What requirement must the committee that confirms or rejects the fine meet?
 - a. The committee must consist of at least 5 members
 - b. The committee must include a household member of a director.
 - c. The committee must meet within 5 days of the fine being levied by the board.
 - d. The committee must not include a spouse, parent, child, brother or sister of an officer.

Ref: HB 841, Cooperative Fining and Suspension Procedure

7. An alarm monitoring company must confirm a residential or commercial intrusion/burglary:
 - a. By calling or texting a message to the owner, occupant, or authorized designee
 - b. By asking a neighbor of the property where the alarm is sounding
 - c. By asking the local police if the owner has not responded to the first attempt
 - d. By doing nothing. No confirmation is required if the property is operating an auditory sensor only.

Ref: HB 539, Requirements for Alarm Confirmation

8. The Castica HOA has proposed an amendment to the governing documents. Which of the following is a requirement to do so?
- A proposal to amend the documents must solely reference the title or number of the section or paragraph being amended.
 - The notice of an amendment must be mailed or delivered to the address identified on the property appraiser website as the parcel owner's mailing address.
 - Proposed new language must be bolded and proposed deleted language must be struck through.
 - The amendment to the governing document is effective when Castica files a copy with the DBPR.
10. In a construction defects case applying to a community association, what is the definition of counterclaim?
- A claim by a defendant, such as a contractor, opposing the claim of the plaintiff and seeking some relief from the plaintiff for the defendant
 - A claim brought by one defendant against another in the same proceeding.
 - A claim made by a defendant seeking to compel a person, not party to the original legal lawsuit, to either perform a specific action or be prohibited from performing a specific action.
 - A claim brought by one plaintiff against another plaintiff in the same proceeding.

Ref: HB 875, Construction Defect Case

Ref: HB 841, HOA Amendments to Governing Documents

9. The Florida Fire Prevention Code was amended to address doorstep refuse and recycling collection containers that stand upright on their own, within buildings with enclosed corridors served by interior or exterior exit stairs. Which of the following conditions should be met?
- The maximum doorstep refuse and recycling collection container size does not exceed 18 gallons.
 - Waste, which is in a doorstep refuse and recycling collection container, is not placed in the exit access corridors for single periods exceeding 24 hours.
 - Management staff have written policies and procedures in place.
 - Doorstep refuse and recycling collection containers do not occupy the exit access corridors for single periods exceeding 12 hours.

Ref: HB 529, Florida Fire Prevention Code