

2013 Legislative Changes Affecting Condominiums, Homeowners Associations, Cooperatives and Timeshares

June 26, 2013

The 2013 Florida Legislature was very busy passing new legislation related to the operation and development of condominiums, homeowners associations, cooperatives and timeshares. Below is a summary of those changes. 11 bills are referenced in our materials, and a tracking chart is provided below as to status:

1. CS/CS/HB 73 - signed by Governor Scott on June 14, 2013, effective as of July 1, 2013, and now known as Chapter 2013-188, Laws of Florida
2. CS/CS/HB 77 - signed into law by Governor Scott on June 10, 2013, effective as of July 1, 2013, and now known as Chapter 2013-136, Laws of Florida
3. CS/CS/SB 120 - signed into law by Governor Scott on June 6, 2013, effective as of July 1, 2013, and now known as Chapter 2013-122, Laws of Florida
4. SB 230 - signed into law by Governor Scott on June 6, 2013, effective as of July 1, 2013, and now known as Chapter 2013-165, Laws of Florida
5. CS/HB 267 - signed into law by Governor Scott on June 28, 2013, effective as of October 1, 2013, and now known as Chapter 2013-241, Laws of Florida
6. CS/HB 903 - signed into law by Governor Scott on June 28, 2013, effective as of October 1, 2013, and now known as Chapter 2013-246, Laws of Florida
7. CS/CS/CS/HB 999 - signed into law by Governor Scott on May 30, 2013, effective as of July 1, 2013, and now known as Chapter 2013-92, Laws of Florida

8. CS/SB 1770 - signed into law by Governor Scott on May 29, 2013, effective as of July 1, 2013, and now known as Chapter 2013-60, Laws of Florida
9. CS/CS/HB 7023 - signed into law by Governor Scott on June 28, 2013, effective as of July 1, 2013, and now known as Chapter 2013-251, Laws of Florida
10. CS/HB 7025 - signed by Governor Scott on June 13, 2013, effective as of July 1, 2013, and is now known as Ch. 2013-159, Laws of Florida
11. CS/HB 7119 - signed by Governor Scott on June 14, 2013, effective as of July 1, 2013, and now known as Chapter 2013-218, Laws of Florida

1. Condominiums (Chapter 718): A. Association Operations:

1. Elevator Retrofitting may not be enforced under local code until the elevator is replaced or requires major modification - the July 1, 2015 required date for retrofitting has been deleted. (§ 1, CS/CS/HB 73)
2. Association Acquisition of Lands of Recreational Leases now can occur upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in s. 718.113. The statute formerly only referred to the requirements under the declaration. (§ 2, CS/CS/HB 73)
3. An “insurable event” as defined in s. 718.111(11) has been clarified to include damage occurring to a portion of the condominium property for which the unit owner has responsibility. (§ 2, CS/CS/HB 73)
4. Electronic Copying of Association Records under s. 718.111(12)(c) now specifically authorizes the use of smart phones and other electronic devices. (§ 2, CS/CS/HB 73)
5. Association Directories can now include the name, address and telephone number of a unit owner (but a unit owner can exclude the telephone number via a written request), per s. 718.112(12)(c). (§ 2, CS/CS/HB 73)
6. The thresholds for Annual Auditing and Reporting of Association Finances under s. 718.111(13) have been increased by \$100,000 at each level. (§ 2, CS/CS/HB 73)
7. Financial Reporting requirements may be waived by a vote of all unit owners, including the developer, from the date of incorporation through the end of the second fiscal year after the year of recording of the surveyor’s certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer’s rights, whichever occurs first, rather than being tied to the date of recording of the declaration. (§ 4, CS/CS/SB 120)

8. The developer's votes may be included in any vote for the Waiver of Reserves prior to developer transfer of control under s. 718.112(2)(f) through the end of the second fiscal year after the year of recording of the surveyor's certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurs first, rather than being tied to the date of recording of the declaration. (§ 5, CS/CS/SB 120)
9. Staggered terms for Election of Directors now only has to be authorized in the articles of incorporation or bylaws (previously, there also had to be a unit owner vote). An individual who is not current in payment of all monetary obligations due to the association is not eligible to be a candidate and cannot be listed on the ballot. (§ 3, CS/CS/HB 73)
10. Associations Governing Timeshare Condominiums are exempt from the s. 718.112(2)(d)4. requirement that an election must be by written ballot or voting machine. (§ 3, CS/CS/HB 73, § 1, CS/HB 7025)
11. Challenges to Election Process must be commenced within 60 days after the election results are announced. (§ 3, CS/CS/HB 73)
12. Failure of a board to hold a meeting to address a Recall of Directors or to file a recall petition enables a unit owner to file a petition for arbitration based upon the board's failure to act. A recalled board member may file an arbitration petition to challenge the validity of the recall. Time frames are prescribed for filing the request for arbitration, and procedures for DBPR to follow are clarified. (§ 3, CS/CS/HB 73)
13. Hurricane Shutters and Protection Requirements under s. 718.113 are expanded to include hurricane protection improvements beyond windows and glass. Hurricane improvements must also comply with applicable codes, and unit owners are entitled to credits for code-compliant improvements made by the unit owner. (§§ 4, 5, CS/CS/HB 73)
14. An association agreement to Acquire Leasehold, Membership or Possessory Interests per s. 718.114 which is not entered into within 12 months of the date of recording of the surveyor's certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurs first (previously, the date of recording of the declaration), constitutes a material alteration or substantial addition requiring a membership vote. (§ 6, CS/CS/SB 120)
15. Common Expenses under s. 718.115 now include the expanded coverage for hurricane improvements (§ 5, CS/CS/HB 73)
16. A unit owner delinquent in paying assessments under s. 718.303(3) is still Entitled to Use (a) limited common elements serving only that unit, (b) common elements necessary for access to the unit, (c) utility services for the unit, and (d) parking spaces and elevators. (§ 6, CS/CS/HB 73)

17. The final trigger for Transfer of Control under s. 718.301(1) has been modified to be 7 years after the date of recording of the surveyor's certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurs first, rather than being tied to the date of recording of the declaration. (§ 7, CS/CS/SB 120)
18. The Turnover Records to be provided by a developer upon transfer of control per s. 718.301(4) now include a copy of the surveyor's certificate of substantial completion or the recorded instrument that transfer title to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurred first. (§ 7, CS/CS/SB 120)

B. Development:

1. When a condominium is created and is not substantially complete at the time of creation, the time period for monies to be held in the Registry of the Court to ensure completion is now 5 years from the date of recordation, rather than 3 years. (§ 2, CS/CS/SB 120)
2. An action to determine compliance with the ch. 718 requirements for Proper Formation of a Condominium must be brought within 3 years of the recording of the surveyor's certificate of substantial completion or the recording of a deed to a unit that is not accompanied by a recorded assignment of developer's rights, whichever occurs first, rather than being tied to the date of recording of the declaration. (§ 3, CS/CS/SB 120)
3. The Addition of Phases to a Condominium under s. 718.403 can now occur beyond the initial 7 year period if an amendment to the declaration (as required under the amendment section) enabling the addition of time is approved by the unit owners. The extension of the 7 year period can only be approved during the last 3 years of the 7 year period and can only permit a total of 10 years from the date of recordation to add all phases. (§ 7, CS/CS/HB 73; § 8, CS/CS/SB 120))
4. Specific Language for the Creation of a Condominium within a Condominium Parcel now exists under s. 718.406, via definitions of "primary condominium" and "secondary condominium," for creating a secondary condominium, governance provisions, resolution of conflicts between documents, and payment of common expenses. (§ 8, CS/CS/HB 73)

2. Homeowners Associations (Chapter 720): A. Electronic Copying of Association Records under s. 720.303(5) now specifically authorizes the use of smart phones and other electronic devices. (§ 15, CS/CS/HB 73, § 2, CS/HB 7119) B. Official Records of a homeowners association, per s. 718.303(5), must be maintained for at least 7 years. (§ 2, CS/HB 7119) C. Official Records must be made available by the board within 45 miles of the community or within the county in which the association is located within 10 business days after receipt of a written request. In the alternative, the records can be made available electronically via the Internet, or via a computer screen, with prints available upon request. (§ 2, CS/HB 7119) D. Employee costs associated with Retrieving and Copying Records, over and above 30 minutes may be imposed by the association, not to exceed personnel costs of \$20 per hour. (§ 2, CS/HB 7119) E. Any Reserve Accounts established by the developer must be designated on

the association budget. (§ 2, CS/HB 7119) *F. Association Directories* can now include the name, address and telephone number of a unit owner (but a unit owner can exclude the telephone number via a written request), per s. 720.303(5)(c). (§ 15, CS/CS/HB 73) *G. The thresholds for Annual Auditing and Reporting of Association Finances* under s. 720.303(7) have been increased by \$100,000 at each level. (§ 15, CS/CS/HB 73) *H. Failure of a board to hold a meeting to address a Recall of Directors or to file a recall petition enables a unit owner to file a petition for arbitration based upon the board's failure to act. A recalled board member may file an arbitration petition to challenge the validity of the recall. Time frames are prescribed for filing the request for arbitration, and procedures for DBPR to follow are clarified. (§ 15, CS/CS/HB 73) *I. A DBPR Reporting Requirement for Homeowners Associations* now exists per s. 720.303(13). By November 22, 2013, in the manner to be prescribed by DBPR, each community association manager or management firm (or the homeowners association if no manager has been employed), must file a report that contains the association's legal name, physical and mailing addresses, FEIN, total number of governed parcels, and total amount of revenues and expenses from the association's annual budget. If the association is still under developer control, the report also must identify the name and address of the developer and the total number of parcels then owned by the developer. DBPR is required to establish an Internet registration website for the submittal of the required information. DBPR is required to provide a summary report to the Legislature of the registrations by December 1, 2013. The statute is stated to expire on July 1, 2016. (§ 2, CS/HB 7119) **NOTE: Presumably, this statute is intended to require an annual registration submittal to DBPR, given the expiration of the statute in 2016, but there are no specific provisions so stating beyond the required submittal by November 22, 2013. This may be the first step towards regulating homeowners associations.** *J. Officers and Directors Certification* of understanding and agreeing to abide by the association's governing documents has now been created in s. 720.3033. This conforms such statute to similar requirements enacted for condominiums in 2011. (§ 3, CS/HB 7119) *K. The homeowners association is now required to maintain Insurance or Fidelity Bonding* for all persons who control or disburse association funds, per s. 720.3033(5). This is essentially the same requirement as already existing for condominium associations. (§ 3, CS/HB 7119) *L. The homeowners association, per s. 720.306(1), is now required to provide members with a Copy of Recorded Amendments* to the governing documents within 30 days of the amendment. (§ 4, CS/HB 7119) *M. With regard to Election of Directors*, the homeowners association is not required to allow for nominations from the floor if the election process in the governing documents provides for nominations prior to the meeting. An election is not required unless the number of candidates exceeds the number of vacancies. (§ 4, CS/HB 7119) *N. The required time frames for Transfer of Control* of a homeowners association in s. 720.307 have been modified to be similar to the requirements for condominium associations. In addition to the existing 90% threshold or when the developer decides to transfer control, turnover is now triggered when (1) the developer abandons or deserts its responsibility to complete amenities or infrastructure (with there being a rebuttable presumption that 2 years of nonpayment of assessments by the developer constitutes abandonment), (2) the developer files a Chapter 7 bankruptcy petition, (3) the*

developer loses the property through foreclosure or deed-in-lieu of foreclosure UNLESS the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of the assignment, or (4) a receiver is appointed for the developer and such receiver is not discharged for 30 days UNLESS the court determines within 30 days after the appointment that transfer of control would be detrimental to the association or its members. (§ 5, CS/HB 7119) **NOTE: It is unclear whether these changes have retroactive effect to associations existing as of the effective date of the changes (which will be July 1, 2013, if the bill is signed by Governor Scott).** *O.* Members other than the developer are entitled to Elect at Least One Director if 50% of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to members (the same provision as contained in the condominium statutes). (§ 5, CS/HB 7119) *P.* Suspension of Use Rights for violation of association governing documents under s. 720.305(2) cannot apply to common areas which provide access or utility services to the parcel. A suspension cannot prohibit the right of an owner to vehicular and pedestrian ingress to and egress from the parcel, and also cannot prohibit the right to park. (§ 16, CS/CS/HB 73) *Q.* Changes in the provisions related to Mortgagee Consents to documents in s. 720.306(1)(d) were made to conform such statute to similar requirements for condominiums. Specifically:

1. The Legislature found that requiring mortgagee consent to amendments that do not affect a mortgagee's rights or interests is an unreasonable and substantial logistical and financial burden on the parcel owners and that there is a compelling state interest in enabling the members of an association to approve amendments to the association's governing documents through legal means.
2. As such, the Legislature declared that notwithstanding any provision of the statute to the contrary:

(a) Regarding any mortgage recorded on or after July 1, 2013, any provision in the association's governing documents that requires the consent or joinder of some or all mortgagees of parcels or any other portion of the association's common areas to amend the **association's** governing documents or for any other matter is enforceable only as to amendments to the association's governing documents that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) With regard to mortgages recorded prior to July 1, 2013, existing provisions in the governing documents that require a mortgagee's consent remain valid and enforceable.

(c) The association can rely upon the public records to identify the holders of mortgages when mortgagee consent is necessary. In such regard. The association can use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded.

(d) Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each parcel owner whose parcel is

encumbered by a mortgage of record any information that the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made.

(e) Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record.

(f) The association is deemed to have complied with this requirement by making the written request of the parcel owners required under this subparagraph. Any notices required to be sent to the mortgagees under this subparagraph shall be sent to all available addresses provided to the association. (§ 17, CS/CS/HB 73)

R. A parcel owner now has the Right to Speak at a membership meeting without having had to file a written request to speak prior to the meeting. (§ 17, CS/CS/HB 73) S. Challenges to Election Process must be commenced within 60 days after the election results are announced. (§ 17, CS/CS/HB 73) T.

Prior to transfer of control of a homeowners association, per s. 720.3075, it is now stated to be the public policy of the state of Florida that Unilateral Amendments by the Developer are subject to a test of reasonableness, which test prohibits unilateral amendments by the developer which are (1) arbitrary, capricious, or in bad faith; (2) destroy the general plan of development; (3) prejudice the rights of existing nondeveloper members to use and enjoy the benefits of common property; or (4) materially shift economic burdens from the developer to the existing nondeveloper members. (§ 6, CS/HB 7119)

NOTE: It is unclear whether these changes have retroactive effect on governing documents recorded prior to the effective date of these provisions (which will be July 1, 2013).

3. Cooperatives (Chapter 719): A. Changes in the provisions related to Official Records in s. 719.104 were made to conform such statute to similar requirements for condominiums that were enacted in 2011. (§ 10, CS/CS/HB 73) B. Changes in the provisions related to Mortgagee Consents to documents in s. 719.1055 were made to conform such statute to similar requirements for condominiums. (§ 11, CS/CS/HB 73) C. Changes in the provisions related to Board Meetings, Election of Directors and Director Obligations in s. 719.106 were made to conform such statute to similar requirements for condominiums that were enacted in 2011 as well as being made in this year's legislation. (§ 12, CS/CS/HB 73) D. Failure of a board to hold a meeting to address a Recall of Directors or to file a recall petition enables a unit owner to file a petition for arbitration based upon the board's failure to act. A recalled board member may file an arbitration petition to challenge the validity of the recall. Time frames are prescribed for filing the request for arbitration, and procedures for DBPR to follow are clarified. (§ 12, CS/CS/HB 73) E. A unit owner delinquent in paying assessments, per s. 719.303, is still

Entitled to Use (a) limited common elements serving only that unit, (b) common elements necessary for access to the unit, (c) utility services for the unit, and (d) parking spaces and elevators. (§ 13, CS/CS/HB 73)

4. Timeshares (Chapter 721): A. Timeshare Telephone Solicitors and Sales Representatives are now regulated under ch. 501, per s. 721.20(9). (§ 46, CS/CS/HB 7023) B. The definition of "Timeshare Estate" under s. 721.05(34) has been modified to include a direct or indirect interest in a trust. (§ 2, CS/HB 7025) C. Definitions of "Resale Transfer Agreement" and "Timeshare Interest Transfer Services" have been added to ch. 721. (§ 2, CS/HB 7025) D. Calculation of Reserves under s. 721.07(5) has been clarified to reflect the total funds being collected and to indicate that the funding formulas will be based on either a separate analysis of each of the required assets using a

straight-line accounting method or a pooled analysis using two or more of the assets (§ 3, CS/HB 7025) *E.* Clarification is made under s. 721.15 that a seller of a timeshare estate or license must provide Notice to the Managing Entity of the purchaser of the timeshare interest, after which the managing entity shall list the purchaser as the owner of the timeshare interest in the association's official records. (§ 4, CS/HB 7025) *F.* An Estoppel Certificate must be issued within 30 days after a written request is received from a timeshare interest owner, as to the amount of any assessment, transfer fee or other monies then due and owing and which will be due and owing within the next 90 days. The fee for such certificate shall not exceed \$150. (§ 4, CS/HB 7025) *G.* "Resale Transfer Agreements" are now defined under s. 721.17(3) to describe the essential terms of agreement between a consumer timeshare owner and someone providing timeshare resale services, including that the agreement be in writing, no payments will be made until the transaction is completed, and establishment of an escrow requirement to ensure that the essential requirements for payment are met. (§ 5, CS/HB 7025) *H.* Modifications have been made to ss. 721.82, 721.84 and 721.856 concerning the Timeshare Trustee Foreclosure process (a non-judicial foreclosure process applicable only to timeshare interests. (§§ 6-9, CS/HB 7025) **5. Other Bills Having an Impact on Community Associations:** *A.* Landlord-Tenant:

1. Per s. 83.64(1)(d), it is unlawful for a landlord to increase a tenant's rent or increase services, or to bring an action, or threaten to bring an action, for possession, because the landlord is retaliating against the tenant for, among other items, paying rent to a condominium, cooperative, or homeowners' association after demand from such association, as a result of the landlord having been deficient in payment of assessments to such association. (§ 15, CS/CS/HB 77)

B. Flag Etiquette:

1. The Governor is now required to adopt protocols on the display of flags, which must include guidelines for proper display of the state flag and for the lowering of the flag to half-staff on appropriate occasions. These provisions will apply to community associations. (§ 1, SB 230)

C. Hidden Liens:

1. A lien by a governmental entity or quasi-governmental entity that attaches to real property for an improvement, service, fine, or penalty (other than a lien for taxes, non-ad valorem or special assessments, or utilities) is valid and has legal effect against creditors or subsequent purchasers for a valuable consideration only if the lien is recorded in the public records of the county where the property is located. The recorded notice of lien must contain the name of the owner of record, a description or address of the property, and the tax or parcel identification number applicable to the property as of the date of recording. (§ 2, CS/HB 267)

D. Adverse Possession:

1. Based upon recent situations where squatters attempted to use the adverse possession statutes to occupy abandoned residential homes, s. 95.18 was amended to prevent such occurrences and to make it a trespass to so occupy a home without having paid all outstanding taxes and special assessments. (§ 1, CS/HB 903)

E. Permitting Regulations – Submerged Lands for Private Residences:

1. A lessee is now permitted to have a lease of sovereignty submerged lands, with no requirement for payment of any lease fees (except in the most extraordinary of circumstances) for (a) a private residential single-family docks to moor up to 4 boats or (b) a private residential multi-family docks capable of mooring boats up to the number of units in the multi-family project (§ 7, CS/CS/CS HB 999)

F. Property Insurance on Residential Structures:

1. Policy limits on residential structures have been changed, such that residential structures having a dwelling replacement cost of \$900,000 as of January 1, 2015 will not be covered by Citizens. Such amount drops to \$800,000 as of January 1, 2016, and to \$700,000 as of January 1, 2017. (§ 7, CS/SB 1770)

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