CARLTON FIELDS
ATTORNEYS AT LAW

SUMMARY OF 2011 FLORIDA LAWS IMPACTING CONDOMINIUMS, HOMEOWNERS ASSOCIATIONS AND COOPERATIVES

The 2011 Florida legislative session had several bills passed into law impacting condominiums, homeowners associations and cooperatives. This article is a summary of relevant changes and accordingly is not intended to be a comprehensive overview of every change. Please refer to the referenced bills for details.

A. **CS/CS/CS/HB 1195** was signed into law by Governor Scott on June 21, 2011, and became effective on July 1, 2011, and is now known as Chapter 2011-196, Laws of Florida. This legislation was the major community association package for the 2011 legislative session, and addressed a number of separate areas:

1. **Board Meetings and Election of Directors**. The law clarifies procedures for condominium and homeowners association board of directors meetings with regard to use of speakerphones, the ability to record a meeting and the right of members to speak at board meetings. The law also clarifies condominium association procedures to eliminate the requirement for an election if the number of vacancies equals or exceeds the number of candidates and to provide that any vacancies remaining after an election are to be filled by the affirmative vote of the majority of the directors making up the newly constituted board, even if the directors constitute less than a quorum or there is only one director. Clarifications were made with regard to a condominium director's requirement for certification of compliance with statutes and the governing documents. The speaking privileges for members of a mandatory homeowners association have been conformed to those of unit owners at a meeting of a condominium association board of directors. Finally, in a homeowners association, a person who is delinquent in the payment of any monetary obligation for more than 90 days is not eligible for board membership, and a person who has been convicted of a felony is not eligible for board membership unless such person's civil rights have been restored for at least five years prior to the date of the election.

2. **Collection of Rents from Tenants; Delinquencies**. The law clarifies procedures for an association attempting to collect rent from a tenant of a delinquent owner have been clarified and includes a form notice letter that must be delivered by an association when an association makes a demand to collect rental payments. An association, or its successor or assignee, that acquires title to a unit or lot through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other owners association. A tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing at least 10 days before the date the rent is due. If a tenant paid rent to the delinquent landlord owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14

days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period. A tenant is immune from any claim by the delinquent landlord owner relating to the rent timely paid to the association after the association has made written demand.

3. **Distressed Condominium Relief Act.** The law clarifies and improves certain provisions of The Distressed Condominium Relief Act (Section 718.701, F.S., et seq.) that came into existence on July 1, 2010. Most importantly, changes were made to explicitly state that bulk assignee and bulk buyer status is available only as to condominium parcels acquired on or after the July 1, 2010 effective date. A bulk assignee is now permitted to appoint or elect members to the board of directors; the statute previously only permitted an election. A bulk assignee's liability for actions taken by the board of directors begins when the bulk assignee elects or appoints a majority of the board of directors. If a bulk assignee assumes the developer's right to guarantee assessments and fund budgetary deficits, the liability for that guarantee obligation now begins upon its acquisition of title to the units (previously, the language could have been interpreted as requiring the bulk assignee to assume all such liability, including the obligations of the previous holder of the guarantee right). A unit owned by a bulk assignee is not deemed "conveyed to a purchaser or owned by an owner other than the developer" until conveyed to an owner other than the bulk assignee (i.e., the conveyance to the bulk assignee does not trigger turnover thresholds). The law also clarifies disclosure requirements to a prospective unit purchaser from a bulk assignee or bulk buyer.

4. **Enforcement Actions**. If a unit owner is more than 90 days delinquent in paying a monetary obligation due to the association, the association may suspend the right of the owner or an occupant, licensee, or invitee to use common elements, common areas, common facilities, or any other association property until the monetary obligation is paid in full. Note that this suspension right does not pertain to limited common elements intended to be used only by a condominium unit, common elements or common areas needed to access the unit or lot, utility services provided to the unit or lot, parking spaces, or elevators. A voting interest which has been suspended for nonpayment of monetary obligations may not be counted towards establishing a quorum, the voting interests required to conduct an election, or the number of voting interests required to approve an action.

5. **Fire Alarm Systems**. The law amends Section 633.0215(14) (which was signed into law per Chapter 2010-174, Laws of Florida) to clarify that, in addition to condominiums, cooperatives or multifamily residential buildings that are less than four stories in height are exempt from installing and maintaining a manual fire alarm system if the building has an exterior corridor providing a means of egress.

6. **Homeowners Associations - Bulk Communications Contracts**. The law creates statutory provisions to govern homeowners association contracts for bulk communications services. If the governing documents allow for the cost of communications services, information services, or internet services to be obtained pursuant to a bulk contract, then such expense shall be deemed an operating expense of the association. If the governing documents do not so provide, the board of directors may contract for such services, and the cost shall be deemed an operating expense of the association but must be allocated on a per parcel basis rather than a percentage basis (even if the governing documents provide for other than an equal sharing of operating expenses). A majority of the voting interests present at the next regular or special meeting of the association, whichever occurs first, may cancel any such contract entered into by the board. The contract must enable permit a parcel being occupied by a person who is hearing impaired or legally blind or who receives supplemental security income or food assistance administered by the Department of Children and Family Services pursuant to Section 414.31, Florida Statutes, to discontinue service without incurring disconnect fees, penalties, or subsequent service charges.

7. **Hurricane Protection in Condominiums.** A condominium association board of directors may now require retrofitting of impact glass or other code compliant windows; previously, the statute only spoke in terms of hurricane shutters and other hurricane protection. A vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, or other code compliant windows are the responsibility of the association pursuant to the declaration of condominium.

8. **Official Records**. Electronic mailing addresses and facsimile numbers are not accessible to owners if consent to receive notice by electronic transmission is not provided by the owner, but the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices. Attorney/client privileged documents include those prepared in anticipation of litigation or proceedings (deleting "adversarial or administrative") until the conclusion of the litigation or proceedings. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health and insurance records, are not accessible to unit owners ("personnel records" do not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee).

9. **Termination of the Condominium – Partial Termination.** Section 718.117 underwent minor revisions in 2010 in an effort to address the problem of "phantom units" (condominium units that exist legally but that have not been constructed). The 2011

amendments go much further towards addressing this problem by updating multiple provisions to explicitly establish a "partial termination" process by which certain portions of an existing condominium can be terminated without disturbing the remaining units and their mortgages. The optional termination provision now allows termination "for all or a portion of the condominium property." The plan of termination must identify the units that will survive the partial termination and specifically provide that those units will remain in the condominium form of ownership pursuant to an amendment to the declaration of condominium or an amended and restated declaration. Title to the units and common elements that survive a partial termination remains unchanged and does not pass to the termination trustee. As to the surviving property, the partial termination of a condominium may provide for the simultaneous filing of an amendment to the surviving declaration of condominium or an amended and restated declaration of condominium.

10. **Termination of the Condominium – Timeshare Property.** The law includes a procedure for the termination of a condominium that includes both condominium units and timeshare estates upon the total destruction or demolition of the improvements. A unit owner (including a timeshare estate owner) can initiate such termination by (a) filing of a petition in court seeking equitable relief; (b) recording a proposed plan of termination; and (c) mailing a copy of the petition to certain individuals (including the association, managing entity, each unit owner, each timeshare estate owner, and each holder of a recorded mortgage lien affecting a unit or timeshare estate). The law establishes procedures by which the proposed plan of termination can be contested, and requires that a court enter a final judgment finding that the proposed plan of termination is fair and reasonable and authorizing implementation of the plan.

B. **CS/CS/CS/HB 408 (Insurance)** became effective on May 17, 2011, and is now known as Chapter 2011-039, Laws of Florida. This bill was the major legislation pertaining to insurance across many areas. There were significant changes to the regulatory scheme for property insurance, particularly with regard to sinkhole insurance, wind insurance and the role of public adjusters. The exclusions from the definition of "loss" in the Florida Hurricane Catastrophe Fund were expanded to encompass amounts "paid to reimburse a policyholder for condominium association or homeowners' association loss assessments or under similar coverages for contractual liabilities."

C. **CS/CS/CS/HB 883 (Vacation Rentals)** became effective on June 2, 2011, and is now known as Chapter 2011-119, Laws of Florida. This law deals with vacation rentals, public lodging establishments and resort condominiums. The law amends the definition of a public lodging establishment to remove from its scope the terms "resort condominium" and "resort dwelling" and to add "vacation rental" (defined as "any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family,

three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment"). The law prohibits local governments from restricting the use of or prohibiting vacation rentals or regulating vacation rentals based solely on their classification, use, or occupancy. The law removes authority for local governments to ban or restrict vacation rentals; however, local law, ordinance or rule adopted on or before June 1, 2011 will be grandfathered in. As a result, some municipalities (including the Town of Surfside and villages of Key Biscayne and Bal Harbour) were able to adopt ordinances to regulate vacation rental by the June 1st deadline.

D. **CS/HB 59 (Process Server Access to Gated Communities)** was signed into law by Governor Scott on June 17, 2011, and became effective on July 1, 2011, and is now known as Chapter 2011-159, Laws of Florida. This legislation deals with service of process within gated residential communities. The statute provides that a gated residential community, including a condominium association or a cooperative, must grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community. There are a variety of problems with this legislation that will likely lead to litigation - who has an obligation to provide access, what is "unannounced entry" (since the concept is not defined)," is there redress against access being granted but notification being given to the person to be served, what constitutes a reasonable belief that someone resides in a community, what proof of identity as a process server can be provided or is appropriate, how this works with gated communities that do not employ a guard on-site – but the most important one is that this statute allows access by non-governmental employees in contravention of existing restrictive covenants for the community.

E. **CS/CS/CS/HB 849 (Elevator Retrofit Repealed)** was signed into law by Governor Scott on June 24, 2011, and became effective on July 1, 2011, and is now known as Chapter 2011-222, Laws of Florida. This legislation repealed the Section 553.509(2) requirement that residential multi-family buildings, including condominium buildings, at least 75 feet high and having a public elevator, are required to retrofit at least one elevator to operate on an alternate power source for emergency purposes.

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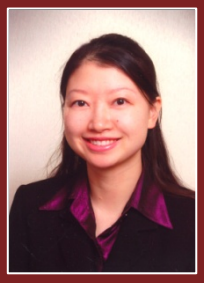
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