

COUNSELOR'S COMMUNITY CHRONICLE

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Summer 2008

2008 LEGISLATION UPDATE

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The Florida Legislature passed significant changes to Chapters 718, Florida Statutes, in 2008. This issue's Chronicle will explore the changes in condominium law for 2008.

Chapter 718, Florida Statutes COMMUNITY ASSOCIATION MANAGEMENT

House Bill ("HB") 995 was signed into law by the Governor on May 1, 2008, and provides as follows:

Community Association Management is defined as when the association or associations served contain more than 10 units or a budget over \$50,000.00 (previously was 50 units).

"Community association management firm" means a corporation, limited liability company, partnership, trust, association, sole proprietorship, or other similar organization engaging in the business of community association management for the purpose of providing any of the services described in subsection (2).

As of January 1, 2009, Community Association Management Firms must be licensed with the state (as managers are currently required to be). If the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other similar organization is canceled automatically during that time.

Community Association Managers and
Community Association Management



Firms may be subject to disciplinary proceedings for contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

ASSOCIATION BOARD OF DIRECTORS

A person convicted of a felony in Florida or of a crime in another state that would be considered a felony in Florida is not eligible to serve on the Board until five years after his/her rights have been restored.

Owners more than 90 days delinquent in assessments may not run for election to the Board of Directors.

Board members who are more than 90 days delinquent in their assessments are considered to have abandoned their Board position, creating a vacancy.

A director of the association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with

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.



regard to the action.

Board members are limited to terms of one year unless the bylaws permit staggered terms and the staggered terms have been approved by a majority of voting interests of the association.

Co-owners of a unit may not serve concurrently on the Board.

A board member must certify that he or she has read the association governing documents and Chapter 718, Florida Statutes, ("F.S.") after the election and not before.

ASSOCIATION OFFICIAL RECORDS

Any person who knowingly or intentionally defaces or destroys accounting records required to be maintained pursuant to Chapter 718, F.S., or who knowingly or intentionally fails to create or maintain accounting records required to be maintained by Chapter 718, F.S., is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

A copy of the inspection report as provided for in s. 718.301(4)(p), which report must be under seal of an architect or engineer authorized to practice in this state, and attesting to required maintenance, useful life, and replacement costs of the common elements comprising a turnover inspection report, is now a part of the Association's Official Records.

The Association's Official Records must be kept for seven (7) years, within 45 miles of the condominium property, or within the county in which the condominium is located.

Access to unit owner social security, driver's license and credit card numbers has been limited.

Associations may not waive the

financial reporting requirements required by statute for more than 3 consecutive years.

BOARD MEETINGS / ASSOCIATION MEETINGS

If 20% of the unit owners petition the Board to include an agenda item, the Board must include such item on the agenda within 60 days.

Proxies relating to the waiver of reserves must include the following statutory language:

WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Special assessment notices must include the estimated cost and description of the purpose of the special assessment.

Fining committees may not be composed of Board members or persons who reside in a Board member's household.

ASSOCIATION LIENS FOR NON-PAYMENT OF ASSESSMENTS

A lien may not be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last known address as reflected in the records of the association.

HURRICANE SHUTTERS

The association shall be responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection authorized by this subsection if such hurricane shutters or other hurricane protection are the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters or

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other hurricane protection authorized by this subsection are the responsibility of the unit owners pursuant to the declaration of condominium, the responsibility for the maintenance, repair, and replacement of such items shall be the responsibility of the unit owner.

ASSOCIATION EMERGENCY POWERS

In the event a state of emergency is declared pursuant to Section 252.36, F.S., in the locale in which the condominium is located, the Board may, but is not obligated to, exercise the following emergency powers:

- ◆ Conduct Board meetings and membership meetings with notice as is practicable.
- ◆ Cancel and reschedule any association meeting.
- ◆ Appoint assistant officers with the same authority as executive officers
- ◆ Implement a disaster plan that may include shutting down or off elevators, electricity, water, sewer or air conditioners.
- ◆ Require evacuation in the event of a mandatory evacuation order in the locale in which the condominium is located.
- ◆ Contract on behalf of the unit owner for services the unit owner is responsible for.
- ◆ Levy special assessments without the vote of the owners.
- ◆ Borrow money without the vote of the owners to fund emergency repairs and carry out the duties of the association when funds are insufficient.

The special powers authorized above shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs.

OTHER MISCELLANEOUS PROVISIONS

Provisions regarding approval of contracts where a Board member has a financial interest in the company require a two-thirds approval of the Board, and such contract shall be disclosed to the membership at the next membership meeting, and may be cancelled by a majority vote of the members present.

The Florida Department of Business and Professional Regulation, Division of Florida Lands Sales, Condominium and Mobile Homes ("Division") may subpoena association records if the records have not been produced pursuant to a unit owner request.

Alternative voting procedures for board elections for all communities containing more than 10 units are eliminated.

Voting rights of units owned by the association are eliminated.

Display of religious objects of limited size on the front door area of a condominium unit is permitted.

All of the above provisions have an effective date of October 1, 2008.

Chapter 720, Florida Statutes

The Legislature also passed significant legislation regarding homeowner associations, most of which has not yet been sent to the Governor as of the publication of this newsletter.

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.

Other pending legislation

HB 601 and HB 679 have been passed by the legislature and have been sent to the Governor for signature. Unless noted otherwise, provisions of HB 601 and HB679, if signed or allowed to become law, will be effective July 1, 2008, and will provide, in part, for the following:

- ◆ Requires newly-elected board members to sign a certification that they have read the community governing documents.
- ◆ Permits a fine of \$1,000 or more against a parcel owner to become a lien against a parcel.
- ◆ Completely revises the dispute resolution process, allowing for mediation and/or arbitration. This provision has an effective date of July 1, 2009.
- ◆ Significant changes to insurance requirements for condominiums and condominium unit owners.
- ◆ These bills will be discussed in more detail in our next newsletter.

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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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Firm News

Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A. welcomes three new partners

The Firm is proud to announce that Roberto C. Blanch and Vivian T. Montz have been made partners, and Jeffrey A. Rembaum has joined the Firm as a partner.

Roberto Blanch has been an attorney with the firm since 2001 and became a shareholder in 2007. He received his Bachelor of Science in Business Administration from the University of Florida in 1997 and his Juris Doctor from Saint Thomas University in 2000. Mr. Blanch concentrates his practice in Community Association Law, handling a broad range of legal issues for the firm's Condominium and Homeowner Association clients

Vivian T. Montz practices in the areas of Condominium Law and transactional work related to construction. She received her Bachelor of Arts in Philosophy from Yale University and her Juris Doctor, cum laude, from the University of Miami School of Law. Active in her community Ms. Montz is a member of the Cuban American Bar Association, the Brazilian American Bar Association, the Latin Builder's Association and the Miami Beach Chamber of Commerce. Ms. Montz is admitted to the Florida Bar and the Eleventh Circuit Court of Appeals.

Jeffrey A. Rembaum is part of the firm's community association and real estate practice groups and works in the firm's West Palm Beach office. Mr. Rembaum was an Assistant Public Defender for the 15th Judicial Circuit in Palm Beach County. Before developing his real estate practice, he gained critical experience as a commercial litigator. His prior experience includes employment with the Development Corporation for Israel. Mr. Rembaum is active in a variety of civic, professional and political organizations in Palm Beach County. He is a member of the Florida Bar's Real Property Section and the Condominium Planned Unit Development sub-committee.

Firm relocates and expands West Palm Beach office

The firm has relocated its West Palm Beach office to the Northbridge Center, located at 1675 Palm Beach Lakes Boulevard, Suite 500, West Palm Beach, FL 33401. The new offices allow room for the office to grow, as well as the establishment of a community association collections department. This means that the firm now has a community association collections department in each of its offices in Coral Gables, Plantation, and West Palm Beach.

"The relocation was essential for our continued growth" said shareholder Helio De La Torre. "Establishing a community association collection department in each of our offices makes it easier for our clients, and their association members, to contact us to resolve their collection matters. We felt it was important, especially in the current economic climate, to make ourselves as accessible as possible to our clients and their association members" said De La Torre.