

COUNSELOR'S COMMUNITY CHRONICLE

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Fall 2008

2008 LEGISLATION UPDATE - PART 2

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The Florida Legislature passed significant changes affecting community associations in 2008. This issue's Chronicle will continue to explore the changes in community association law for 2008.

SB 464 applies to Chapters 718, 719, 720, & 721, Florida Statutes, and provides that the restriction on transfer fee covenants does not apply to any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association, including, but not limited to, fees or charges payable for estoppels letters or certificates issued by the association or its authorized agent. In a condominium, the Association is still bound by Section 718.112 (i), Florida Statutes, which provides that the Association may only charge a fee if it has the authority to approve a sale or lease and such fee is in the governing documents. The fee in a condominium is limited to no more than \$100.00.

SB 564 applies to Chapters 718, 719, 720, & 721, Florida Statutes, and concerns automatic external defibrillators. In addition to the existing immunities, the revision adds that persons who use such defibrillators are immune from liability for using the defibrillator if the device is equipped with audible, visual or written instructions on its use, including any such visual or written instructions posted on or adjacent to the device.

The above laws are effective July 1, 2008.

SB 1986 applies to Chapter 720, Florida



Statutes and provides:

- ◆ A 45 day notice before recording a claim of lien.
- ◆ A 45 day notice before commencing a foreclosure action.
- ◆ The claim of lien secures payment of interest, late fees and reasonable attorney's fees.
- ◆ Owner may statutorily contest a lien. If statutorily contested, Association has 90 days to foreclose on the lien or the lien is void.
- ◆ Liability of first mortgagee, its successor or assignee who acquires title by foreclosure or deed in lieu of foreclosure, filed suit against the owner and initially joined the association is limited to the lesser of:
 - ◇ Twelve (12) months past due assessments; or
 - ◇ One percent (1%) of the original mortgage note.
- ◆ Specific requirement for the owner to submit a "qualifying offer" that stays association's foreclosure action for sixty

Practice Areas:

Construction Law and Litigation, Condominium Law, Homeowner Association Law, Real Estate, Shopping Center Law, Landlord Tenant Litigation, Complex Corporate and Commercial Transaction Work, Aviation Law, Collection Litigation.



(60) days.

The effective date is July 1, 2008.

HB 697 applies to Chapters 718, 719 and 720, Florida Statutes, and provides that owners may install energy efficient devices on their property regardless of any restrictions in a declaration or restrictive covenants.

In a condominium, the board may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

The effective date is July 1, 2008.

HB 1105 applies to condominiums, cooperatives and homeowner associations and provides that an owner may petition for a receiver to be appointed where an association fails to fill vacancies on the board sufficient to constitute a quorum in accordance with the association's bylaws.

A statutory form of notice must be provided to all owners and the association. If the vacancies are not filled within thirty (30) days of the notice, then the owner may file a petition for appointment of a receiver.

The bill also provides that in condominiums, the association must provide a thirty (30) day notice before filing a claim of lien.

The effective date is July 1, 2008.

HB 601 makes significant changes to the insurance provisions of Chapter 718, Florida Statutes, as well as other

changes.

INSURANCE

Regardless of any provision in a declaration, adequate hazard insurance shall be based upon full replacement value as determined by an independent insurance appraisal or update of a prior appraisal, and shall be determined at least once every 36 months.

A developer controlled association's failure to obtain and maintain adequate hazard insurance during any period of developer control constitutes a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless the board members can show that despite such failure, they have made their best efforts to maintain the required coverage.

Insurance deductibles shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.

The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board. Such meeting shall be open to all unit owners in the manner set forth in Section 718.112(2)(e), Florida Statutes. The notice of such meeting must state the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any.

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Every hazard insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium shall provide primary coverage for:

- All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications. All alterations or additions made to the condominium property or association property pursuant to Section 718.113(2), Florida Statutes.
- The coverage shall exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing.

Every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner must contain a provision stating that the coverage is excess coverage over the amount recoverable under any other policy covering the same property. The policies must include special assessment coverage of no less than \$2,000 per occurrence.

All improvements or additions to the condominium property that benefit less than all unit owners shall be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having the use thereof.

The association shall require each owner to provide evidence of a currently effective policy of hazard and liability insurance upon request, but not more than once per year. Upon the failure of an owner to provide a certificate of insurance issued by an insurer approved to write such insurance in this state within 30 days after the date on which a written request is delivered, the association may purchase a policy of insurance on behalf of an owner. The cost of such a policy, together with reconstruction costs undertaken by the association but which are the responsibility of the unit owner, may be collected in the manner provided for the collection of assessments in Section 718.116, Florida Statutes.

All reconstruction work after a casualty loss shall be undertaken by the association except as otherwise authorized by statute. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board. However, such work may be

conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner shall obtain all required governmental permits and approvals prior to commencing reconstruction.

Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry casualty insurance, and any such reconstruction work undertaken by the association shall be chargeable to the unit owner and enforceable as an assessment pursuant to Section 718.116, Florida Statutes. The association must be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.

Any portion of the condominium property required to be insured by the association against casualty loss which is damaged by casualty shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. All hazard insurance deductibles, uninsured losses, and other damages in excess of hazard insurance coverage under the hazard insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds, if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees.

2. The provisions of the above subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also applies to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

However, an association may, upon the approval of a majority of the total voting interests in the association, opt out of the provisions for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. The vote may be approved by the voting interests of the association without regard to any mortgagee consent requirements.

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This journal does not contain specific legal advice. The information here is summary in nature. Any principles of law here cited are subject to change. Any questions can be directed to Siegfried, Rivera, Lerner, De La Torre, & Sobel, P.A. at 201 Alhambra Circle, 11th Floor, Coral Gables, FL 33134.

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Section 718.115, Florida Statutes, is amended to provide that the expenses of any items or services required by any federal, state, or local governmental entity to be installed, maintained, or supplied to the condominium property by the association, including, but not limited to, fire safety equipment or water and sewer service where a master meter serves the condominium, shall be common expenses whether or not such items or services are specifically identified as common expenses in the declaration of condominium, articles of incorporation, or bylaws of the association.

Section 718.116(c), Florida Statutes, is amended to provide that the Association or its agent may charge a reasonable fee for the preparation of an estoppel certificate. The amount of the fee must be included on the certificate.

The authority to charge a fee for the certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payer that is not the unit owner, the fee shall be refunded to that payer within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.

Section 720.30581, Florida Statutes, is created to provide that association must provide an estoppel certificate within fifteen (15) days of receipt of a request, and the amount of such fee must be stated on the certificate. The authority to charge a fee for the certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payer that is not the parcel owner, the fee shall be refunded to that payer within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.

The name of The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation is changed to The Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation. The Division's enforcement powers have been expanded.

Unless otherwise noted, the above are effective July 1, 2008.

As a reminder from our last issue, **HB 1378** has been signed by the Governor and is effective as of July 1, 2008. HB 1378 allows any homeowner to erect a flag pole not to exceed 20 feet in height on the owner's private property for display of the United States flag and flags of branches of the armed services. The legislation preempts provisions in a community's governing documents or rules and regulations that restrict the right authorized by the bill.