

**CONDOMINIUM AND HOMEOWNERS ASSOCIATION
2015-2016 LEGISLATIVE UPDATE**

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Agenda

- I. 15 minutes - Discussion of House Bill 71 relating to service animals**
- II. 10 minutes - Discussion of House Bill 87 relating to procedures for property owners filing a construction defect complaint against a contractor and Chapter 468 revisions**
- III. 10 minutes - Discussion of House Bill 715 Senate Bill 1094, and House Bill 165 regarding insurance**
- IV. 10 minutes - Discussion of House Bill 307 relating to updates to the operations of a mobile home owners' association**
- V. 5 minutes - Discussion of House Bill 453 relating to the creation, sale, exchange, promotion, and operation of timeshare plans**
- VI. 10 minutes - Discussion of House Bill 779 relating to relocation caused by condominium termination or as a result of a tenant living in a foreclosed home.**
- VII. 20 minutes - Discussion of House Bill 791 concerning fines, penalties, and electronic voting**
- VIII. 20 minutes - Question and Answer regarding materials and items discussed**
- IX. 20 minutes *as applicable - Written examination and evaluation confirming retention of course materials**

House Bill 71

Overview: The bill amends Section 413.08 of the Florida Statutes pertaining to service animals and places of public accommodation. It specifies the manner in which a public accommodation may inquire whether an animal is a service animal and adds penalties for misrepresenting oneself as being qualified to use a service animal.

Updates

- The bill revises the definition of “individual with a disability” to add an individual with a physical or mental impairment that substantially limits one or more major life activities.
 - A “physical or mental impairment” is defined in part as a physiological disorder or condition that affects at least one bodily function or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders.
 - The term “major life activity” is defined as a function such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 - The bill expands the definition of the term “public accommodation” to include a timeshare that is a transient public lodging establishment and exempts air carriers covered by the Air Carrier Access Act of 1986 under the definition of “public accommodation.”
 - Provides that a “service animal” is generally limited to a dog or miniature horse and must be trained to ameliorate or otherwise assist with a particular disability.
 - The bill requires a **public accommodation** to modify its policies to permit the use of a service animal by an individual with a disability.
 - “Public accommodation” means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging establishment as defined in s. 509.013; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers covered by the Air Carrier Access Act of 1986, 49 U.S.C. s. 41705, and by regulations adopted by the United States Department of Transportation to implement such act.
 - The bill further specifies that a public accommodation may not ask about the nature or extent of an individual’s disability in order to determine if an animal is a service animal or pet. However, a public accommodation may ask: (1) if the animal is a service animal required because of a disability; and (2) what work the animal has been trained to perform.
 - Additionally, the bill requires a service animal to be kept under the control of its handler. The bill authorizes a public accommodation to remove the animal if the animal is not under the handler’s control, is not housebroken, or poses a serious threat to others. The criminal penalty for interference with the right of a disabled individual or service animal trainer to use a place of public accommodation is modified to include the requirement that a person also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the court’s discretion.
 - The bill provides that the knowing and willful misrepresentation of oneself as being qualified to use a service animal or being a trainer of a service animal is a second degree misdemeanor. It also requires the person to perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity, at the court’s discretion.
 - The legislative changes only concern state law and do not affect rights or obligations under federal law.

House Bill 87

Overview: The bill amends Chapter 558 of the Florida Statutes regarding the current procedures for filing a notice of construction defect claim. It provides for an alternative dispute mechanism for construction defect disputes in which the claimant provides the contractor, subcontractor, supplier, or designer responsible for the alleged defect sufficient notice and an opportunity to cure the defect without having to resort to litigation.

Updates

- The bill amends s. 558.001, F.S., to include a finding that the insurer of the contractor, subcontractor, supplier, or designer responsible for the alleged defect should also be provided an opportunity to resolve a claim “through confidential settlement negotiations.”
- The bill amends the definition of “completion of a building or improvement” in s. 558.002(4), F.S., to provide that the issuance of a temporary certificate of occupancy qualifies as “completion of a building or improvement.” The bill also amends ss. 718.203(3) and 719.203(3), F.S. to make those definitions consistent.
- The bill amends s. 558.004(1), F.S., to add that a notice of claim must also identify the location of each construction defect, based upon at least a visual inspection, sufficient to enable the responding party to locate the alleged defect without undue burden. A claimant is not required to perform destructive testing or other testing before providing a notice of claim.
- The bill amends s. 558.004(4), F.S., to provide that the contractor’s response must be in writing and must include at least one of the responses already provided for in s. 558.004(5)(a)-(e), F.S., such as whether he or she is willing to make repairs, settle the claim with a monetary offer, or both, whether the contractor disputes the claim, or whether the contractor’s insurer will cover the claim.
- The bill amends s. 558.004(13), F.S., to provide that if the terms of the contractor’s insurance policy permit a claim to be made by providing a copy of the presuit notice to the insurer, the notice may constitute a claim under the policy.
- The bill amends 558.004(15), F.S., to require a party to also exchange “the maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of the claim and any resulting damages.” The bill also provides that photographs and videos provided pursuant to a request must be “of the alleged construction defect identified in the notice of claim.” However, a party does not have to disclose privileged documents, records, and information and the bill expressly provides that a party may assert a claim of privilege with regard to the foregoing materials if recognized by law.

House Bill 715

Overview: The bill relates to Citizens Property Insurance Corporation (Citizens), a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance. Specifically, the bill removes a prohibition on coverage for any major structure located seaward of the coastal construction control line or within the Coastal Barrier Resources System that is substantially improved pursuant to a building permit applied for on or after July 1, 2015, but retains the prohibition on new construction of a major structure located in such areas.

Updates

- The bill revises eligibility for insurance with Citizens based on location of the property.
- It removes the prohibition on coverage for any major structure that is substantially improved pursuant to a building permit applied for on or after July 1, 2015, but retains the prohibition on new construction of a major structure. Thus, the bill revises the prohibition applicable to existing structures.
- “Substantial improvement is defined broadly and generally contemplates any type of repair, reconstruction, or other similar action that costs 50% or more of the market value of the structure.

- “Major Structure” is defined broadly with the apparent intent to encompass all residential and commercial buildings.
- Also ineligible for Citizens is a major structure that is rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent pursuant to a permit applied for after July 1, 2015.
- **Effect on Associations:** Condominium associations presently in existence and located within the prescribed areas will not lose eligibility for Citizens insurance by engaging in a substantial improvement. A property owner who incurs a catastrophic loss would be able to rebuild and retain eligibility for Citizens coverage provided the total square footage of finished space is not increased beyond the threshold.

Senate Bill 1094

Overview: The bill expands flood insurance that may be offered by admitted insurance carriers, requires local governments to include a redevelopment component to reduce the risk of flood when drafting comprehensive coastal management plans, and requires surveyors and mappers to submit elevation certificates to the Division of Emergency Management.

Updates

- The bill allows insurance providers to offer flood insurance on a “flexible” flood insurance basis. Flexible flood insurance differs from standard or preferred coverage by including one or more of the following:
 - An agreed upon amount of coverage between the insurer and policyholder.
 - A deductible s authorized in § 627.701, F.S.
 - Adjustment in accordance with § 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
 - Limitation of coverage to only the principal building, as defined in the policy.
 - Provisions including or excluding coverage for additional living expenses.
 - Provisions excluding coverage for personal property or contents.
- Bill also requires local governments to include development principles, strategies, and engineering solutions that reduce the flood risk in coastal areas when drafting comprehensive coastal management plans.
- Beginning January 1, 2017, a surveyor and mapper who completes and elevation certificate must submit a copy of the certificate to the Division of Emergency Management (Florida administrative agency) within 30 days of completion.

House Bill 165

Overview: The bill amends various portions of Chapter 627 of the Florida Statutes concerning property and casualty insurance. The bill both reduces and imposes regulation on insurers, much of which does not have a substantial effect on community associations. The bill also changes certain provisions pertaining to hurricane loss models and notice requirements for insurance nonrenewal.

Updates

- The Office of Insurance Regulation is charged with reviewing and approving the rates charged by insurance companies to ensure compliance with rate standards. The bill exempts certain types of commercial insurance from the rate filing and review requirements, some of which include: excess or umbrella policies; surety and fidelity; errors and omissions; fiduciary liability (D&O); general liability; and nonresidential multiperil.
- The Florida Commission on Hurricane Loss Projection Methodology was established in 1995 to establish standards and otherwise regulate hurricane loss models. Generally, insurers may only use hurricane loss models

that the Commission finds to be accurate and reliable to predict the insurers probable maximum loss levels. The bill specifies the number of days that an insurer may use a hurricane loss projection model and probable maximum loss level in an approved rate filing at 120 days following the stated expiration date of the model.

- The bill amends Section 627.4133 of the Florida Statutes to require the insurer to provide the insured a written notice of nonrenewal, cancellation, or termination at least 120 days (previously 100 days) before the effective date of the nonrenewal, cancellation, or termination with respect to any personal lines or commercial residential property insurance policy, including community associations and individual unit owner policies. Certain exceptions to the required notice are implicated when the reasons for nonrenewal, etc. are for nonpayment of premium or material misrepresentation. The bill also limits the circumstances under which a policy that has been in effect for 90 days may be cancelled.

- Of particular concern for community associations is that the bill repeals a prior statutory provision requiring a notice of non-renewal, cancellation, or termination to be provided prior to June 1st, which was intended to provide notice to policyholders that the policy would be cancelled, not renewed, or terminated during the hurricane season (June 1 – November 30) before the season began. The anticipated practical effect of the amendment would mean that a policyholder could receive notice during the hurricane season that the policy would not be effective at the end of the season. For example, an insurer could possibly send notice of non-renewal on June 1 of a year that the policy would not be in effect as of September 29 of the year, which is during the hurricane season.

- The bill also amends certain provisions pertaining to sinkhole claims and personal injury protection automobile insurance, which are not of particular importance in the community association context.

House Bill 307

Overview: The bill relates to the Florida Mobile Home Act, which regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots. The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation enforces the act and the legislative amendments increased the Division's jurisdiction and authority in the Mobile Home context. Specifically, the bill makes updates to the operations of a mobile home owners' association, including actions relating to rental increases, removal of committee members, and training for homeowners' associations. Like homeowners' associations governed by Chapter 720 of the Florida Statutes, the legislative changes reflect a trend toward an increase in regulation of similar property occupancy and ownership types to establish regulatory schemes similar to those imposed on condominium associations and unit owners.

Updates

- Prior to the enactment of HB 307, the Division was not charged with approving training and educational programs for association board members and owners. Now, the Division is required to provide training and education programs for mobile homeowners' associations board members and owners.

- The bill provides that mobile home owners must comply with all building permit and construction requirements and that a mobile home owner is responsible for fines imposed for violating any local codes.

- Section 723.037, F.S. established a procedure for increasing lot rent, reducing services provided by the park owner, or changing the rules and regulations. The procedure involves a meeting between the park owner and a committee of the owners to discuss the reasons for any such changes and negotiate. If the meetings are unsuccessful, then either party may petition the Division for mediation and ultimately file a lawsuit if mediation is unsuccessful. The bill amends Section 723.037 to provide that a mobile home owner's right to a 90-day notice of a rental increase or change in services may not be waived. The bill also provides that the committee and park owner must meet no later than 60 days prior to the effective date of the change (previously required to meet within 30 days after notice of the change). Further, a homeowners' committee must make a written request for a meeting with the park owner to discuss a proposed rental increase or change in services or rules.

- Prior to enactment of the bill, lifetime mobile home lot leases entered into after July 1, 1986 were not assumable unless allowed by the rental agreement or the transferee was the homeowner's spouse. The bill amended the law to provide that lifetime leases and automatically renewable leases are assumable by the by the homeowners' spouse; however, this right of assumption may only be exercised once during the term of the lease.

- The Florida Mobile Home Relocation Corporation was established to provide relocation assistance to residents of mobile homes who receive eviction notices due to a change in the land use of the mobile home park. The bill provides that a member of the board of directors of the Corporation must be removed immediately upon written request for removal from the association that originally nominated that member.

- The bill eliminates certain requirements that certain provisions be included in the association's bylaws for the association to be entitled to exercise a statutory right to purchase a mobile home park.

- **Administration:** A mobile homeowners' association's bylaws are deemed to provide specific provisions in the bill related to the conduct of the meetings, electronic communication, voting requirements, use of proxies, amending the articles of incorporation and bylaws, duties of officers and directors, filling vacancies on the board, and recall of directors. Some specific changes include:

- Amends quorum requirement to 30% of the membership unless otherwise provided in Bylaws.
- Reduces the number of days that a proxy is valid from 120 to 90 and establishes conditions for use of limited proxies.
- Clarifies process for electing officers.
- Brings Ch. 723 into harmony with Chapters 720 & 718 with regard to various matters, including open meeting requirement exceptions for personnel matters or attorney-client privileged communications; board member participation via telephone; voting and email communication; and members' right to participate in meetings.
- Provides process by which board vacancies may be filled.
- Provides for director nominations in advance of the annual meeting and permits notice via electronic communication (which does not include telephone).
- Provides for default Articles and Bylaws amendment requirements if the documents fail to prescribe a method. Generally, they may be amended by a vote of the majority of the Board and a majority of a quorum of the membership (previously required total majority of membership).

- The bill established substantial recall dispute regulation and Division jurisdiction similar to the provisions presently appearing in the Condominium Act and Homeowners' Association Act. The division must adopt rules to provide binding arbitration and recall election disputes.

- Board members must either certify that they have read the association's organizing documents, rules, and regulations and that they will faithfully discharge their fiduciary responsibility, or complete the division's education program within one year of taking office.

- The bill requires the association to retain and make available for inspection certain enumerated official records of the association, similar to the Condominium Act and Homeowners Association Act.

House Bill 453/Senate Bill 932

Overview: The bill relates to the Florida Vacation Plan and Timesharing Act and establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including disclosure requirements aimed to protect consumer-purchasers. The Division of Florida Condominiums, Timeshares and Mobile Homes (Division) within the Department of Business and Professional Regulation has been delegated the authority to implement the Act through regulation and oversight.

Updates

- **Timeshare Estate:** Bill modifies the definition of timeshare estate. Provides that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust is required for such interests to qualify as timeshare estates.

- Expands the definitions of nonspecific and specific multisite timeshare plans to provide that the plans may include interests other than timeshare licenses or personal property timeshare interests.

- **Developer Regulation & Oversight:** The bill amends the requirements for the persons who must receive the public offering statements and amendments to timeshare instruments. Sections 721.07 and 721.551, F.S. were amended to provide that public offering statements and amendments to timeshare instruments for component sites located in this state are only required to be delivered to purchasers who receive a specific interest in the component site in this state.

- Bill also amends pertinent statutory provisions to require disclosure of the nature and term of leasehold accommodations within a timeshare trust to prospective purchasers.

- **Developer Safe Harbor:** Prior to the adoption of the bill, a developer's liability for nonmaterial errors, omissions, or noncompliance with certain sections of the Act pertaining to the public offering statement is limited if the developer acted in good faith, attempted to comply, and substantially complied with the stated provisions. The limitation of liability was only available for violations of certain portions of the Act pertaining to disclosures to purchasers. The bill amended the Act to expand the limitation of liability for developers to all provisions of Chapter 721; however, the developer bears the burden of proving entitlement to such a limitation of liability.

- **Judicial Approval of Disposition of Timeshare Property:** Previously, timeshare trustees were required to obtain judicial approval prior to disposing of or encumbering timeshare property. In addition, the trustee was required to notify the Division of the court petition in writing and the Division could advise the court of its interpretation of the pertinent statutes as it relates to the petition. The Act repeals the requirement for judicial approval of such transactions and eliminates Division standing to participate in the proceedings. Accordingly, and subject to other applicable law, timeshare property may be transferred or encumbered by a vote of two-thirds of the voting interests of the timeshare plan.

- **Default Extension or Termination Provisions:** Previously, Ch. 721 was silent as to extension or termination of timeshare plans, which was problematic for older plans with no provisions for extension or termination. The Act established a default approval requirement of sixty percent (60%) of the voting interests for extension or termination for timeshare plans that have been in existence for at least 25 years as of the date of the proposed extension or termination.

- **Transfer of Reservation System Data:** Prior law imposed requirements for the transfer of reservation system data when a managing agent of a multisite timeshare plan has been terminated but was did not address managing entities of single-site timeshare plans. The Act creates new procedures and default requirements related to the transfer of reservation system and owner data when a managing entity is terminated for single-site and multisite timeshare plans.

- **Component Disclosure:** Act requires all multisite timeshare plans to disclose the term of each component site plan and prominently disclose the term of component sites that are shorter than the term of the plan.

- **Assessments:** Prior to the bill, the total common expense assessment for the multisite timeshare plan in a given year could not exceed 125% of the total common expense assessment for the plan in the previous calendar year. The bill created an exception to exclude component site common expenses and ad valorem expenses from the cap on annual increases in common expense assessments.

- **Substitutions and Deletions:** Prior to the bill, only substitutions of accommodations and facilities for nonspecific multisite timeshare plans that were "substantially similar" to the existing accommodations and facilities were permitted. There were also limits to the percentage of the accommodations that may be substituted at any given component site in a given year unless a written plan of substitution was properly approved by a majority of purchasers and the board. The bill amends Section 721.552, F.S. to allow for substitute and replacement

accommodations that are better (subjective) than the existing accommodations. The bill also modifies the notice requirements prior to a substitution to disclose a purchaser's right to object. There are other particular limitations that were imposed on the developer's authority to make substitutions.

House Bill 643

Overview: The bill amends laws related to condominium termination.

Updates

- **Optional Termination:** Bill amends Section 718.117(3), F.S. to provide that if 10% or more of the voting interests of the association reject a plan of termination, a termination may not proceed and another plan for termination may not be considered for 18 months (previously 180 days). The bill further specifies that no voting interest of the condominium may be suspended during the consideration of a plan of termination.
- **Limitation on Termination of Condo Conversions:** Bill prohibits a condominium that has been created by conversion of existing improvements from undertaking an optional plan of termination until five years after the conversion unless there are no objections to the plan of termination.
- **Bulk Owners:** Bill created additional terms that govern a termination where at least 80 percent of the condominium's voting interests are owned by a bulk owner:
 - Unit owners must be allowed to lease their units if the units will be offered for lease after termination.
 - Any unit owners whose unit was granted homestead exemption must be paid a relocation payment equal to 1% of the termination proceeds allocated to the former owner's unit, which must be paid by the entity owning at least 80% of the voting interests.
 - Unit owners other than the bulk owner must be paid at least 100 percent of the fair market value of their units. Certain owners who voted to reject the plan of termination must be paid at least the original purchase price paid for their units.
 - The outstanding first mortgages of unit owners current on association assessments and mortgage payments must be satisfied, and such mortgages are deemed satisfied in full upon payment of the lesser of the unit's share of the proceeds of the termination or the outstanding balance of the mortgage
 - Bill added required disclosures that must be provided before presenting a plan of termination to the unit owners. A notice identifying any person or entity that owns 50 percent or more of the units and the purchase and sale history of any bulk owners must be provided to owners.
- **Board of Directors:** Unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.
 - Additional terms that govern a condominium termination proceeding that are not specific to those owned by bulk owners:
 - If a condominium association fails to approve a plan of termination another termination may not be considered for 18 months.
 - A plan of termination may be withdrawn or modified under certain circumstances.
 - **Proceeds:** Section 718.117, F.S. provides default provisions for the apportionment of proceeds from the sale of condominium property upon termination if the governing documents do not provide for apportionment. A termination trustee may reduce termination proceeds to a unit for unpaid assessments, fines, taxes, costs, and other expenses.
 - **Division Oversight & Right to Contest Termination Plan.** Prior to the bill, a unit owner or lien holder could contest a plan of termination by initiating a summary procedure in court. Bill amended law to provide that unit owners or lien holders must file a petition for mandatory nonbinding arbitration with the Division within 90 days of recording of the termination plan.

- Unit owner and lien holders may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale, that the liens of the first mortgages of unit owners will not be satisfied, or that the required vote was not obtained.
- An arbitrator may void a plan of termination if it determines that the plan did not apportion the sales proceeds fairly and reasonably, that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed.

House Bill 779

Overview: The bill requires that a bona fide tenant renting a home that is in foreclosure, sometimes discovering the foreclosure when facing a 24-hour notice of eviction, be given at least 30 days' notice before eviction from a foreclosed home, provides a form for such notice, prohibits the purchaser at a foreclosure sale from violating the prohibited practices applicable to residential landlords, and allows the parties to enter into a new lease.

Updates

- The bill creates s. 83.561, F.S., regarding termination of a rental agreement after foreclosure. If a tenant is occupying a **residential premises** that is the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises subject to the rights of the tenant created by the bill.
- The tenant may remain in possession for up to 30 days following the giving of a written notice to vacate, the form of which is prescribed by statute. This notice must be delivered by mail, personal delivery, or, if the tenant is absent, by leaving a copy at the residence. If the tenant does not vacate at the end of the 30 day period, the purchaser at the sale may apply to the clerk of the court for a writ of possession. The tenant must pay rent during the 30 day period.
- The bill only protects a bona fide (i.e. the transaction was entered into in good faith) tenant. It does not apply if:
 - The tenant is the mortgagor in the subject foreclosure of the child, spouse, domestic partner, or parent of the mortgagor in the subject foreclosure.
 - The tenant's rental agreement is not the result of an arm's-length transaction.
 - The tenant's rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.
- The bill provides that a purchaser at a foreclosure sale is subject to the restrictions of s. 83.67, F.S., which provides that a landlord may not terminate utilities, block access to the unit, discriminate against a servicemember, prohibit display of the United States flag, remove doors or windows as an attempt to drive out the tenant, or remove tenant belongings except in certain circumstances. A landlord violating any of the prohibitions is liable to a tenant for the greater of actual damages or 3 month's rent.
- The bill also provides that the purchaser at a foreclosure sale does not assume the obligations of a landlord unless the purchaser and the tenant agree to a lease, whether such agreement is assumption of the prior lease or is a new lease between the parties. The effect of this new subsection (4) is that a purchaser at a foreclosure sale is prohibited from retaliatory actions (see above and § 83.67, F.S.) and must allow occupancy; however, the purchaser is not liable for other statutory duties of a landlord such as the building maintenance responsibilities of s. 83.51, F.S., or the post-lease notices regarding security deposits at s. 83.49, F.S.

Notice of electronic notice.

House Bill 791

Overview: The bill amended various provisions pertaining to community associations, including: regulation of fines, assessment collection and application of payments, board composition, electronic voting, electronic notice of meetings, amendments, proxy voting, and bulk assignees and buyers.

Updates

- **Assessments:** Bill amends the Condominium Act and Cooperative Act to specifically provide that any payments received must be applied in the statutory manner (interest, late fees, costs and reasonable attorney's fees, then the most delinquent assessment) irrespective of any restrictive endorsement, designation, or instruction placed on or accompanying a payment or any purported accord and satisfaction.
 - Appears to be a legislative response to *St. Croix Lane Trust v. St. Croix at Pelican Marsh Condo. Ass'n, Inc.*, 144 So. 3d 639 (Fla. 2d DCA 2014) in which the court found that the Association's negotiation of a check accompanied by a letter stating that it was being tendered as full and final satisfaction of all claims constituted accord and satisfaction.
- **Insurance & Repair:** Bill amends 718.111(11) regarding responsibility for maintenance and repair after the occurrence of an insurable event. The bill clarifies that the maintenance provisions of the Declaration or Bylaws determine whether the association or unit owners are responsible for the repair or replacement of the portion of the property at issue. Prior law did not specify that the maintenance provisions control and generally referred to the Declaration and Bylaws.
 - **Fines & Penalties:** Revises provisions related to fines and penalties assessed by associations. Provides that fines and suspensions are imposed by the board of administration and the role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.
 - Provides that a member who is delinquent in the payment of a monetary obligation may not run for the board (not an eligible candidate) and if a board member remains delinquent for 90 days, he or she will be deemed to have abandoned the position and the vacancy may be filled.
 - Defines "fee, fine, or monetary obligation" as any delinquency to the association with respect to any parcel."
 - Provides that any suspension of voting rights reduces the total number or percentage of all voting interests required to approve any action.
 - **HOA Fine:** Section 720.305(2) was amended to provide that for a homeowners' association, a fine may not exceed \$100.00 per violation unless otherwise provided in the governing documents. A fine may be levied each day for a continuing violation with a single notice and opportunity for a hearing, except that a fine may not exceed \$1,000.00 unless otherwise provided in the governing documents.
 - **Official Name:** Ch. 720, F.S. was official named the "Homeowners' Association Act." Also, the term "governing documents" was amended to include the rules and regulations within its definition.
 - **Electronic Notice of Meetings:** Previously, law (for condos, co-ops, and HOAs) required the authority to provide notice of meetings electronically to be contained in the Bylaws. Bill removes any requirement that authorization be contained in the Bylaws but members must still provide written consent to receive notice of meetings electronically.
 - **Electronic Voting:** Bill creates a mechanism for electronic voting (both elections and other issues) if a member consents in writing to online voting and certain requirements are met. Also, the board must authorize the use of an electronic voting system by resolution, unless the governing documents otherwise allow it and members may opt out of electronic voting after giving consent.
 - Members voting electronically shall be counted as being in attendance at the meeting for the purposes of determining a quorum.

Additional requirements:

Not recommended for secret ballot

1. The association must provide each member with a method to authenticate the member's identity to the online voting system.
2. There must be a method to confirm, at least 14 days before the voting deadline, that the member's electronic device can successfully communicate with the online voting system.
3. Must conform with the election and voting procedures in the association's Bylaws (more of an issue for HOAs as election procedures are not established by statute).
4. Must be able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
5. Must be able to transmit a receipt from the online voting system to each member who casts an electronic vote.
6. Must be able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie an election ballot to a specific member. (applies to all condo elections, which must be secret, but only applies to HOAs if the governing documents require secret balloting).
7. Must be able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.
 - **Amendments:** Bill provides that a homeowners' association's failure to provide notice of the recording of an amendment does not affect the validity or enforceability of the amendment.
 - Authorizes non-profit corporation proxy voting based on a reproduction of the original proxy (i.e., copies of proxies are sufficient);
 - Extends the time limitation for classification as bulk assignee or bulk buyer under the Distressed Condominium Relief Act from July 1, 2016 to July 1, 2018.

Senate Bill 706

Overview: Chapter 468 of the Florida Statutes regulates community association managers. The State Legislature (or a committee thereof) is directed by statute (F.S. 11.242) to periodically review laws to omit all statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority. The legislature made changes to Chapter 468 in accordance with its directive and the changes are technical rather than substantive.

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