



Florida Condominium Legal Update

July 1, 2011

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*The following is a summary of Florida House Bill 1195 which amended the Florida Condominium Act, Florida Statutes Chapter 718. All changes are effective as of **July 1, 2011.***

What's New in the Law Regulating Condominiums?

Manual Fire Alarms

Fla. Stat. §633.0215

Any condominium building less than **four** stories and has an exterior corridor is exempt from laws requiring installation of manual fire alarm systems.

Previously, the law exempted only to one or two-story condominiums.

Unit Owner Access to Personal Information; Guidelines for Directories

Fla. Stat. §718.111(12)(a)(7) & (12)(c)(5)

Unit owner e-mail addresses and fax numbers are **not available** to other unit owners unless written consent to receive notice by electronic transmission is received or unit owners otherwise consent to such information's disclosure.

Previously, such information was available unless consent was revoked (i.e. the change was from an opt-out to opt-in system).

Associations are protected from liability if they **inadvertently** disclose an owner's e-mail address and fax number. Previous law used the term "erroneously."

Associations are also protected from liability if they **inadvertently** disclose an owner's protected personal identifying information* if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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).

Unit Owner Access to Personnel Records

Fla. Stat. §718.111(12)(c)(3)

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.**

Closed Board Meetings

Fla. Stat. §718.112(c)(3)

Previously, members of a condominium association could only be excluded from board or committee meetings when the board or committee was meeting with the association's attorney to receive legal advice relating to proposed or pending litigation.

Under the new law, members may also be excluded from meetings held for the **purpose of discussing personnel matters**, even if the association's attorney is not present. These meetings must still be properly noticed.

Elections and Director Eligibility; Term; Vacancies

Fla. Stat. §718.112(2)(d)

- **Director Eligibility**

Unit owners must be eligible to serve on the board of administration **at the time of the deadline for submitting a written notice of intent** to run for a board position.

Previously, the Division's interpretation was that as long as a candidate was eligible to serve by the time he was elected (at the election meeting), he was eligible to serve.

- **Director Term**

Unless the bylaws provide otherwise, board members' terms of office expire at each annual meeting, except in these cases:

- (1) **If board members are elected in staggered terms, the term does not expire until the next annual meeting, or**
- (2) **If all board members' terms expire at the next annual election and there are no eligible candidates running for election, then-existing board members retain their respective positions on the board. In this instance, board members do not need to comply with the new candidate filing requirements.**

A person can run for re-election upon expiration of his term, **unless prohibited by the bylaws.**

- **Vacancies**

When no election is required (when the number of board members whose terms expire at the annual meeting equals or exceeds the number of eligible candidates) the candidates become members of the board **effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies are 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.**

Board Member Certification

Fla. Stat. §718.112(2)(d)(4)(b)

Board members continue to have two (2) board member certification options:

- (1) Written Certification: To certify in writing to the association secretary that he has read the association's governing documents, will work to uphold such documents and policies, and will faithfully discharge his fiduciary responsibility to the association's members; or
- (2) Division-approved Educational Course Certification: To complete a Division-approved educational course and submit such educational certificate to the association within ninety (90) days of his election or appointment.

The law now allows newly elected or appointed board members to complete a Division approved educational course **up to one (1) year prior to** or 90 days after the date of such member's election or appointment. **If a board member serves on the board without interruption, he is not required to submit a new certificate.**

Hurricane Protection

Fla. Stat. §718.113(5)(a)

The new law adds **impact glass or other code-compliant windows** to items an association may install pursuant to a majority vote. No vote is required if the maintenance, repair and replacement of the hurricane shutters, impact glass or other code-compliant windows are the responsibility of the association pursuant to the declaration, except a **majority vote** is required if hurricane protection has been previously installed. Therefore, an association may now upgrade its hurricane protection upon approval of majority of voting interests.

Previously, if an association had shutters, the members could not vote to install impact glass as an upgrade.

Association Power to Enter into Agreements and Acquire Interests

Fla. Stat. §718.114

An association may enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities (such as country clubs, golf courses, marinas and other recreational facilities) **upon a vote of, or written consent by, a majority of voting interests** or as authorized by the declaration.

Previously, to allow such a material alteration, approval of seventy-five (75%) of the total voting interests was required.

Collecting Rent from Tenant(s) of Delinquent Owners

Fla. Stat. §718.116(11)

- **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 following changes reflect advice most attorneys were already giving association clients relating to demand-for-rent actions, and clarify the existing law is to be followed:

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 pay.

Suspension Rights & Fines

Fla. Stat. §718.303(3), (4), (5) & (6)

- **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.

- **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.

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.