

2014 Legislative Changes Affecting Condominiums, Homeowners Associations, Cooperatives and Timeshares

June 30, 2014

The 2014 Florida Legislature passed new legislation related to the operation and development of condominiums, homeowners associations, cooperatives, and timeshares. Below is a summary of those changes. Four bills are referenced in our materials, as noted below:

1. **CS/CS/CS/HB 807** - signed by Governor Scott on June 13, 2014, effective July 1, 2014, and now known as Chapter 2014-133, Laws of Florida
2. **CS/CS/HB 1089** - signed into law by Governor Scott on June 13, 2014, effective July 1, 2014, and now known as Chapter 2014-140, Laws of Florida
3. **CS/CS/HB 7037** - signed into law by Governor Scott on June 13, 2014, effective July 1, 2014, and now known as Chapter 2014-146, Laws of Florida
4. **CS/CS/SB 440** - signed into law by Governor Scott on June 13, 2014, effective July 1, 2014, and now known as Chapter 2014-74, Laws of Florida

A. Condominiums (Chapter 718)

1. **Insurance** for wind-only coverage for condominium associations will no longer be available after July 1, 2014, if 50 percent or more of the condominium units in a condominium are rented more than eight times in a calendar year if the rental agreement period is less than 30 days. This is a new ineligibility provision (§ 6, CS/CS/HB 1089).
2. An association must use a **release of lien** form that follows substantially a prescribed form, adding § 718.116(5)(d). The form requires signatures by two witnesses and must be sworn to or affirmed (one would normally expect merely an acknowledgement) before a notary (§ 3, CS/CS/HB 7037).

3. An association must use a **notice of intent to foreclose a lien** that follows substantially a prescribed form, amending § 718.116(6)(b) (§ 3, CS/CS/HB 7037).
4. In amending § 718.116(6), the Legislature, likely inadvertently, **deleted sub-subsections (c) and (d)** by amending all of subsection (6) but not restating those two sub-subsections. Sub-subsection (c) authorized appointment of a receiver for a unit under foreclosure and authorized the association to collect rent for an owner remaining in possession of the unit after foreclosure judgment is entered. Sub-subsection (d) recognized the power of the association to purchase the unit in foreclosure of the association's lien, and to hold, lease, mortgage or convey the unit. This is a significant change for condominium associations, as the referenced powers to take action no longer exist (§ 3, CS/CS/HB 7037).
5. An association must use a **notice of intent to file a lien** that follows substantially a prescribed form, amending § 718.121(4) (§ 4, CS/CS/HB 7037).
6. An association's rights and obligations with respect to **an abandoned unit** are addressed in detail by the new § 718.111(5)(b). An abandoned unit is defined to be one which is either (a) in foreclosure and has no apparent resident for four continuous weeks without written notice to the association, or (b) has no apparent tenant for two consecutive months without written notice to the association and the association has been unable to contact the unit owner after reasonable efforts. Except in an emergency, an association cannot enter an abandoned unit until two days after written notice of intent to enter has been mailed or hand-delivered to the owner at the owner's address as referenced in the association's records. Expenses incurred in connection with an abandoned unit are chargeable to a unit owner pursuant to the § 718.116 assessment process, and a lien can be utilized to enforce collection. The concept of a special assessment against a unit owner rather than against all unit owners is not previously in § 718.116. The association can petition a court for the appointment of a receiver to lease out the abandoned unit and offset against the rental income the association's costs and expenses of maintaining, preserving and protecting the unit and all unpaid assessments (which, if the unit is subject to a mortgage, may reduce a first mortgagee's potential liability for unpaid assessments under § 718.116(1)(b)). (§ 8, CS/CS/CS/HB 807).
7. If there is no insurable event, the declaration and bylaws determine whether the association or the unit owners are responsible for **reconstruction, repair or replacement costs** following a property loss, as noted in § 718.111(11)(j) (§ 8, CS/CS/CS/HB 807).
8. The association may disclose otherwise **confidential contact information** (as described in § 718.111(12)(c)) of an owner if the owner consents in writing (§ 8, CS/CS/CS/HB 807).
9. An outgoing association board or committee member must **relinquish all association records** in his or her possession within five days after a new election, or face the possibility of a civil penalty being imposed by the division, per the new § 718.111(12)(f) (§ 8, CS/CS/CS/HB 807).

10. Section 718.112(12)(b)5. has been clarified to provide that if a board or committee member participates in a **meeting electronically**, he or she will count as present for a quorum and will have the right to vote as if physically present (§ 9, CS/CS/CS/HB 807).
11. Under § 718.112(2)(c) , **e-mails** may be used for board of directors' communications but not for voting purposes (§ 9, CS/CS/CS/HB 807).
12. The requirement in § 718.112(2)(c)1. regarding a **member-initiated agenda item** at a board of directors meeting is changed from being held not later than 60 days after receipt of the petition to an unspecified time. Within 60 days, the board must place the petition item on the agenda for the next regular meeting or a special meeting, but the time within which any meeting must be held is unspecified (§ 9, CS/CS/CS/HB 807).
13. The “previous owner” **jointly liable for past due assessments** does not include a condominium association that acquires property by foreclosure or deed in lieu, and a subsequent owner's liability does not extend back beyond the assessments accrued before the association so acquired title, amending § 718.116(1)(a) (§ 10, CS/CS/CS/HB 807).
14. **A plan of termination that fails** to obtain the required votes may not be recorded, and no new termination plan may be proposed at a meeting or by joinder and consent for 180 days after the failed plan was first given to unit owners, amending § 718.117(9) (§ 11, CS/CS/CS/HB 807).
15. The creation of the **Community Association Living Study Council** is repealed. The Council had been created to study issues concerning community association living and to advise the Division and the Legislature about public education, rules, revisions and improvements (§ 12, CS/CS/CS/HB 807).
16. The expiration of Part 7 of Section 718 concerning bulk assignees and buyers, the **Distressed Condominium Relief Act, was extended for an additional one-year period**, until July 1, 2016 (§ 13, CS/CS/CS/HB 807 and § 5, CS/CS/SB 440).
17. A number of bylaws requirements in § 718.112 are now limited to **residential condominiums**, including the association's obligation to respond to inquiries within 30 days, limitations on the use of proxies, terms of board members, ineligibility of co-owners to serve as board members at the same time, ineligibility of candidates for board membership because of suspension by the division, assessments delinquency or felony conviction, the requirement to use written ballots or voting machines, and certification by newly elected or appointed board members (§ 1, CS/CS/SB 440).
18. Certain provisions of Chapter 718 now are specifically stated to only apply to **residential condominiums**, namely:

a. Mandatory nonbinding **arbitration**, in § 718.112(k) (§ 1, CS/CS/SB 440). b. Permission in § 718.112(2)(l) for an association that is not in compliance with requirements for a **fire sprinkler system** to vote to forego retrofitting of such a system by December 31, 2016. If a residential condominium association is not in compliance and has not voted to forego retrofitting, it must initiate an application for a building permit for such work demonstrating that it will be compliant by December 31, 2019 (§ 1, CS/CS/SB 440). c. The requirement that the board must adopt **hurricane shutter specifications** under § 718.113(5) (§ 2, CS/CS/SB 440). d. The provisions for **alternative dispute resolution** in § 718.1255, unless the declaration of a nonresidential condominium provides otherwise (§ 3, CS/CS/SB 440). e. The requirement in § 718.403(2)(a) that **modifications to the plot plan** of a phase condominium be limited to changes described in the declaration (§ 4, CS/CS/SB 440). f. The requirements in § 718.403(2)(b)-(f) that a phase condominium must specify certain **details in each phase** concerning the minimum and maximum number of size of units, recreational areas and facilities, membership votes and ownership in the association, and timeshare estates information (§ 4, CS/CS/SB 440). g. The **filing with the Division** by the developer of the declaration and amendments adding phases under § 718.403(8) (§ 4, CS/CS/SB 440).

B. Homeowners Associations (Chapter 720)

1. An association must use a **release of lien** form that follows substantially a prescribed form, adding § 720.3085(1)(d). The form requires signatures by two witnesses and must be sworn to or affirmed (one would normally expect merely an acknowledgement) before a notary (§ 6, CS/CS/HB 7037).
2. An association must use a **notice of intent to record a claim of lien** that follows substantially a prescribed form, amending § 720.3085(4)(a). The claim of lien must be executed and acknowledged by an officer or authorized agent of the association. (§ 6, CS/CS/HB 7037)
3. An association must use a **notice of intent to foreclose a lien** that follows substantially a prescribed form, amending § 720.3085(5) (§ 6, CS/CS/HB 7037).
4. Association **board meetings must be accessible** to a physically handicapped person having a right to attend the meeting if so requested, amending § 720.303(2)(a) (§ 17, CS/CS/CS/HB 807).
5. The association may disclose otherwise **confidential contact information** (as described in § 720.303(5)) of an owner if the owner consents in writing (§ 17, CS/CS/CS/HB 807).
6. Association **member meetings must be accessible** to a physically handicapped person having a right to attend the meeting if so requested, amending § 720.306(1)(a) (§ 18, CS/CS/CS/HB 807).

7. The association is **not required to provide a copy of an amendment** to the governing documents to the members if the proposed amendment is provided before the vote and is not changed, but the association must advise members that the amendment was adopted, provide the identifying recording information and make a copy available at no charge, amending § 720.306(1)(b) (§ 18, CS/CS/CS/HB 807).

8. Associations are granted **emergency powers** to mirror those for a condominium association (§ 718.1265), creating § 720.316 (§ 19, CS/CS/CS/HB 807).

C. Cooperatives (Chapter 719)

1. An association must use a **notice of intent to file a lien** that follows substantially a prescribed form, amending § 719.108(4). The lien must be executed and acknowledged by an officer or authorized agent of the association (§ 5, CS/CS/HB 7037).

2. The **automatic expiration of the association's lien** if a notice of claim of lien is not filed within one year after the due date of the assessment has been deleted, and the automatic expiration of the association's lien if an action to enforce the lien is not commenced within once year after a claim of lien is filed is extended during the period of an automatic stay under bankruptcy proceeding, amending § 719.108(4) (§ 5, CS/CS/HB 7037).

3. The unit owner may **require the association to commence an action** within 90 days (or an extended period during the period of an automatic stay under bankruptcy proceedings) to enforce its recorded claim of lien by recording a notice of contest of lien that follows substantially a prescribed form, adding § 719.108(4)(c) (§ 5, CS/CS/HB 7037).

4. An association must use a **release of lien** that follows substantially a prescribed form, adding § 719.108(4)(d). The form requires signatures by two witnesses and must be sworn to or affirmed (one would normally expect merely an acknowledgement) before a notary (§ 5, CS/CS/HB 7037).

5. The association may disclose otherwise **confidential contact information** (as described in § 719.104(2)(c)) of an owner if the owner consents in writing (§ 14, CS/CS/CS/HB 807).

6. An outgoing association board or committee member must **relinquish all association records** in his or her possession within five days after a new election, or face the possibility of a civil penalty being imposed by the Division, per the new § 719.104(2)(e) (§ 14, CS/CS/CS/HB 807).

7. The **financial records requirements** for cooperatives have been revised to mirror those for a condominium association, amending § 719.104(4)(a) and (b). However, unlike a condominium association where the board may elect to prepare a greater level of financial reporting (§ 718.111(13)(c)), in a cooperative such action requires approval by a majority of the voting interests of the members at a meeting called upon the petition of 20 percent of the unit owners, the meeting to be held within 30 days after petition, and the disclosure to be provided within 90 days after the later of the meeting or the end of the fiscal year, adding § 719.104(4)(d). Preparation of a lower level of financial reports requires a majority vote of unit owners (§ 719.104(4)(e), as is also true for condominium associations under § 718.111(13)(d)) (§ 14, CS/CS/CS/HB 807).
8. **Disqualification** for membership on the board of the association has been added to mirror the requirements for a condominium association (§ 718.112((2)(d)(2) and (2)(o)), adding § 719.106(1)(a) (2) (§ 15, CS/CS/CS/HB 807).
9. Associations are granted **emergency powers** to mirror those for a condominium association (§ 718.1265), adding § 719.128 (§ 16, CS/CS/CS/HB 807).

D. Timeshares (Chapter 721)

1. Timeshare projects are added to the list of “**public lodging establishments**” if they are transient establishments under § 509.013(4)(a)(1), i.e., rented to guests more than three times in a calendar year for periods of less than 30 days or publicly held out as regularly rented to guests. In that event, the timeshare project must be licensed under Chapter 509 (§§ 1-5, CS/CS/CS/HB 807).
2. Timeshare projects licensed under Chapter 509 are **not subject to mandatory biannual inspections** (§ 2, CS/CS/CS/HB 807).
3. Timeshare projects licensed under Chapter 509 are **exempt from certain sanitary requirements**, i.e., maintaining public bathroom facilities and providing certain standards of beds and bedding under § 509.221(2), (5) and (6) (§ 3, CS/CS/CS/HB 807).
4. Timeshare projects within separate buildings or at separate locations may be combined under a **single license application** if there is a single licensed agent (§ 6, CS/CS/CS/HB 807).

E. Other Bills Having an Impact on Community Associations

1. **Community association managers** are given authority to perform a greatly **expanded scope of services**, including among other things, determining the number of days required for statutory notices, calculating the votes required for a quorum or an action, completing official forms, drafting meeting notices and agenda, calculating and preparing estoppel certificates, drafting arbitration demands, and complying with the association’s governing documents and the requirements of law necessary for its practices. Community association managers manage residential homeowners’ associations of lots, homes, mobile homes, townhouses, villas, condominiums, or cooperatives (§ 1, CS/CS/HB 7037).

- Community association managers are made **agents of the association**, are under a duty of loyalty, skill and diligence, must deal honestly, fairly and in good faith, and may not charge excessive fees. The association may, by contract, agree to indemnify the community association manager for ordinary negligence, but not for criminal activity, gross negligence, actions in bad faith, with malicious purpose or form which an improper personal benefit is derived, or acts exhibiting a wanton and willful disregard of human rights, safety or property (§ 2, CS/CS/HB 7037).
- The **Marketable Record Titles to Real Property Act** (MRTA) is clarified to provide that a homeowners association which files a notice of preservation of covenants after approval at a meeting of its members under § 712.05, is not required to provide an additional notice to owners of the property under § 712.06(3) (§ 7, CS/CS/CS/HB 807).

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