

Summary 2011 Florida Statute Changes

Fire Prevention and Code

S. 633.0215 - Florida Fire Prevention Code

Clarification was added to address two conflicting amendments changes that were made in 2010. *Statute 633.0215* now provides that a condominium, cooperative, or multifamily residential building that

- is less than four stories in height, and
- has an exterior corridor providing a means of egress

is exempt from installing a manual fire alarm system (as provided in the life safety code adopted in the Florida fire prevention code).

The Condominium Act Changes

718.111(12)(c) Regarding inspection and copying of official records.

The Association Roster

In the list of official records, section 718.111(12)(c) which deals with a roster of the unit owners was amended to clarify that the electronic mailing addresses and facsimile numbers are a part of the roster only when the unit owners *consent* to receive notice by electronic transmission.

On the other hand, the electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission has not been received in writing (as provided in accordance with the statute).

The Association is not liable for an inadvertent disclosure of an electronic mail address or facsimile number.

Records not Accessible to Unit Owners

The list of records not accessible to unit owners was clarified in s. 718.111(12)(c) with respect to *personnel records*. The personnel records of the Association or management company employees, including but not limited to, disciplinary, payroll, and health insurance records are not accessible.

However, language was added that the term "personnel records" do not include written employment agreements with the association employee or management company, or budgetary or financial records that indicate compensation paid to an association employee.

The list of records not available to owners which was expanded in 2010 to include such records as social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers or emergency contact information and any addresses of the owner other than as provided to fulfill the Association notice requirements. When this was added in the 2010 legislation a problem was created with respect to those associations who published a member directory. This new language appeared to prohibit the association from publishing this information. Some associations were provided legal advice that where an owner approved the publication of their information, the association could continue to publish the directories.

New language was added in 2011 that clarifies this issue. The statute now provides that an owner may consent in writing to the disclosure of protected information provided for in the statute. New language also provides that the Association is not liable for the inadvertent disclosure of information that is protected under the statute

- if that information is included in the official record of the association, and
- is voluntarily provided by the owner and not requested by the association.

718.112 - Bylaws

Board Meetings

The first significant change in this section concerns board meetings. New language provides that board of administration meetings held for the purpose of discussing personnel matters are not open to the unit owners.

Board Member Elections

The amendments to chapter 718.112 revised requirements for electing the board of directors.

The amendments clarified some issues that were created in the 2008 and 2010 modifications to the Condominium Act.

The language now provides that an election is not required if the number of vacancies equals or exceeds the number of candidates. The term "candidate" means an eligible person who has submitted a written notice of his or her intention to become a candidate.

Except in a timeshare condominium, or if the staggered term of the board member does not expire until a later annual meeting, or if all members terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members stand for reelection unless prohibited by the bylaws.

If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board of administration effective upon the adjournment of the annual meeting. Unless bylaws provide otherwise, any remaining vacancy shall 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.

Any unit owner desiring to be a candidate for the board membership must provide the notice of intent to run and must be eligible to serve on the board of directors at the time the deadline for submitting a notice of intent to run in order to have his/her name listed as a proper candidate on the ballot or to serve on the board. *This new language addresses the problem that existed previously wherein the owner could be more than 90 days delinquent in the payment of an assessment and still be a candidate for the board.* The new language now provides that in order to be a candidate you must be eligible to serve on the board. The statute still contains the language that provides that any person who is more than 90 days delinquent in the payment of a monetary obligation is not eligible for membership on the board. Likewise, a person who has been convicted of a felony and not had their civil rights restored for five years is not eligible to be of the board.

Board Member Certification

The 2008 legislative changes provided a process whereby candidates for the board had to submit a form certifying that they had read the documents, the applicable statutes and Florida administrative code regarding condominiums. The amendments in 2010 clarified this certification process. Now within 90 days of being elected to the board, the newly elected or appointed board member must either submit a certification form indicating that they have read the applicable documents for the community and will carry out their duties to the best of their ability, or provide evidence of having satisfactorily completed an educational curriculum administered by a division (DBPR) approved Condominium Education Provider within one year before or within 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without

interruption. The statute goes on to provide that the failure to have such written certification or educational certificate on file does not affect the validity of any board action.

Timeshare condominiums

A new section was added in the bylaws provisions that states that this chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association.

718.113 Maintenance

Hurricane Protection

This section providing for hurricane protection was amended to add that the association could, with the approval of a majority voting interest, install impact glass or other code compliant windows or hurricane protection that complies with or exceeds the applicable building code. The statute goes on to say that a vote of the owners is not required if the maintenance repair or replacement of hurricane shutters, impact glass, or other code compliant windows are the responsibility of the association pursuant to the declaration of condominium.

718.116 Assessments

The 2011 amendments provided language in the assessments section that provides a condominium association, or its successor or assignee, that acquires title to the unit 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 became due before the association's acquisition of title in favor of any other association.

This section was also amended to address the demand for rent on a tenant when a unit is rented and the owner is not paying the assessments to the association. It now provides that the rent collected from the tenant may be applied to all past due amounts, not just those accruing in the future. The new language also specifies the content of the demand letter. It also clarifies that the tenant is immune from any claim by the landlord or unit owner related to the rent timely paid to the association after the association has made the written demand.

718.117 Termination of timeshare condominium

A new section was added to address the termination of a timeshare condominium where the improvements have been totally destroyed or demolished. The section was also amended to address partial termination of condominiums.

718.303 Obligations of owners and occupants; remedies

This section was amended to clarify the fining rights of a condominium association. The new language still provides that a fine may not exceed \$100 per violation or \$1000 in the aggregate.

The language was added to also clarify the suspension rights. The statute now says that an association may suspend, for a reasonable period of time, the right of the unit owner, or unit owners tenant, guest, or invitee to use common elements, common facilities or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

A fine or suspension may not be imposed unless the association provides at least 14 days written notice and opportunity for a hearing to the unit owner.

If the unit owner is more than 90 days delinquent in paying a monetary obligation to the association, the association may suspend the right of the unit owner or its occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligations are paid in full.

This provision does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements do not apply to suspensions due to nonpayment of monetary obligations to the Association.

This section was also amended to clarify the impact of the suspension of voting rights. If an owner is more than 90 days delinquent in the payment of any monetary obligation, the association may suspend that unit's voting rights. The voting interests or consent right allocated to that unit which has been suspended by the association may not be counted towards the total number of voting interest necessary to constitute a quorum, the number of voting interests required to conduct election, or the number of voting interests required to approve an action under the statute or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations owed to the Association. There is no requirement for a notice and hearing. However, all suspensions of voting rights must be approved at a properly noticed board meeting and upon approval, the association must notify the unit owner and, if applicable, its occupant, licensee, or invitee by mail or hand delivery.

Chapter 718, PART VII, DISTRESSED CONDOMINIUM RELIEF

Parts seven of the condominium act, which was added in 2010 to address the problems associated with condominium developments in various stages of developer failure or lender issues, was amended in 2011 as well. The amendments clarified rights, duties and responsibilities of bulk buyers and bulk assignees.

The Cooperative Act Changes

719.108 Rents and assessments

This section was amended to clarify the cooperative association's lien right. The statute now provides that the cooperative association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. The amendments removed from the lien right reasonable cost for collection services for which the association has contracted against the unit owner of the cooperative parcel.

This section was also amended to address the demand for rent on the tenant when the unit is rented. The demand for rent now can be used to satisfy all outstanding debts of the cooperative parcel owner, not just the future assessments. The language for the demand letter is also specified in the statute.

719.303 Obligations of owners

The section on fines was clarified. The new language provides that the association may fine a unit owner, or the unit's occupant, licensee, or invitee for failure to comply with any provisions of the cooperative documents or reasonable rules of the association. As before, the fine cannot become a lien against the unit. The fine cannot exceed \$100 per violation but may be imposed for each continuing day of violation not to exceed \$1000.

The association may suspend, for a reasonable time, the right of the unit owner, or unit owner's guest, or invitee, to use common elements, common facilities, or any other association property for failure to comply with any provision of the cooperative documents or reasonable rules of the association. The fine or suspension may not be imposed without giving reasonable notice and an opportunity for a hearing to the unit owner or the unit's licensee or invitee.

If a unit owner is more than 90 days delinquent in paying any monetary obligation to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, facilities or any other association property until the monetary obligation is paid in full. The suspension does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements do not apply to suspensions imposed on delinquent owners.

The new amendments also provide that the association may suspend the voting rights of the unit owner who is more than 90 days delinquent in the payment of any monetary obligation to the association. The statute provides that the voting

interests or consent right allocated to the unit or member which are suspended by the association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, number of voting interests required to conduct an election, the number of voting interests required to approve an action pursuant to the cooperative documents, articles of incorporation, bylaws or the statute.

The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements do not apply to suspensions for the nonpayment of any monetary obligation owed to the association. All suspensions imposed under this provision must be approved at a properly noticed board meeting; upon approval of the suspension the association must notify the unit owner, and if applicable the units occupant, licensee, or invitee by mail or hand delivery.

Homeowners' Associations Changes

720.303 Association powers and duties

For board meetings in homeowners' associations, the amendments now provide that the owners have the right to speak at all such meetings with reference to all designated items on the agenda. HOA had the right to speak only on matters placed on the agenda by petition of the membership.

In the records section of the statute, the amendments further define personnel records with respect to the right to inspect and copy such records. The new language provides that the term "personnel records" does not include written employment agreements with an association employee or budgetary or financial records that indicate compensation paid to the association employees.

Also in this section, the legislation added language that allows an owner to consent in writing to the disclosure of protected information described in this portion of the statute. It goes on to say that the association is not liable for the disclosure of information that is protected under the statute if information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

This would address the problems by previous legislation that restricted the disclosure of records such as social security numbers, drivers license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, and any addresses for a parcel owner other than as provided for the association notice requirements.

720.305 Obligations of members

This section was amended to address the right of a homeowners' association to impose fines. The language still provides that the association may levy reasonable fines of up to \$100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. The fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that a fine may not exceed \$1000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1000 dollars may not become a lien against a parcel.

The suspension of use rights was also addressed. The new language provides that an association may suspend, for reasonable time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure the owner of the parcel or its occupant, licensee, or invitee to comply with the provisions of the declaration, the association bylaws, or reasonable rules of the association. This section also provides that a fine or suspension may not be imposed without at least 14 days notice to the person sought to be fined or suspended and an opportunity for hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee.

New language also provides that if a member is more than 90 days delinquent in the payment of any monetary obligation due to the association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee to

use common areas and facilities until the monetary obligation is paid in full. The suspension does not apply to the portion of common areas used to provide access or utility services to the parcel. The suspension also does not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The notice and hearing requirements do not apply to suspensions imposed for nonpayment of monetary obligations.

This section goes on to provide that the association may suspend the voting rights of a parcel owner or member for the nonpayment of any monetary obligation due to the association that is more than 90 days delinquent. The voting interests or consent right allocated to a parcel which has been suspended by the association may not be counted towards the total number voting interests for any purpose, including, but not limited to the number of voting interests necessary to constitute a quorum, the number of voting interest required to conduct an election, the number voting interests required to approve action under the statute or the governing documents. The notice and hearing requirement does not apply to suspensions imposed for nonpayment of assessments and the suspension ends upon full payment of all obligations currently due to the association. Such suspension imposed by the association must be approved by a properly noticed board meeting and upon approval, the association must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.

720.306 Meetings of the members

New language is added in this section regarding elections and board vacancies. The new language provides that any person who is delinquent in payment of any fee, fine, or other monetary obligation to the association for more than 90 days is not eligible for membership. Persons who have been convicted of any felony in Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in the state, is also not eligible for board membership unless such felon's civil rights have been restored for at least five years as of the date on which the person seeks election to the board. The language also provides that the validity of any action by the board is not affected if it is later determined that a member of the board is ineligible for board membership.

720.3085 Payment for assessments

This section was amended to provide that an association, or its successor or assignee, which acquires title to a parcel 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 which became due before the association's acquisition of title in favor of any other association, which holds a superior lien interest on the parcel.

This section was also amended to address the demand for rent on a tenant when the unit is rented by the owner. If the owner is delinquent in the payment of any monetary obligation due to the association and the unit is rented, the association may make a demand for all rental payments to the tenant. The payments made to the association may be applied to all delinquent amounts owed to the association until such time as all monetary obligations related to the parcel have been paid in full to the Association. The new language also provides specific language that must be contained in the demand letter. (See 720.3085(8)(b)1.)

720.309 Agreements entered into by the association

The new section was added addressing the cost of communications services, information services or Internet services obtained pursuant to a bulk contract.

The new language provides that such cost for such services can be deemed an operating expense of the association if the governing documents so provide. It goes on to say that if the governing documents do not provide for such services, the board may contract for the 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. Any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all parcel owners may be changed by majority vote of the voting age present at a regular or special meeting of the association in order to allocate the cost equally among all the parcels.

Any contract entered into by the board may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel such contract, but if no motion is made or if such motion fails to obtain the required vote, the contract shall be deemed ratified for the term expressed therein.

The language goes on to say that any contract entered into by the board must provide that any hearing-impaired or legally blind parcel owner who does not occupy the parcel with a non-hearing-impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or suspend service charges, and may not be required to pay any operating expense charge related to such service for those parcels. This also applies to a parcel owner who receives supplemental security income under Title XVI of the Social Security Act or food assistance as administered by the Department of Children and Family Services.

If fewer than all parcel owners share the expenses of communication services, information services, or Internet services, all participating parcel owners must share the expense.

The statute also provides that a resident of any parcel, whether a tenant or parcel owner, may not be denied access to available franchised, licensed, or certificated cable or video service providers if the resident pays the provider directly for such services. A resident or a cable or video service provider may not be required to pay anything of value in order to obtain or provide such service except for the charges normally paid for, such as services by residents of single-family homes located outside the community but within the same franchised, licensed, or certificated area, and except for installation charges agreed to between the resident and the service provider.