

NEW CHANGES IN FLORIDA'S CONDOMINIUM LAWS WHICH TAKE EFFECT OCTOBER 1, 2008

The table below table provides an overview of the changes to Chapter 718 which are effective beginning October 1, 2008 and compares them to the prior law. These changes were enacted in House Bill 995, now Chapter 2008-28 Laws of Florida. The complete text of the new law can be viewed on our home page. Just click the link identified as Chapter 2008-28, Laws of Florida.

Section	Post HB 995	Pre HB 995
Section 6	A director who abstains from voting on any action taken on any corporate matter is presumed to have taken no position regarding the action.	Provided for a director to abstain from voting because of an asserted conflict of interest, the new provision defines the action of abstaining from voting as having taken no position
Section 6	Officers, agents, and members of the board of directors of a condominium association are required to adhere to a good faith and reasonably prudent person standard and provides for monetary damages and criminal penalties for breach of this standard.	No provision
Section 6	Persons could be fined up to \$5,000 for intentionally or knowingly defacing a condominium accounting record or failing to create or maintain such a record.	No provision
Section 6	Amends the maintenance period of the association for contracts and bids for work performed to a period of seven (7) years; includes a copy of the inspection report in accounting records	Required the association to maintain the records for 1 year the inspection report was not previously included in accounting records
Section 6	Requires the official records to be maintained in Florida for at least seven (7) years within 45 miles or within the county of the condominium project, except for timeshare condominiums; providing the records electronically or via the internet (with the ability to print upon request) is an allowable alternative	No prior provisions for the maintenance of records in-state, the location or the option to provide the records electronically
Section 6	Includes social security, driver's license, and credit card numbers, and other personal identifying information, on the list of items that is not be accessible to unit owners	No provision
Section 6	Requires FCTMH to adopt rules related the disclosure and accounting of condominium reserve accounts.	No provision
Section 6	Associations may approve to opt to prepare a report of cash receipts and expenditures and/or a compiled financial statement and/or a reviewed financial statement in lieu of an audited financial statement, effective for the following fiscal year; audits and reviews done prior to turnover of control of the association shall be paid for by the developer; an association may not waive the financial reporting requirements for more than three (3) consecutive years	No provision

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Section 7	No voting interest or consent right allocated to a unit owned by the association shall be considered for any purpose, whether for quorum, an election or otherwise	No provision
Section 7	The annual meeting of unit owners must be held within 45 miles of the condominium property.	No provision
Section 7	Provides qualifications for membership on the association board of directors, additionally precludes persons suspended or removed by the Division and persons with delinquent fees or assessments. Adds 5 year period after restoration of civil rights before being eligible	Additional provisions; previously only disqualifier for serving was a felony conviction
Section 7	The terms of all board members shall expire at the annual meeting, these members may stand for reelection unless precluded by the association bylaws	The terms expired upon the election of their successors at the annual meeting
Section 7	In the event that the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms.	No provision
Section 7	If no person is interested in or demonstrates an intention to run for the position of a board member whose term has expired according to the provisions of this subparagraph, such board member whose term has expired shall be automatically reappointed to the board of administration and need not stand for reelection.	No provision
Section 7	In a condominium association of more than 10 units, co owners of a unit may not serve as members of the board of directors at the same time.	No provision
Section 7	Candidates for a seat on the association board of directors would have to certify in writing that, to the best of their ability, they have read and understand their association governing documents, the condominium act, and related rules.	No provision
Section 7	Provides for unit owners, representing 20% of the voting interest, to petition the association board to address an item of business at the next regular or special meeting of the board	No provision
Section 7	Establishes a certification form, to be provided with the election notice to unit owner entitled to vote, for candidates for condominium association boards attesting that the candidate has read and understands, to the best of his/her ability, the governing documents of the association and the provisions of Chapter 718 and any applicable rules	No provision
Section 7	Establishes specific wording and distinct type for proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended	No provision

Section	Post HB 995	Pre HB 995
Section 7	A member of the board of directors or an officer of a condominium association is considered to have abandoned their office, creating a vacancy, if they are 90 days or greater in paying their regular assessments. Officers and directors who are charged with a felony theft or embezzlement offense shall be removed from office and cannot be appointed or elected as director or officer. Should the charges be resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of the term of office.	No provision
Section 8	Revises procedures for appointing a receiver via unit owner petition, requires prior notice and delivery to every unit owner of the association by certified mail or personal delivery	Previously, a unit owner was required to notify the association at least 30 days prior by mail and post in a conspicuous place on the condominium property a notice of intent to petition for receivership
Section 9	Unit owners are allowed to display religious decorations not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep	No provision; previously controlled by individual association documents
Section 9	Condominiums greater than 3 stories in height must be inspected by an architect or engineer every 5 years.	No provision
Section 9 – 10	Clarifies hurricane shutter specifications related to use and installation, responsibility for maintenance, repair and replacement dictated by association documents	Previously, the association was responsible for the maintenance, repair or replacement of hurricane shutters both on the common elements, limited common elements or units
Section 11 & 16	If a receiver is appointed, the court shall direct the receiver to provide to all unit owners written notice of her or her appointment as receiver by mail (at the address provided by the county property appraiser) or delivered within 10 days after appointment	No provision
Section 12	Associations that intend to place a lien against a condominium unit must first provide a notice of intent, by certified mail, return receipt requested and by first class US mail to the owner at the last know address. If outside the US, the notice must be sent by first class US mail to the unit and to the last know address with international postage or served on the unit owner.	No provision

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Section 13	Establishes the public policy of the State of Florida that governmental entities, business organizations, and individuals not engage in strategic lawsuits against public participation (SLAPP suits); prohibits associations from using association funds in prosecuting a SLAPP suit against a condominium unit owner.	No provision
Section 14	Removes the Legislative finding regarding condominium and other disputes	Established Legislative finding that the courts are becoming overcrowded with condominium and other disputes
Section 15	Grants certain emergency powers to a condominiums board of directors in the presence of an emergency declared by the Governor to the extent allowed by law and unless specifically prohibited by the condominium declaration, articles, or bylaws	No provision
Section 17	Requires the developer to provide an architect or engineer's turnover inspection report stating required maintenance, useful life & replacement costs of various common elements.	No provision
Section 18	Requires a maintenance or management service contract with an association to disclose any financial or ownership interest a board member or any party providing maintenance or management services to the association holds with the contracting party to be valid and enforceable	No provision
Section 19	Reduces the size of an association that may opt out of contract bid requirements to 10 units.	Previous opt out threshold of a contract bid requirement was 100 units
Section 19	Deletes the exemption from competitive bid requirements for contracts executed before January 1, 1992, local government franchise agreements and for condominiums operating under competitive bidding provisions in their bylaws in lieu of the requirements in 718.3026, Florida Statutes	Provided various exemptions for competitive bidding
Section 19	Establishes disclosure requirements and a two-thirds affirmative vote regarding contracts or transactions between an association and one or more of its directors or any corporation, firm, association or entity of financial interest to one or more board members	No provision
Section 20	Defines the membership of the committee of unit owners that conduct the hearing to determine whether a unit owner is fined for violation of association rules or bylaws to exclude board members or persons residing in a board member's household.	No provision
Section 21	After turnover from the developer to the unit owners, the division's jurisdiction to investigate condominium complaints is limited to elections, records access, and financial issues.	Previously, the Division's jurisdiction pre and post turnover was the same

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Section 21	Directs the Division to bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief or any other available remedy and may also temporarily revoke its acceptance of the developer filing until payment of restitution is made if the developer fails to pay restitution and interest after issuance of a final order and conclusion of any appeal	No provision
Section 21	Expands the authority of the Division to remove a person as an officer or from the board of administration and prohibit them from serving as an officer or board member for a period of time	No provision
Section 21	Penalties against associations that fail to provide records access to unit owners are strengthened; grants subpoena powers to the Division; provides for records to be provided electronically	Previously, associations not providing records access as required by law were found to be in violation and could be fined
Section 21	Directs the Division to establish procedures to provide notice to the developer, when the developer controls the association, when considering issuing a declaratory statement	Previously, notice was just provided to the association
Section 21	Grants discretion to the Division to develop an educational program; considers web-based electronic media, living training and seminars throughout the State.	The Division has an existing mandate to provide training
Section 23	Renames the present Condominium Advisory Council and replaces it with a Community Association Living Study Council which would meet every five years and make recommendations to the Legislature, based on public input, regarding community association living laws.	Previously, the Condominium Advisory Council would meet once a month
Section 24	Establishes a governance form to be provided by the Division including various topics related to condominium education, rights and responsibilities that a seller must provide, at the seller's expense, to a potential purchaser; identifies specific language noting that in the event of a conflict, the provisions of Chapter 718, FS, Division rules, and association documents prevail.	No provision