



June 30, 2010

RE: 2010 Legislative Changes to Homeowners' Associations Statutes

Dear Board Member:

This letter is written for purposes of providing your condominium association with a summary of the most recent and relevant changes (SB 1196) effectuated by the Legislature and Governor of the State of Florida to chapter 720, Florida Statutes, and other Florida Statutes which affects condominiums.

With an effective date of July 1, 2010, SB 1196 provides the following changes to your community in these specific topics:

1) Official Records:

- a) Requests for inspection of Official Records must now be made by certified mail, return receipt requested.
- b) 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.
- c) Records not accessible to owner inspection are extended to include:
 - i) Personnel records of association employees, including but not limited to disciplinary, payroll, health and insurance records;
 - ii) 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;
 - iii) Electronic security measures used to safeguard data, including passwords;
 - iv) 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.

2) Elections and Directors Eligibility:

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



3) Collection of Rents:

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) The association shall, upon request, provide the tenant with written receipts for payments made.
- f) The association shall mail written notice to the parcel owner of the association's demand that the tenant pay monetary obligations to the association.
- g) 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.
- h) The tenant shall be given a credit against rents due to the parcel owner in the amount of assessments paid to the association.
- i) 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.
- j) However, the association is not otherwise considered a Landlord under the Florida Residential Landlord and Tenant Act, and specifically has no duties there under.
- k) 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.
- l) A court may supersede the effect of this subsection by appointing a receiver.

4) Compensation of Directors, Officers, and Committee Members Prohibited:

- a) 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.
- b) However, such member is not precluded from:
 - c) 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;
 - d) 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;
 - e) Any recovery of insurance proceeds derived from a policy of insurance maintained by the association for the benefit of its members;
 - f) Any fee or compensation authorized in the governing documents;
 - g) 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;
 - h) 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.

5) Budget and Financial Reporting:

- a) 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.



- b) Once established, reserve accounts may be terminated upon approval of a majority of the total voting interests of the association.
 - c) Upon such approval, the terminating reserve account shall be removed from the budget.
 - d) 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:
 - i) 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.
 - e) 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.
 - i) 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.
 - f) The projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the allowance for doubtful accounts.
- 6) **Finning:**
- a) 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.
 - b) 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.
 - c) 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.
 - d) 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".
 - e) The HOA Statute continues to permit fining of a member's tenants, guests and invitees.
 - f) 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).
 - g) 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).
 - h) 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.
- 7) **Suspension of Use Rights:**
- a) Homeowners' associations are now authorized to suspend use rights regardless of whether the governing documents authorize the board to impose such suspensions.
 - b) 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,



- c) The use rights that can be suspended include the right to use of the common areas or facilities.
 - d) 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.
 - e) The suspension of use rights may last until such monetary obligation is paid by the parcel owner.
 - f) The right to suspend use rights extends to the member's tenants, guests and invitees.
 - g) 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.
 - h) 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).
- 8) **Flagpoles:**
- a) A parcel owner's right to erect a freestanding flagpole must be exercised in accordance with the associations 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.
- 9) **Recreational Leaseholds and Club Memberships:**
- a) 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.
 - b) 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.
 - c) 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.
 - d) 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.
 - e) If the declaration is silent, any such transaction requires the approval of seventy-five (75%) of the total voting interests of the association.
 - f) 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.
 - g) 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.

If you have any questions in regard to any or all of the foregoing matters or would like additional information with respect thereto, please do not hesitate to call and we will be ready to assist you.

Best regards,

Noel Duque