



Florida Homeowners Association Legal Update

July 1, 2011

Table of Contents

Right to Speak at Board Meetings	3
Homeowner Access to Personnel Records, Personal Identifying Information; Directories	3
Suspension Rights & Fines	7
Eligibility to Run for Board	4
Demand for Rent from Tenant(s) of Delinquent Homeowners.....	6
Allocating the Cost of Bulk Communications Contracts	7
Cancellation and Enforcement of Bulk Contracts	x
Appendix 1	8

*The following is a summary of Florida House Bill 1195 which amended the Florida Statutes Chapter 720, Homeowners' Associations. All changes are effective as of **July 1, 2011.***

What's New in the Law Regulating Homeowner Associations?

Right to Speak at Board Meetings

Fla. Stat. §720.303(2)(b)

Members are now entitled to speak at all board meetings and may speak on any designated item.

Previously, members were only allowed to speak for at least three (3) minutes, and only on items placed on the agenda by petition of the voting interests.

Homeowner Access to Personnel Records; Personal Identifying Information; Directories

Fla. Stat. §720.303(5)(c)

Previously, the personnel records of association employees were restricted from disclosure.

The new law further excludes personnel records of **management company employees** from disclosure. Personnel records include disciplinary, payroll, health and insurance records **but not** (1) written employment agreements of either association or management company employees or (2) budget or financial records which indicate the compensation paid to an association employee.

Associations are also protected from liability if the protected personal identifying information* is included in an official record of the association and is voluntarily provided by an owner and not requested by the association. However, the amendment provides that an owner may consent in writing to the disclosure of protected information. **This entire provision was added.**

*Protected personal identifying information includes (1) Social Security numbers, (2) driver's license numbers, (3) credit card numbers, (4) e-mail addresses, (5) telephone numbers, (6) **fax numbers**, (7) emergency contact information, and (8) addresses of a unit owner other than to fulfill notice requirements, and is restricted from disclosure unless unit owners provide written consent. Manner of consent is not provided for but may take the form of provisions in future screening applications for new owners and annual election packages. Excluded from consent requirement is (9) person's name, (10) unit designation, (11) mailing address, (12) property address and (13) addresses of a unit owner that fulfill notice requirements. **Fax numbers were added to this provision.**

Therefore, association directories may include items (9) – (13) above without unit owner consent, but require written consent for any of the items (4) – (8).

Suspension Rights & Fines

Fla. Stat. §720.305

- **Suspension of Use Rights and Fines for Violation of Governing Documents**

Upon fourteen (14) days written notice and after a hearing, an association may:

- (1) suspend, for a reasonable period of time, the right of, or
- (2) fine

A unit owner, or a unit owner's tenant, guest, or invitee, to use the 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.

Fines may not to exceed \$100 per violation which can be imposed each day of a continuing violation, or \$1,000 in the aggregate, unless otherwise provided in the governing documents. A fine less than one thousand dollars (\$1,000), cannot become a lien against the parcel.

- **Suspension of Use Rights for Delinquency**

After obtaining approval at a properly noticed board meeting (no notice or hearing required), an association may suspend the right of a unit owner, or the unit's occupant, licensee, or invitee of a unit owner who is more than ninety (90) days delinquent in paying a monetary obligation due to the association, to use the common elements, common facilities, or any other association property until the monetary obligation is paid in full. Once a suspension of rights is approved, the member must be given notice of the suspension of their voting rights by either mail or hand delivery.

The association must still provide fourteen (14) days written notice and hold a hearing before it may impose a fine.

- **Suspension of Voting Rights for Delinquency**

After obtaining approval at a properly noticed board meeting (no notice or hearing required), an association may suspend the voting rights of a unit or member due to nonpayment of any monetary obligation due to the association which is more than ninety (90) days delinquent. The suspension of a voting right prevents that interest from being considered for any purpose, including a quorum, an election, or the votes required to approve an action. Once a suspension of rights is approved, the member must be given notice of the suspension of their voting rights by either mail or hand delivery.

The association must still provide fourteen (14) days written notice and hold a hearing before it may impose a fine.

The requirement that such authority be provided by the governing documents is deleted.

Eligibility to Run for Board

Fla. Stat. §720.306

- Two (2) restrictions on eligibility
 1. Any person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association for more than ninety (90) days is not eligible for board membership.
 2. A person who has been convicted of a felony in Florida or in any US District or Territorial Court, or has been convicted of any offense in another jurisdiction that would be considered a felony if committed in Florida, is not eligible for board membership unless the felon's civil rights have been restored for at least five (5) years as of the date on which such person seeks election to the board.

Any action that has been taken by a board with a member who is later discovered to have been ineligible for board membership as a result of the above restrictions will remain valid.

Demand for Rent from Tenant(s) of Delinquent Homeowners

Fla. Stat. §720.3085

- **Payments an Association May Collect**

The new law replaced the term “future monetary obligations” with the term “**subsequent rental payments.**” This clarifies that the tenants of delinquent owners must pay the entire amount of their rent to the association until the owner's past due monetary obligation is paid in full.

Previously, the law was subject to interpretation that the tenant only had to pay future monetary obligations of the owner, or the assessments going forward, and the association could not apply the rent to the owner's past due amounts.

- **Demand-for-Rent Letters**

The new law provides a form letter for demanding rent from a tenant, which must be substantially followed. [See Appendix 1 for Demand for Rent language.](#)

The tenant must continue to make rental payments until the association releases the tenant or the tenant discontinues their tenancy.

The landlord has no claim against the tenant for rental payments once the association has delivered a written demand-for-rent.

Associations retain the right to evict tenants who do not pay their rent. The new law clarifies that the association must issue a written demand-for-rent letter to the tenant before the association may begin the eviction process.

Eliminates the requirement that tenants must have acted in “good faith” to be immune from landlord and owner claims relating to rent paid to the association after receipt of a demand letter.

Language previously providing that tenants are not responsible for increases in the amount due unless the association provided ten (10) days written notice has been deleted. This language is unnecessary now that it has been clarified that tenants are obligated to pay the association the entire amount of and up to the monthly rent due under their lease until the owner’s monetary obligation to the association is fully paid.

Allocating the Cost of Bulk Communications Contracts

Fla. Stat. §720.309

If the governing documents provide that the cost of communications services, information services or internet services obtained pursuant to a bulk contract shall be deemed an operating expense of the association, then the costs shall be allocated in accordance with the operating expense allocation set forth in the governing documents.

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, notwithstanding the governing document provisions which set forth an allocation procedure other than an equal sharing of operating expenses (i.e. regardless if documents say otherwise).

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 a majority of the voting interests present at a regular or special meeting of the association in order to allocate the cost equally among all parcel owners.

Any contract entered into by the board must provide that a hearing-impaired or legally blind parcel owner who does not occupy the parcel with a non-hearing-impaired or sighted person, or a parcel owner who receives SSI or food stamps, may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and may not be required to pay any operating expense charge related to such service for those parcels.

If fewer than all parcel owners share the expenses of the services, the expense must be shared by all participating parcel owners.

Cancellation and Enforcement of Bulk Contracts

Fla. Stat. §720.309

Any communication services 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, whichever occurs first. 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 association may utilize its lien rights to enforce payment by the parcel owners receiving such services.

A resident of any parcel, whether a tenant or parcel owner, may not be denied access to available franchised, licensed, or certified cable or video service providers if the resident pays the provider directly for the services.

A resident or 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 similar 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. In effect, any owner may subscribe to communication services in addition to those provided by the association's bulk service contract, and the owner is still responsible to pay his share of the association's bulk service contract.

Appendix 1

DEMAND FOR RENT – FORM LETTER

Dear [Tenant]:

Pursuant to section 718.116(11), Florida Statutes, the association demands that you pay your rent directly to the condominium association and continue doing so until the association notifies you otherwise.

Payment due the condominium association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to [Full Address], payable to [Name].

Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to section 718.116(11), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord for all amounts timely paid to the association.