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COMMITTED TO COMMUNITY

SENATE BILL 1196:

A Guidebook for Community Associations

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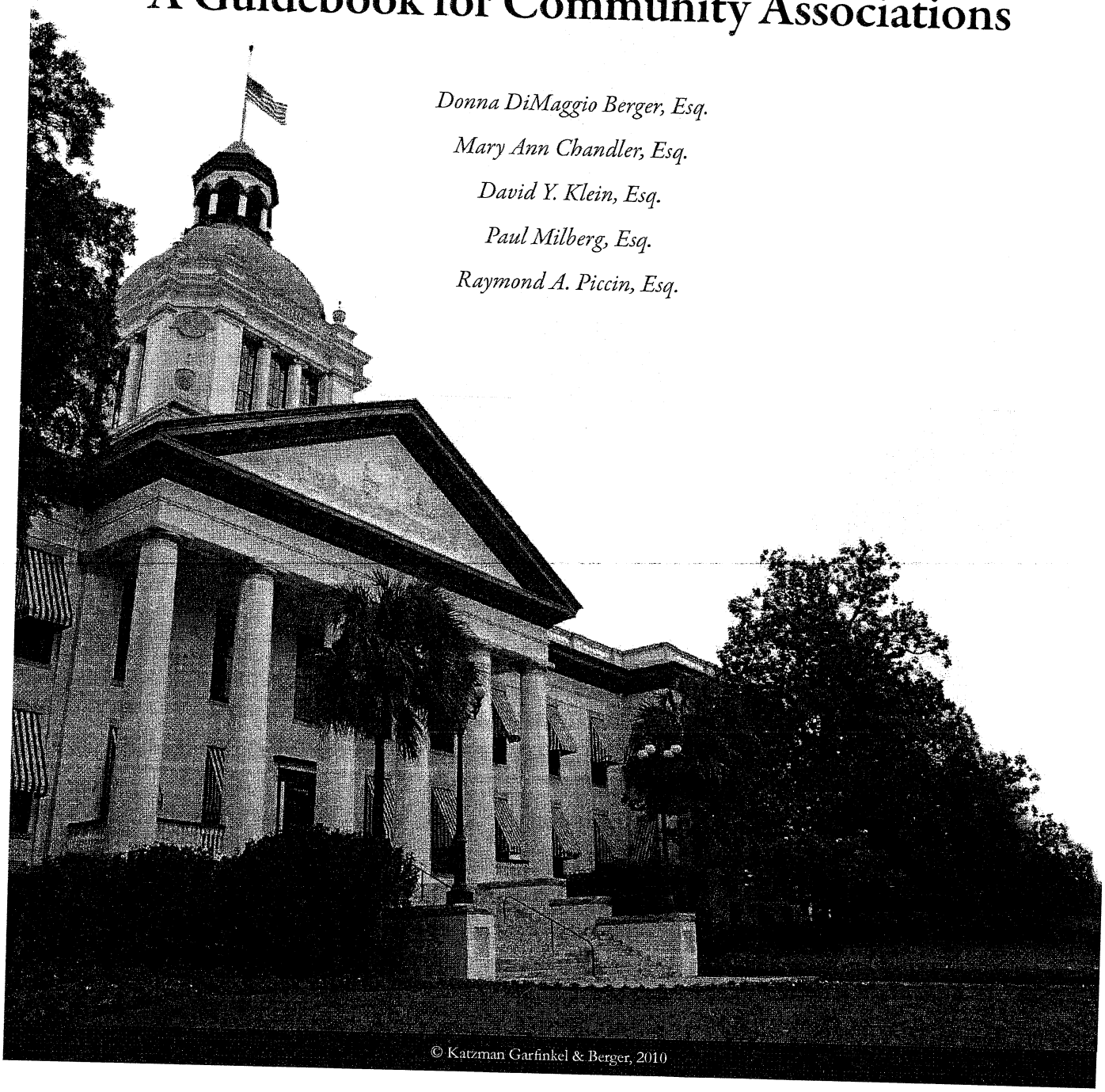

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SENATE BILL 1196:
A Guidebook for Community Associations

Board members, owners and community association managers throughout the State of Florida can breathe a collective sigh of relief as the 2010 Regular Session of the Florida Legislature has produced many long-awaited positive changes to our common interest ownership statutes. Perhaps the most substantial of these changes lies within Senate Bill 1196 ("SB 1196").

Just a year after the disappointing veto of last year's SB 714, the Legislature passed and the Governor signed into law SB 1196, a reform bill that is sure to have significant impact on many of the issues facing common interest ownership communities today.

The following is a guidebook prepared by our Law Firm which is intended to highlight the most important statutory changes contained in this 103-page bill. Under each indexed topic heading, readers will find the relevant statutory changes affecting condominiums, cooperatives and/or homeowners' associations. While we hope that this guidebook clarifies the issues for you, many of these changes must be further discussed and implemented with the aid of association counsel.

With an effective date of **July 1, 2010**, SB 1196 provides the following changes to your community:

- **Rental Restrictions:**

  Condominiums - §718.110(13):

  - Previously, any amendment that placed a restriction on an owner's rights relating to renting or leasing of units only applied to those unit owners who consented to the amendment and those owners who purchased their units after the effective date of the amendment. This legislation lessens the burden on associations by expanding the application of rental amendments. Beginning July 1, 2010, amendments that prohibit renting or leasing of units, change the permissible rental term, or specify or limit the number of times a unit may be rented within a certain period will only apply to unit owners who consent to the amendment and owners who acquire title to their units after the effective date of the amendment. Any other amendment relating to the rental or leasing of units will apply to all owners regardless of owner consent or date of title acquisition. Among other useful rental amendment language, this legislation allows for amendments which permit associations to collect delinquent assessments directly from tenants in the event of unit owner/landlord delinquency.

- **Amendments Regarding Common Elements:**

  Condominiums - §718.110(14):

  - Common elements that serve only one (1) unit or a group of units (other than those designed and intended for use by all unit owners) may be reclassified as limited common elements by a vote of the membership required to amend the declaration. Such reclassification will not be considered a material alteration or modification of the appurtenances to the units under §718.110(4).

- **Official Records:**

Condominiums - §718.111(12):

- Email addresses and telephone numbers for owners must be removed from association official records if the owner revokes consent to receive association notices in this manner.

- An association is not responsible for the use or misuse of information provided to an owner or authorized representative of an owner in compliance with a request for records inspection, unless the association discloses information that it has a duty not to disclose.

- Any person who knowingly or intentionally harms or destroys any accounting records required to be created or maintained in accordance with statute during the period that such records are required to be maintained, or who knowingly or intentionally fails to create or maintain such records with the intent to cause harm to the association or one or more of its members, is subject to civil penalty.

- Records not accessible to owner inspection are extended to include:

  - Personnel records of association employees, including but not limited to disciplinary, payroll, health and insurance records;
  - E-mail addresses, telephone numbers, emergency contact information, and addresses of unit owners other than those provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address and property address;
  - Electronic security measures used to safeguard data, including passwords;
  - The software and operating system used by the association allowing manipulation of data, even if the owner owns a copy of the same software. However, the data itself is considered part of the official records.

Homeowners' Associations - §720.303(5):

- Requests for inspection of Official Records must now be made by certified mail, return receipt requested.

- If an association does not have a photocopy machine available, or if the number of copies requested exceeds 25 pages, the association may have copies made by an outside vendor or by association management company personnel, and charges for the actual costs of copying, including reasonable costs of personnel fees and charges at an hourly rate for the vendor or employee time to cover administrative costs to the vendor or association, may be charged to the inspecting owner.

- Records not accessible to owner inspection are extended to include:

  - Personnel records of association employees, including but not limited to disciplinary, payroll, health and insurance records;

- **Official Records: (continued)**

  Homeowners' Associations - §720.303(5):

  - Records not accessible to owner inspection are extended to include:
    - Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, emergency contact information, and any addresses of parcel owners other than those provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address and property address;
    - Electronic security measures used to safeguard data, including passwords;
    - The software and operating system used by the association allowing manipulation of data, even if the owner owns a copy of the same software. However, the data itself is considered part of the official records.

- **Elections and Director Eligibility:**

  Condominiums - §718.112:

  - Where the number of board seats expiring is greater than the number of candidates running for those seats, each board member whose term has expired is eligible for reappointment without standing for reelection.
  - The restrictions upon co-owners serving on the board is relaxed to allow co-owners to serve where such co-owners own more than one (1) unit, or where there are not enough eligible candidates to fill the vacancies on the board.
  - The director delinquency restriction is expanded to include any person delinquent more than ninety (90) days in the payment of any monetary obligation to the association, including fines, fees, and regular or special assessments. Such persons are not eligible for board membership.
  - Removes the candidate certification requirement, and replaces it with a certification required from all directors within ninety (90) days after being elected. Each newly elected or appointed director must certify in writing within 90 days after being elected or appointed that he or she has read the association's governing documents (declaration, bylaws, articles of incorporation and current rules/policies), and that he or she will work to uphold these documents to the best of his or her ability, and faithfully discharge his or her fiduciary duty to the association and its members.
  - In lieu of written certification, a director may submit a certificate of satisfactory completion of the educational curriculum from a condominium education provider approved by the Division.
  - Directors who do not submit proper certification are suspended from board service until they comply with this requirement, and the board may appoint an interim replacement.
  - The Secretary must maintain the directors' certifications for five (5) years after their election.

- Elections and Director Eligibility: (continued)

Condominiums - §718.112:

- Directors charged by information or indictment with a felony theft or embezzlement offense involving association funds must be removed from office until the end of the period of the suspension or the end of the director's term, whichever occurs first.

Cooperatives - §719.106:

- Vacancies on the board occurring before the expiration of a term may be filled by the majority of the remaining board members, even if less than a quorum or if only one (1) board member remains. The board may also choose to hold an election to fill the vacant seat. If an election is held, the election must conform to the statutory election notice requirements.

- A director appointed or elected to fill a vacant seat shall serve the remainder of the unexpired board term.

Homeowners' Associations - §720.306:

- Candidates may nominate themselves from the floor of the meeting at which the election takes place, or in the case where association documents allow for voting by absentee ballot, candidates may nominate themselves in advance of the balloting.

- Vacancies on the board occurring before the expiration of a term may be filled by the majority of the remaining board members, even if less than a quorum or if only one (1) board member remains. The board may also choose to hold an election to fill the vacant seat. If an election is held, the election must conform to the notice requirements of the association's governing documents pertaining to elections.

- A director appointed or elected to fill a vacant seat shall serve the remainder of the unexpired board term.

- If the association's documents allow for voting by secret ballot for persons not in attendance at the election of directors, the ballot must be submitted to the association with an inner and outer envelope similar to that used in condominiums and cooperatives. The inner envelope must not bear any identifying marks, and the outer envelope must contain the name of the owner, the lot number or address, and the owner's signature. If the person submitting the ballot is eligible to vote and no other ballot has been submitted for that lot, then the inner envelope is removed and placed with the other ballots to be opened and counted. If more than one (1) ballot is submitted for the same lot, all ballots for the lot are disqualified and not counted. No ballots received after the closing of the balloting shall be considered or counted.

- **Collection of Assessments:**

  Lender Liability - Condominiums - §718.116:

  - The liability of a Lender (First Mortgagee) that acquires title to a unit through foreclosure or a deed in lieu of foreclosure has increased from six (6) months to twelve (12) months of unpaid assessments.

  - With the statutory change, Lender liability will be limited to the lesser amount of either twelve (12) months of unpaid assessments coming due prior to the issuance of the Certificate of Title or one (1%) percent of the mortgage debt.

  - This change will take effect on foreclosed units in which a Lender **acquires title after July 1, 2010.**

- **Collection of Rents:**

  Condominiums - §718.116:
  Cooperatives - §719.108:

  - If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay the future monetary obligations related to the condominium unit to the association, and the tenant must make such payment.

  - The demand is continuing in nature and, upon demand, the tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.

  - The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association.

  - The association shall, upon request, provide the tenant with written receipts for payments made.

  - A tenant who acts in good faith in response to a written demand from an association is immune from any claim from the unit owner.

  - If the tenant prepaid rent to the unit owner before receiving the demand from the association and provides written evidence of paying the rent to the association within fourteen (14) days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the association to be credited against the monetary obligations of the unit owner to the association.

- Collection of Rents: (continued)

Condominiums - §718.116:
Cooperatives - §719.108:

- The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least ten (10) days before the date the rent is due.
- The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord.
- The tenant's landlord shall provide the tenant a credit against rents due to the unit owner in the amount of monies paid to the association.
- The association may issue notices under the Florida Residential Landlord and Tenant Act, and may sue for eviction as if the association were a landlord if the tenant fails to pay a required payment to the association.
- However, the association is not otherwise considered a landlord under the Florida Residential Landlord and Tenant Act and specifically has no duties there under.
- The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.
- A court may supersede the effect of this subsection by appointing a receiver.

Homeowners' Associations - §720.3085:

- If the parcel is occupied by a tenant and the parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the future monetary obligations related to the parcel.
- The demand is continuing in nature, and upon demand, the tenant must continue to pay the monetary obligations until the association releases the tenant or the tenant discontinues tenancy in the parcel.
- A tenant who acts in good faith in response to a written demand from an association is immune from any claim from the parcel owner.
- If the tenant prepaid rent to the parcel owner before receiving the demand from the association and provides written evidence of paying the rent to the association within fourteen (14) days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the association to be credited against the monetary obligations of the parcel owner to the association.
- The association shall, upon request, provide the tenant with written receipts for payments made.

- Collection of Rents: (continued)

  Homeowners' Associations - §720.3085:

  - The association shall mail written notice to the parcel owner of the association's demand that the tenant pay monetary obligations to the association.
  - The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least ten (10) days before the date on which the rent is due.
  - The tenant shall be given a credit against rents due to the parcel owner in the amount of assessments paid to the association.
  - The association may issue notices under the Florida Residential Landlord and Tenant Act, and may sue for eviction there under as if the association were a landlord if the tenant fails to pay a monetary obligation.
  - However, the association is not otherwise considered a landlord under the Florida Residential Landlord and Tenant Act, and specifically has no duties there under.
  - The tenant does not, by virtue of payment of monetary obligations, have any of the rights of a parcel owner to vote in any election or to examine the books and records of the association.
  - A court may supersede the effect of this subsection by appointing a receiver.

- Compensation of Directors, Officers, and Committee Members Prohibited:

  Homeowners' Associations - §720.303:

  - A member of the association may not directly receive any salary or compensation from the association for the performance of duties as a director, officer, or committee member and may not in any other way benefit financially from service to the association.
  - However, such member is not precluded from:
    - Receiving compensation for the routine maintenance, repair, or replacement of community assets as long as such benefits accrue to all or a significant number of members as a result of actions lawfully taken by the board or a committee of which he or she is a member;
    - Reimbursement for out-of-pocket expenses incurred by such person on behalf of the association, subject to approval in accordance with procedures established by the association's governing documents or, in the absence of such procedures, in accordance with an approval process established by the board;

- **Compensation of Directors, Officers, and Committee Members Prohibited:** (continued)

  Homeowners' Associations - §720.303:

  - Any recovery of insurance proceeds derived from a policy of insurance maintained by the association for the benefit of its members;
  - Any fee or compensation authorized in the governing documents;
  - Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by proxy at a meeting of the members;
  - A developer or its representative from serving as a director, officer, or committee member of the association and benefitting financially from service to the association.

- **Liens:**

  Cooperatives - §719.108:

  - The prior statutory language provided that a lien will secure unpaid rents and assessments, interest, and, if authorized by cooperative documents, reasonable attorney fees. The new Statute provides that if allowed by the cooperative documents, the lien will also secure administrative late fees and any reasonable costs incurred in the association's collection services against the parcel owner.
  - The new Statute has a slight change in the required delivery method of the thirty (30) day notice of intent to lien the parcel. It used to provide that prior to placing a lien on a unit, the association was required to give 30 days' notice of intent to lien by certified mail or personal service. The Statute now provides that the 30 day notice of intent to lien must be ***sent by first class mail to the unit address.*** In addition, the notice must be sent ***by certified mail, return receipt requested to the owner's address as it appears on the Association's records.*** If the address on record is not within the United States, the notice must be sent by first class mail to the unit owner's most recent address.
  - Previously the 30 day notice of intent to lien ran from the time the notice was deemed served either by personal service or certified mail. With the statutory change, it provides that the notice is deemed ***delivered upon mailing.***

- **Budgets and Financial Reporting:**

  Condominiums - §718.111(13):

  - The Division of Florida Condominiums, Timeshares, and Mobile Homes shall adopt revised rules setting forth uniform accounting principles and standards to be used by all associations and shall adopt rules addressing the financial reporting requirements for multi-condominium associations to include the following:

- Budgets and Financial Reporting: (continued)

Condominiums - §718.111(13):

- The revised rules must include standards for presenting a summary of association reserves including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method.

- This disclosure is not applicable to reserves funded via the pooling method.

- A condominium association that operates fewer than seventy-five (75) units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements.

Homeowners' Associations - §720.303:

- If reserve accounts have been established, the funding of such reserves is limited to the extent that the governing documents limit increases in assessments, including reserves.

- Once established, reserve accounts may be terminated upon approval of a majority of the total voting interests of the association.

- Upon such approval, the terminating reserve account shall be removed from the budget.

- If the budget of the association does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year must contain the following statement in conspicuous type:

  - THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

- If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts were not created by the developer, or by vote of the membership, each financial report for the preceding fiscal year required must also contain the following statement in conspicuous type:

- Budgets and Financial Reporting: (continued)

  Homeowners' Associations - §720.303:

  - THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

  - The projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the allowance for doubtful accounts.

- Fining:

  Condominiums - §718.303 (3):

  - Previously associations were permitted to levy fines only where their declarations or by-laws expressly authorized fining. The statutory change now authorizes all condominiums to levy fines pursuant to statute, regardless of whether fining authority is included in the association's declaration or by-laws.

  - The basis for levying a fine remains limited to failures to comply with provisions in an association's governing documents.

  - The Condominium Act previously provided that fines could be levied "against a unit." The new amendment expands the scope of fining to permit fines to be levied against specific individuals who fail to comply with provisions in the governing documents - including owners, invitees, licensees and occupants. This means that associations can now fine any individual that is authorized to be on the property and who violates a covenant, restriction or rule and regulation of the association. The amended language fails to include the word "tenant" – but there is no reason to believe this was meant to exclude tenants who should fall under the umbrella of the word "occupants" and therefore similarly subject to fining.

  - Fines still may not exceed $100 per violation and $1000 in the aggregate, and the procedure for levying fines still requires a hearing upon at least fourteen (14) days' written notice, first be held before a committee of non-board member unit owners. The new amendment excludes fines relating to failure to pay amounts due to the association from notice and hearing requirements (and instead requires the fines to be imposed at a properly noticed board meeting with post-meeting notification of the fine sent to the owner/occupant/invitee by mail or hand-delivery).

- **Fining:** (continued)

Condominiums - §718.303 (3):

- The amendment expands fining authority to apply to unoccupied units, where previously it did not.
- The amendment does not authorize lien and foreclosure as a method of collecting fines. Continuing inability to collect fines through lien and foreclosure leaves this remedy difficult to practically enforce.

Homeowners' Associations - §720.305 (2):

- The HOA Statute previously only permitted fines where an association's governing documents expressly authorized fining. The new amendment now authorizes all HOAs to levy fines pursuant to statute, regardless of whether fining is authorized in the governing documents.
- Homeowners' associations are now authorized to levy fines where a member is more than ninety (90) days delinquent in the payment of a monetary obligation owed to the Association.
- The amount of a fine remains limited to $100 per day, up to an aggregate of $1000 for a continuing violation. Associations are still permitted to impose fines in excess of the $1000 limit, if authorized by the governing documents.
- The HOA Statute previously expressly prohibited lien and foreclosure as a method of collecting fines. However, the amendment now authorizes associations to lien for fines that are not "less than $1000."
- The HOA Statute continues to permit fining of a member's tenants, guests and invitees.
- Fines still require at least fourteen (14) days' notice to the person against whom the fine is sought to be levied and a hearing before a committee of at least three (3) owners who are not board members, Association employees or relatives of same (the committee must approve the fine by a majority vote).
- The amendment requires that if a fine is imposed, the association must provide written notice by mail or hand-delivery to the owner and tenant/occupant (if applicable).
- The HOA Statute continues to provide that the prevailing party in any litigation to recover a fine is entitled to reimbursement of its reasonable attorneys fees.

- Suspension of Use Rights:

Condominiums - §718.303:

- Condominium associations may suspend the use rights of unit owner in the limited circumstances where an owner is delinquent for more than ninety (90) days in the payment of any "monetary obligation" to the association.
- The use rights that can be suspended include the right to use the common elements, the common facilities, and any other association property.
- Voting rights may also be suspended due to non-payment of a monetary obligation to the association in excess of ninety (90) days. While an owner's voting rights are suspended, he or she is still counted toward the quorum requirement.
- Use rights cannot be suspended regarding limited common elements, common elements needed to access the unit, parking spaces, elevators, or utility services provided to the unit. The statute is not clear as to whether cable and other bundled services are considered "utilities," or whether such services would be subject to suspension.
- An association's right to suspend use rights extends to an owner's invitees, licensees, and unit occupants.
- The notice and hearing requirements pertaining to the traditional levying of fines do not apply to the suspension of use rights associated with the failure to pay a monetary obligation to the association.
- Instead, the suspension of use rights relating to monetary delinquency may be imposed at a properly noticed board meeting with post-meeting notification of the fine or suspension to the owner/occupant/invitee by mail or hand-delivery.
- The suspension ends upon full payment of all monetary obligations due to the association.

Homeowners' Associations - §720.305 (2):

- Homeowners' associations are now authorized to suspend use rights regardless of whether the governing documents authorize the board to impose such suspensions.
- However, such suspension of use rights is limited to circumstances in which a member is more than ninety (90) days delinquent in the payment of any monetary obligation due the association.
- The use rights that can be suspended include the right to use of the common areas or facilities.
- However, associations may not suspend any use rights relating to that portion of the common areas that must be used to provide access to a parcel including the right to park, or for the provision of utility services to such parcel.
- The suspension of use rights may last until such monetary obligation is paid by the parcel owner.

- Suspension of Use Rights: (continued)

  Homeowners' Associations - §720.305 (2):

  - The right to suspend use rights extends to the member's tenants, guests and invitees.
  - Suspension of use rights still requires at least fourteen (14) days' notice to the person whose use rights are sought to be suspended, and a hearing before a committee of at least three (3) members who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director or employee of the association (the committee must approve the suspension by a majority vote). With the deletion of the previous §720.305 (2)(b), it appears that a hearing upon at least 14 days notice is now required for suspensions of use rights for the non-payment of monetary obligations to the association.
  - The amendment requires that if a suspension is imposed, the association must provide written notice by mail or hand-delivery to the owner, tenant, or occupant (where applicable).

- Flagpoles:

  Homeowners' Associations - §720.304 (2)(b):

  - A parcel owner's right to erect a freestanding flagpole must be exercised in accordance with the association's setback and locational criteria (as provided in the governing documents), as well as, any applicable building codes, zoning setbacks, noise or lighting ordinances of all applicable governmental entities.

- Casualty (Property) Insurance Requirements:

  Condominiums - §718.111(11):

  - When applying for or renewing its casualty (property) insurance policy, a condominium association's board of directors must still determine the amount of the policy deductible.
  - However, the board is no longer required to include in the Notice of Board Meeting to decide upon such deductible: the proposed deductible amount; the amount of available funds to meet such deductible; nor the estimate of potential assessment against each unit to meet such deductible.
  - Unit owners are still responsible for insuring their personal property within the unit, their limited common elements, and their floor, walls, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets, countertops, and window treatments including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit.

- Casualty (Property) Insurance Requirements: (continued)

  Condominiums - §718.111(11):

  - Condominium associations are no longer required to request that each unit owner provide evidence of such unit owner's currently effective casualty (property) insurance and liability policy.
  - Condominium associations are no longer authorized to force place the purchase a policy of such insurance on behalf of such unit owner.
  - Unit owner property insurance policies are no longer required to name the association as an additional named insured and loss payee. As such, the unit owners need not obtain the association's endorsement for payments made by the unit owner's insurance carrier.

- Bulk Cable, Telephone, and Internet Contracts:

  Condominiums - §718.115:

  - Expands the definition of "common expenses" which the association's board of directors may contract for on a bulk rate basis *without unit owner approval* beyond mere cable television and master antenna services.
  - Condominium associations are now free (without unit owner approval) to contract for other "*Communication Services*" which include high speed internet and telephone services.
  - However, such bulk rate contracts must be for a term of at least two (2) years.

- Fire Prevention Code (Fire Alarm System):

  Condominiums - §633.0215:
  Cooperatives - §633.0215:

  - A condominium or cooperative that is less than four (4) stories in height, and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system under section 9.6 of the Life Safety Code adopted under the Florida Fire Prevention Code.

- **Fire Prevention Code (Sprinkler Retrofit):**

  Condominiums - §718.112:
  Cooperatives - §719.1055:

  - A condominium or cooperative association may now vote to forego the retrofitting of the common areas in a high-rise building with a fire sprinkler system.
  - A high-rise building is defined as a building that is greater than seventy five (75) feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.
  - The term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway.
  - The vote to forego retrofitting is effective upon the recording of a certificate attesting to such vote in the public records of the county where the property is located.
  - A vote to forego retrofitting may be reversed in favor of requiring such retrofitting by a vote of the unit owners at a special meeting called by a petition of at least ten percent (10%) of all voting interests for such purpose. However, such vote to require such retrofitting may only be conducted once every three (3) years.
  - In the absence of such unit owner vote to forego retrofitting, the local authority may not require the completion of retrofitting with a fire sprinkler system before the end of 2019.
  - If the association is not in compliance with the requirements for a fire sprinkler system, and has not voted to forego retrofitting of such a system, the association must initiate an application for a building permit for the required installation with the local government having jurisdiction no later than December 31, 2016, demonstrating that the association will become compliant by December 31, 2019.

- **Elevator Retrofit (ASME A17.1 and A17.3):**

  Condominiums – §399.02:
  Cooperatives – §399.02:

  - Creates a moratorium on the enforcement of amendments to the Safety Code for Existing Elevators and Escalators (ASME A17.1 and A17.3) requiring modifications to elevators in condominiums and cooperatives.
  - Such retrofitting requirements may not be enforced for five (5) years starting July 1, 2010, if such building was properly issued a certificate of occupancy by the local building authority as of July 1, 2008. However, such modifications will be required if such elevators are replaced or require major modifications before the expiration of the five (5) years.
  - New buildings which were issued a certificate of occupancy by the local building authority after July 1, 2008, are still required to make such modifications assuming the new construction did not already incorporate such modifications.

- **Elevator Retrofit (Alternate Power Sources):**

  Condominiums - §718.112:

  - A condominium association may not be obligated to, and may forego the retrofitting of any improvements required by Florida Statutes Section 553.509(2) (alternate power sources for elevators) upon an affirmative vote of a majority of the voting interests in the affected condominium.

- **Distressed Condominium Relief Act: Creation of Part VII of §718**

  - The Legislature has acknowledged the massive downturn in the condominium market, and that numerous condominium projects have failed, or are in the process of failing.

  - As such, the Legislature has created the "*Distressed Condominium Relief Act*", and has declared it is the public policy of the State of Florida to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

  - Under the Act the term "*bulk assignee*" means a person who:

    - Acquires more than seven (7) condominium parcels as set forth in §718.707; and

    - Receives an assignment of some or all of the rights of the developer by recorded written instrument.

  - A *bulk assignee* assumes all duties and responsibilities of the developer except:

    - Certain warranties of the developer under §718.203(1) or §718.618 (with certain exceptions for design, construction, development, or repair work performed by or on behalf of such *bulk assignee*);

    - Certain obligations to fund converter reserves;

    - The requirement to provide the association with a cumulative audit of the association's finances from the date of formation of the condominium association (the *bulk assignee* must provide an audit for the period during which the *bulk assignee* elects a majority of the members of the board of administration);

    - Any liability arising out of actions taken by the board of administration or the developer-appointed directors before the *bulk assignee* elects a majority of the members of the board of administration; and

    - Any liability for or arising out of the developer's failure to fund previous assessments or to resolve budgetary deficits in relation to a developer's right to guarantee assessments (with certain exceptions).

- **Distressed Condominium Relief Act: Creation of Part VII of §718 (continued)**

  - A *bulk assignee* may elect to assume some or all of the obligations of the developer.

  - A *bulk assignee* receiving the assignment of the rights of the developer to guarantee the level of assessments and fund budgetary deficits assumes all obligations of the developer with respect to such guarantee and funding of reserves.

  - A *bulk assignee* not receiving such assignment does not assume such liability with respect to such guarantee, but is responsible for payment of assessments in the same manner as all other owners of condominium parcels.

  - A *bulk assignee*, while it is in control of the board of administration of the association, may not authorize

    - The waiver of reserves or the reduction of funding of the reserves unless approved by a majority of the voting interests not controlled by the developer, *bulk assignee*, and *bulk buyer*; or

    - The use of reserve expenditures for other purposes unless approved by a majority of the voting interests not controlled by the developer, *bulk assignee*, and *bulk buyer*.

  - Unless control of the association has already been relinquished, the *bulk assignee* must relinquish control of the association as if the *bulk assignee* were the developer.

  - When a *bulk assignee* relinquishes control of the board of administration, the *bulk assignee* must deliver all turnover items required to be turned over by the developer.

  - However, the *bulk assignee* is not required to deliver items and documents not in the possession of the *bulk assignee* during the time period which the *bulk assignee* was entitled to elect at least a majority of the members of the board of administration.

  - In conjunction with acquisition of condominium parcels, a *bulk assignee* shall undertake a good faith effort to obtain the documents and materials that must be provided to the association upon turnover by the developer.

  - If the *bulk assignee* is not able to obtain all of such documents and materials, the *bulk assignee* must certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the *bulk assignee*. Delivery of the certificate relieves the *bulk assignee* of responsibility for delivering the documents and materials referenced in the certificate as otherwise required.

- **Distressed Condominium Relief Act: Creation of Part VII of §718 (continued)**

  - A "*bulk buyer*" means a person who:

    - Acquires more than seven (7) condominium parcels;

    - Who does not receive an assignment of developer rights other than the following:

      - The right to conduct sales, leasing, and marketing activities within the condominium;

      - The right to be exempt from the payment of working capital contributions to the condominium association arising out of the *bulk buyer's* acquisition of a bulk number of units; and

      - The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the *bulk buyer* to a third party purchaser concerning one or more units.

  - A *bulk buyer* does not assume the obligations of the developer with respect to the guarantee of the level of assessments, but is responsible for payment of assessments in the same manner as all other owners of condominium parcels.

  - A person may not be classified as a *bulk assignee* or *bulk buyer* unless the condominium parcels were acquired before July 1, 2012. The date of such acquisition shall be determined by the date of recording of a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuance of a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

  - An assignment of developer rights to a *bulk assignee* or *bulk buyer* does not release the original developer from liabilities under the association's declaration or Florida law.

  - A *bulk assignee* or a *bulk buyer* must comply with all the requirements of Florida Statutes §718.302 regarding any contracts entered into by the association during the period the *bulk assignee* or *bulk buyer* maintains control of the board of administration.

  - Unit owners shall be afforded all the protections contained in Florida Statutes §718.302 regarding the cancellation of agreements entered into by the association before unit owners other than the developer, *bulk assignee*, or *bulk buyer* elected a majority of the board of administration.

  - Failure of a *bulk assignee* or *bulk buyer* to substantially comply with all the requirements of the Act results in the loss of any and all protections or exemptions provided under the Act.

  - The Division of Florida Condominiums, Timeshares, and Mobile Homes is empowered to enforce the provisions of the *Distressed Condominium Relief Act.*

- **Recreational Leaseholds and Club Memberships:**

Homeowners' Associations - §720.31:

- An association may enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas, submerged land, parking areas, conservation areas and other recreational facilities.

- An association may enter into such agreements regardless of whether the lands or facilities are contiguous to the lands of the community or whether such lands or facilities are intended to provide enjoyment, recreation or other use or benefit to the owners.

- All leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration.

- Subsequent to recording the declaration, agreements acquiring leaseholds, memberships, or other possessory or use interests not entered into within twelve (12) months after recording the declaration may be entered into only if authorized by the declaration as a material alteration or substantial addition to the common areas or association property.

- If the declaration is silent, any such transaction requires the approval of seventy-five (75%) of the total voting interests of the association.

- The declaration may provide that the rental, membership fees, operations, replacements, or other expenses are common expenses; impose covenants and restrictions concerning their use; and contain other provisions not inconsistent with this subsection.

- An association exercising its rights under this subsection may join with other associations that are part of the same development or with a master association responsible for the enforcement of shared covenants, conditions, and restrictions in carrying out the intent of this subsection.