SUMMARY OF THE 2010 LEGISLATIVE SESSION

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The 2010 Legislative Session proved very eventful as there were a number of bills that passed which will significantly impact community associations. The most significant bill, SB 1196, provides needed revisions to the law, including additional remedies to condominium associations, homeowners associations and cooperatives in collecting delinquent accounts. CALL assisted in drafting portions of SB 1196 and our CALL team spent much of the Legislative Session in Tallahassee pushing the bill through each committee stop and suggesting positive amendments to make the bill better. We are also especially proud and grateful to the thousands of CALL members who contacted their elected officials to express their support for the bill.

This article will provide an overview of the major legislation adopted in 2010 that will impact Florida's community associations.

SB 1196—RELATING TO COMMUNITY ASSOCIATIONS

Effective Date: July 1, 2010

***Note**: For ease of review, this section is divided into condominium association impacts, cooperative association impacts, and homeowners' association impacts. There is also a section describing the changes made to the not-for-profit corporations act, which will impact all types of community associations. In some of the sections, we have provided additional analysis that will assist you in applying these new laws to your association's operations.*

CONDOMINIUM ASSOCIATION IMPACTS

Condominium Collections and Foreclosures--Statutory Cap

- Amends §718.116(1) and increases the "statutory cap" that a foreclosing first mortgagee must pay from the lesser of six months unpaid common expenses and regular periodic assessments or 1% of the original mortgage debt to the lesser of twelve months unpaid common expenses and regular periodic assessments or 1% of the original mortgage debt.

Example: Let us assume that Mr. Smith previously took out a $250,000.00 first mortgage to buy a $300,000.00 condominium unit. The unit is now worth $200,000.00, and Mr. Smith has stopped paying both his mortgage and condominium assessments. Let us further assume that the association's assessments are $300.00 per month and that Mr. Smith hasn't paid the assessments in over a year. When the lender forecloses on its first mortgage, the lender would be liable to the association for $1,800.00, six months of unpaid assessments.

SB 1196 amends the law by increasing the lender's liability to the lesser of twelve months of unpaid assessments or 1% of the original mortgage debt. Using our same hypothetical scenario,

the lender would now owe the association $2,500.00, which is 1% of the original mortgage debt. Twelve months of unpaid assessments would be $3,600.00, so the lender still has the advantage of the one percent cap.

Note: There are a number of questions that remain unanswered about this new law. For example, does the law only affect first mortgages entered into after July 1, 2010, or does it affect existing first mortgages as well? Another question is whether a condominium association whose documents incorporate the old six month mortgagee liability language needs to amend its documents to take advantage of the new law. It would seem at least prudent to do so.

Condominium Collections and Foreclosures—Collection from Tenants

- Under §718.116(11), if a unit is occupied by a tenant and that unit owner is delinquent in the payment of any "monetary obligation" to the association, the association may make a written demand that the tenant pay to the association the "future monetary obligations" related to the condominium unit. This section also requires the association to mail the written notice to the unit owner of the association's demand that the tenant make payments to the association.
- The tenant's liability may not exceed the amount due from the tenant to the tenant's landlord. Also, the tenant's landlord must provide the tenant a credit against rents due to the unit owner in the amount of monies paid to the association. Lastly, the association may sue for eviction as if the association were a landlord if the tenant fails to pay a required assessment to the association.

Note: This significant change in the law applies equally to condominiums, cooperatives, and homeowners' associations. Each of the relevant statutes has been amended to state that if a unit or parcel is occupied by a tenant, and the unit/parcel 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 unit or parcel directly to the association, and the association can evict a tenant who does not comply.

There are several key points to keep in mind. First, the association may demand rent when the owner is delinquent in paying "any monetary obligation." Presumably, this would apply not only to regular assessments, but also special assessments, fines, and other charges which an owner might owe to the association.

One issue which is already being heavily debated is whether the statute's statement that the tenant must "pay the future monetary obligations" related to the unit means only assessments and obligations that accrue after the association demands the rent, and not past-due obligations. Such a restrictive interpretation would certainly blunt the effectiveness of the new law.

Proponents of a broader interpretation of the law argue that the "future monetary obligations" related to the unit or parcel refer to the tenant's obligations, which includes all the rent the tenant owes to the landlord/unit owner. It has also been argued that when a unit owner is delinquent in the payment of monetary obligations to the association, his or her "future monetary obligations" include all past-due amounts, since those sums are still due and owing, and are a continuing

obligation. Also, the law provides that "any payment received by an association" must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to delinquent assessments. Under this logic, since existing law requires that payments received by the association be applied to oldest debts first, and keeping in mind that statutes are supposed to be read in harmony with each other, one could argue that the association may justly demand receipt of all rents until the unit's account is brought current. It will certainly be interesting to see how all of these issues will play out.

Condominium Suspension of Use Rights and Voting Rights

- Under §718.303(3), an association may now suspend the voting rights of a member due to nonpayment of any monetary obligation due to the association which is delinquent in excess of ninety days.
- Provides that the association may suspend the use rights for the common elements, common facilities or any other association property if a unit owner is delinquent for more than ninety days in the payment of a monetary obligation due to the association, except that the association may not suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators.

Note: For condominium associations, common element use rights may now be suspended when a unit owner is more than ninety days delinquent in the payment of any "monetary obligation" to the association. Notably, this would not only include regular assessments, but also interest, late fees, and attorney's fees, as well as special assessments and unpaid fines. The authority to suspend common element use rights does not need to be contained in the condominium governing documents, and no hearing is required. However, the law clearly states that common element use rights may not be suspended unless the suspension is approved at a properly noticed Board meeting. Notice of the suspension, once approved by the Board, must be sent to the unit owner, or his or her tenant, guest, or invitee after the Board meeting. The law goes on to say that suspension of common element use rights cannot restrict access to the unit, use of elevators, or parking rights, and the association cannot cut off "utilities" (water and sewer service, for example).

A condominium association may now also suspend the voting rights of a member due to the non-payment of any monetary obligation due the association which is more than ninety days delinquent. The authority for suspension of voting rights likewise does not need to be contained in the condominium documents. The voting suspension ends upon full payment of all obligations due the association.

Condominium Elevators

- Amends §399.02(8) to provide that updates to the building code requiring modifications for Phase II Firefighters' Service on existing elevators, as amended into the Safety Code for Existing Elevators and Escalators, ASME A17.1 and A17.3, may not be enforced on elevators in condominiums or cooperatives where certificates of occupancy have been

issued on or before July 1, 2008, for 5 years or until the elevator is replaced or requires major modification, whichever occurs first. This exception does not apply to a building for which a certificate of occupancy was issued after July 1, 2008. This exception would not prevent an elevator owner from requesting a variance for the applicable code before or after the expiration of the five year term, and also does not prohibit the Division of Florida Condominiums, Timeshares and Mobile Home (the "Division") from granting variances to the upgrade requirements.

Note: Not all elevator upgrades are addressed by this legislation. The 5-year extension of time is limited to Phase II Firefighters' Service upgrades, which is a system that allows a firefighter to operate an elevator during a fire from within the car in an emergency mode.

Condominium Generators for Elevators

- Creates §718.112(2)(l)4. to provide that notwithstanding §553.509, an association may not be obligated to, and may forego the retrofitting of, any improvements required by §553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

Note: §553.509(2) provides that any person, firm, or corporation that owns, manages, or operates a residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, shall have at least one public elevator that is capable of operating on an alternate power source for emergency purposes. The new §718.112(2)(l)4 will permit condominium associations to opt-out of this requirement by a vote of a majority of the voting interests in the affected condominium. Note also that §553.507(1) exempts buildings that were either under construction or under contract for construction on October 1, 1997 from the requirements of §553.509. Therefore, you should discuss with your community association attorney whether it would be advisable to take an opt-out vote.

Condominium Fire Alarm Systems

- Provides that a condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code.

Condominium Fire Sprinklers

- Amends §718.112(2)(l) to extend the deadline for sprinkler retrofitting from 2014 to 2019. By December 31, 2016, an association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting, must initiate an application for a building permit for the required installation demonstrating that the association will become compliant by December 31, 2019.
- Further amends §718.112(2)(l) to allow high rise buildings to forego fire sprinkler retrofitting of units and common areas by vote of majority of all voting interests. (Prior

law prohibited high rise buildings from opting out of fire sprinkles for common areas and required the opt-out vote to be approved by two-thirds of all voting interests).

- Removes ability of association to provide electronic notice of meeting held to opt-out of retrofitting requirements.
- If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be called for by a petition signed by 10% of the voting interests. Such a re-vote may take place once every 3 years.

Note: The underlying requirement for existing high rise apartment buildings in §31.3.5.12 of National Fire Protection Association ("NFPA") 101 is to protect the building with a fully automated sprinkler system or an Engineered Life Safety System ("ELSS") approved by the fire official by December 31, 2014, unless this requirement is superceded by another law. While the old opt-out law clearly provided that the opt-out vote applied to both the sprinkler and the ELSS requirement, but was limited in application to the units, the new law expands the applicability of the opt-out vote to the units and the common areas, but has removed the references to ELSS. Therefore, associations with high-rise buildings that do conduct an opt-out vote may still be required to install certain fire safety components to comply with the ELSS requirement. As the new law is just recently effective, there has been no real indication from those involved in compliance with the laws as to what would be required and when it will be required.

Condominium Insurance

- Creates §627.714 to require all HO-6 policies, issued or renewed on or after July 1, 2010, to include at least $2,000.00 of property loss assessment coverage for all assessments made as a result of the same direct loss to the property, regardless of the number of assessments, owned by all members of the association collectively if such loss is the type of loss covered by the unit owner's residential property insurance policy, to which a deductible of no more than $250 per direct property loss applies. If a deductible was or will be applied to other property loss sustained by the unit owner resulting from the same direct loss to the property, no deductible shall apply to the loss assessment coverage. The maximum amount of any unit owner's loss assessment coverage that can be assessed shall be an amount equal to that unit owner's loss assessment coverage limit in effect one day before the occurrence. Every HO-6 policy shall contain a provision stating that coverage is excess coverage over the amount recoverable under any other policy covering the same property.

The following changes are to §718.111(11):

- References to "hazard insurance" have been replaced throughout the new statute with the term "property insurance".
- Provides that the "replacement cost" must be determined once every 36 months. (Prior law stated that the "full insurable value" must be determined every 36 months.)
- Removes the requirement that notice of Board meeting where insurance deductible is set contain specific information (but still requires 14 days notice).

- Unit owner insurance is only for items listed (i.e., wallpaper, carpet, cabinets, etc.) that are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.
- Condominium unit owner's policy shall conform to §627.714.
- Removes language regarding insurance of "improvements."
- Eliminates mandatory HO-6 insurance by eliminating the requirement that the association require owners to provide proof of insurance to the association not more than once a year. Also eliminates language that association may "force place" insurance if the owner does not have it.
- Eliminates requirement that Association be loss payee and additional insured on HO-6 policy.

Note: Pursuant to a 2008 change to the statute, the Board was obligated to set deductibles at an open Board meeting, preceded by fourteen days mailed and posted notice. The mailed notice which was sent to unit owners was required to contain a detailed disclosure of the proposed deductible, potential special assessments, and various other information. The new law eliminates the requirement that a detailed proposed deductible statement be included with notice of the Board meeting. However, deductibles must still be set at open Board meetings preceded by fourteen days' mailed and posted notice.

The 2008 change to the law implementing mandatory HO-6 insurance for unit owners, and granting authority for an association to "force-place" such insurance, has been removed from the law. Although the statute still states that the insurance of various internal unit items (such as coverings, cabinetry, and fixtures) is "the responsibility of the unit owner", there is no longer an affirmative right granted to the association to require proof of insurance nor "force-place" such insurance (buy the insurance on behalf of the unit owner and file a claim of lien against the unit if the insurance cost is not reimbursed). In our opinion, an association can still mandate HO-6 insurance through the declaration of condominium if it so chooses, and likewise through the declaration can determine appropriate remedies for non-compliance.

Timeshare Condominiums

- Amends §718.112(2)(d)1 to exempt timeshare condominiums from the requirement that the terms of all Board members expire at the annual meeting unless otherwise permitted by the bylaws.
- Amends §718.112(2)(d)1 to exempt timeshare condominiums from the prohibition against co-owners serving on the Board at the same time.

Condominium Rental Amendments

- Amends §718.110(13) to provide that any amendment prohibiting "unit owners from renting their units or altering the duration of the rental term or the number of times unit owners are entitled to rent their units during a specified period" applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of the amendment.

Note: The previous law provided that any amendment "restricting owners' rights relating to the rental of units" applied only to owners who consented to amendment and owners who acquired title to their units after the effective date of the amendment. This new law will allow associations to amend their condominium documents to, for example, impose an application process or background checks for tenants, without being unduly restricted in enforcing the new requirements.

Condominium Amendments Designating Limited Common Elements

- Creates §718.110(14) to provide that except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the declaration as provided therein or as required under §718.110(1)(a), and shall not be considered an amendment pursuant to §718.110(4).

Condominium Official Records

- Amends §718.111(12) to limit liability for destruction of official records to cases where there is intent to harm.
- Association is not liable for unit owner misuse of information obtained from official records unless there is an affirmative statutory duty not to disclose.
- Exempts personnel records (disciplinary, payroll, health and insurance records) from ambit of official records.
- Exempts e-mail addresses, telephone numbers, emergency contact information, and other addresses of unit owners from ambit of official records (unless provided to fulfill association's notice requirements).
- Exempts association's computer security data, including passwords, software and operating systems from ambit of official records.

Note: Significantly, the statute has been amended to specifically exempt e-mail addresses, telephone numbers, emergency contact information, and any address of a unit or parcel owner other than as provided to fulfill the association's notice requirement from the ambit of "official records." Stated otherwise, it is now a violation of the statute to provide unit owner e-mail addresses or telephone numbers to the association membership, either under the auspices of an official records request, or generally.

There is one exception to the rule on e-mail privacy. Where an association provides notice to members by "electronic transmission" (which is permitted by law if so authorized in the bylaws), and a member has consented to receive notice of association meetings by electronic transmission (which must be done in writing and can be revoked at any time), the member's e-mail address is part of the "official records", since that is where official notices to the owner are sent. However, once a member revokes their consent to receive notices by electronic transmission, the e-mail address must be removed from the association's official records.

The statute has also been amended to provide that personnel records of association employees, including but not limited to disciplinary, payroll, health, and insurance records are exempt from the definition of "official records", and thus not available to association members. This exception only applies to association employees, and would not apply to independent contractors, such as a management company.

Condominium Financial Reporting Requirements

- Amends §718.111(13) to require associations that operate fewer than 75 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures. (Prior law stated that associations with fewer than 50 units, regardless of the association's annual revenues, were required to prepare a report of cash receipts and expenditures.)
- Amends the provisions dealing with the Division's requirement to adopt rules concerning financial reporting requirements.

Condominium Board Elections/Qualifications

- Amends §718.112(2) to provide that Board members are not automatically reappointed when no one runs for their seat; rather, they are eligible for re-appointment.
- Precludes "co-owners" from simultaneous Board service, unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on Board.
- Adds special assessments and fines to financial delinquencies which disqualify a director.
- Eliminates requirement that candidate certification form be sent out with second notice of meeting. Replaces candidate certification form requirement with a requirement that newly elected or appointed directors either: (1) certify in writing, within 90 days after being elected or appointed, that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and written policies; that he or she will work to uphold such documents and policies; and that he or she will faithfully discharge his or her fiduciary duty; or (2) submit a certificate of completion of educational curriculum administered by a Division-approved education provider. Failure to comply will result in suspension from Board until requirement is completed. Board may temporarily appoint someone to fill seat held by suspended Board member.
- Provides that a director must be accused of embezzlement by information or indictment before they can be removed from office. Such removal shall last until the end of the period of the suspension or the end of the director's term of office, whichever occurs first.

Condominium Common Expenses

- Amends §718.115(1) and specifies that common expenses may now include additional communication services (e.g. high speed internet, telephone, etc.) for which the Board may enter into a bulk-rate contract.
- Prior law only referenced cable television and master antenna services.

Condominium Termination

- Amends §718.117(2)(a)1 dealing with termination because of economic waste. Provides that a condominium may be terminated because of economic waste when the total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs.
- Amends §718.117(19) to provide that the termination of a condominium does not bar the filing of a declaration of condominium or an amended and restated declaration of condominium.

Condominium Sales or Reservation Deposits prior to Closing

- Creates §718.202(11) to require escrow agents to maintain separate accounting records for each purchaser and for amounts separately covered by §718.202(1) and (2), and if applicable, released to developer pursuant to §718.202(3).

Turnover of Condominiums from Developer

- Amends §718.301(1)(f) to provide that turnover shall occur when a receiver is appointed by the circuit court and is not discharged within 30 days of appointment, unless the court determines within 30 days after appointment that transfer of control would be detrimental to association or its members.

Condominium Bulk Buyers

- Creates Part VII of Chapter 718, Florida Statutes, the new "Distressed Condominium Relief Act" (also known as bulk-buyer law). The new law is intended to stimulate the condominium market by encouraging purchasers to buy units in bulk. Designates certain bulk purchasers as "bulk assignees" and "bulk buyers" depending on several criteria, including the number of units purchased. Creates different levels of liability and obligations for these bulk purchasers. This new law contains a "sunset provision" whereby bulk purchases must be made by July 1, 2012 for Part VII to be applicable.

COOPERATIVE IMPACTS

Cooperative Elevators

- Amends §399.02(8) to provide that updates to the building code requiring modifications for Phase II Firefighters' Service on existing elevators, as amended into the Safety Code for Existing Elevators and Escalators, ASME A17.1 and A17.3, may not be enforced on elevators in condominiums or cooperatives where certificates of occupancy have been issued on or before July 1, 2008, for 5 years or until the elevator is replaced or requires major modification, whichever occurs first. This exception does not apply to a building for which a certificate of occupancy was issued after July 1, 2008. This exception would not prevent an elevator owner from requesting a variance for the applicable code before

or after the expiration of the five year term, and also does not prohibit the Division from granting variances to the upgrade requirements.

Note: Not all elevator upgrades are addressed by this legislation. The 5-year extension of time is limited to Phase II Firefighters' Service upgrades, which is a system that allows a firefighter to operate an elevator during a fire from within the car in an emergency mode.

Cooperative Fire Alarm Systems

- Provides that a condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code.

Cooperative Associations--Filling Vacancies on Board

- Provides that Board vacancies may be filled for remainder of the term unless otherwise provided in Bylaws. In the alternative, the Board may hold an election to fill the vacancy.

Cooperative Fire Sprinklers

- Extends deadline for sprinkler retrofitting from 2014 to 2019. By December 31, 2016, an association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting, must initiate an application for a building permit for the required installation demonstrating that the association will become compliant by December 31, 2019.
- Amends §719.1055(5) to allow high rise buildings to forego fire sprinkler retrofitting of units and common areas by vote of majority of all voting interests. (Prior law prohibited high rise buildings from opting out of fire sprinkles for common areas and required opt-out vote to be approved by two-thirds of all voting interests).
- Removes ability of association to provide electronic notice of meeting held to opt-out of retrofitting requirements.
- If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be called for by a petition signed by 10% of the voting interests. Such re-vote may take place once every 3 years.

Note: The underlying requirement for existing high rise apartment buildings in Section 31.3.5.12 of National Fire Protection Association ("NFPA") 101 is to protect the building with a fully automated sprinkler system or an ELSS approved by the fire official by December 31, 2014, unless this requirement is superceded by another law. While the old opt-out law clearly provided that the opt-out vote applied to both the sprinkler and the ELSS requirement, but was limited in application to the units, the new law expands the applicability of the opt-out vote to the units and the common areas, but has removed the references to ELSS. Therefore, associations with high-rise buildings that do conduct an opt-out vote may still be required to install certain fire safety components to comply with the ELSS requirement. As the new law is just recently

effective, there has been no real indication from those involved in compliance with the laws as to what would be required and when it will be required.

Cooperative Collections and Foreclosures

- Amends §719.108(3) to provide that a claim of lien may include late fees and reasonable costs for collection services for which the association has contracted.
- Revises requirements for 30-day intent to lien notice under §719.108(4).
- Creates §719.108(10) which states that if a unit is occupied by a tenant and that unit owner is delinquent in the payment of any "monetary obligation" to the association, the association may demand that the tenant pay to the association the "future monetary obligations" related to the condominium unit. Requires the association to mail written notice to the unit owner of the association's demand that the tenant make payments to the association. Provides that the liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. Provides that 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. Provides that the association may sue for eviction as if the association were a landlord if the tenant fails to pay a required assessment to the association.

Note: See further discussion regarding collection from tenants under "Condominium Impacts" section.

HOMEOWNERS' ASSOCIATION IMPACTS

Homeowners' Associations Fines, Suspension of Use Rights and Voting Rights

- Amends §720.305(2) to provide that if a member is delinquent for more than ninety days in the payment of a monetary obligation, the association may suspend the right to use the common areas, except for common areas that must be used to provide access to the parcel or utility services provided to the parcel.
- Fines of $1,000 or more may become a lien against the parcel.
- If association imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner, and if applicable, to the tenant, licensee, or invitee.

Note: For some time, homeowners associations' could suspend use rights for non-payment of assessments if authorized by the governing documents. Pursuant to SB 1196, a homeowners' association can now suspend common area use rights if a member is delinquent for more than ninety days in the payment of any monetary obligation to the association, until such monetary obligation is paid. The right to suspend no longer needs to be contained in the governing documents.

Similar to the new law for suspension of condominium use rights, homeowners association suspensions cannot apply to portions of the common areas used for providing access to the parcel, nor may "utility services" provided to the parcel be cut off. As in condominiums,

suspensions of common area use rights in the homeowners association context may be imposed for non-payment of any "monetary obligation" (including fines).

Homeowners' Associations Collections and Foreclosure—Collection from Tenants

- Creates §720.3085(8) which states that if a unit is occupied by a tenant and that unit owner is delinquent in the payment of any "monetary obligation" to the association, the association may demand that the tenant pay to the association the "future monetary obligations" related to the condominium unit. Requires the association to also mail the written notice to the unit owner of the association's demand that the tenant make payments to the association.
- Provides that the tenant's liability may not exceed the amount due from the tenant to the tenant's landlord. Provides that 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.
- Provides that the association may sue for eviction as if the association were a landlord if the tenant fails to pay a required assessment to the association.

Note: See further discussion regarding collection from tenants under "Condominium Impacts" section.

Homeowners' Associations—Board of Directors

- Provides for filling vacancies for remainder of the term unless otherwise provided in bylaws. In the alternative, the Board may hold an election to fill the vacancy.
- Meetings between the Board or committee to discuss proposed or pending litigation are not required to be open to members.
- Prohibits directors from receiving compensation from the association except in certain circumstances (for example, out-of-pocket expenses, compensation authorized by governing documents, etc.).

Homeowner' Associations—Official Records

- Rebuttable presumption that association willfully failed to provide access to records applies only if the request for records is submitted by certified mail, return receipt requested.
- Association may charge owners for personnel fees at an hourly rate for employee time to cover administrative costs related to providing copies of association records.
- Exempts personnel records (disciplinary, payroll, health and insurance records) from ambit of official records.
- Exempts e-mail addresses, telephone numbers, emergency contact information, and other addresses of unit owners from ambit of official records.
- Exempts association computer security data, including passwords, and software and operating systems, from ambit of official records.

Note: The statute has now been amended to specifically exempt e-mail addresses, telephone numbers, emergency contact information, and any address of a parcel owner other than as

provided to fulfill the association's notice requirement from the ambit of "official records." Stated otherwise, it is now a violation of the statute to provide parcel owner e-mail addresses or telephone numbers to the association membership, either under the auspices of an official records request, or generally.

There is one exception to the rule on e-mail privacy. Where an association provides notice to members by "electronic transmission" (which is permitted by law if so authorized in the bylaws), and a member has consented to receive notice of association meetings by electronic transmission (which must be done in writing and can be revoked at any time), the member's e-mail address is part of the "official records", since that is where official notices to the owner are sent. However, once a member revokes their consent to receive notices by electronic transmission, the e-mail address must be removed from the association's official records.

The previous statute exempted disciplinary, health, insurance, and personnel records, but did not specifically apply to payroll records. SB 1196 clarifies that payroll records are also exempted for homeowners' associations. This exception only applies to association employees, and would not apply to independent contractors, such as a management company.

Homeowners' Associations- Reserves

- Clarification of reserve requirements to distinguish between "statutory" reserves and other types of reserves (not established by the developer or by a vote of the owners).
- If reserve accounts are not established by the developer or by a vote of the owners, the funding of such reserves is limited to the extent that the governing documents limit increases in assessments, including reserves.
- Statutory reserves can be terminated upon the approval of a majority of the total voting interests.
- Revises the statement that must be included in the financial report if the association does not provide for statutory reserves and is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided. (For the exact wording of the statement to be included in the financial report, please see §720.303(6)(c)1.)
- If the budget does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created by the developer or by a vote of the owners, the financial report must include a statement in conspicuous type stating that the funds are not subject to the restrictions on use of such funds set forth in the statute, nor do the reserves have to be calculated in accordance with the statute. (For the exact wording of the statement to be included in the financial report, please see §720.303(6)(c)2.)

Note: The previous statute only addressed "statutory reserves" (reserves established by the developer or by a vote of the owners). However, many associations had reserves in their budget that had not been established by the developer or by a vote of the owners. These other types of reserves (typically referred to as "non-statutory reserves" even though that term was not used in the statute) were not addressed by the previous statute. The new law clarifies that these other

types of reserves are optional, do not have to be fully funded, and do not require a vote of the owners to partially fund or not fund at all.

Homeowners' Associations--Flagpoles

- Amends §720.304(2)(b) to provide that flagpoles and displays are subject to all building codes, zoning setbacks, and other governmental regulations, including noise and lighting ordinances and setback and locational criteria contained in the governing documents.

Homeowners' Associations—Authority to Enter into Agreements

- Creates §720.31(6) which states that an association, with owner approval, 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. The vote of the owners required is the same as required by the declaration for material alterations to the common areas or association property. If the declaration is silent, it will require the approval of 75% of the total voting interests.

Homeowners' Associations—Elections—Two Envelopes for Secret Ballots

- If governing documents permit voting by secret ballot by members not in attendance at a meeting, it will require two envelopes (similar to two-envelope system required for condominiums).
- The election ballots must be placed in an inner envelope with no identifying markings and mailed or delivered to the association in an outer envelope bearing identifying information reflecting the name of the member, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting that ballot.
- If the eligibility of the member to vote is confirmed and no other ballot has been submitted for that lot or parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted.
- If more than one ballot is submitted for a lot or parcel, the ballots for that lot or parcel shall be disqualified.
- Any vote by ballot received after closing of the balloting may not be considered.

Homeowners' Associations-Elections—Nominations

- A member may nominate himself or herself as a candidate for the Board at a meting where the election is held, or, if the election process allows voting by absentee ballot, in advance of the balloting.

Note: This new law appears to allow the association to forego nominations from the floor, if the election process allows voting by absentee ballot. In that case, the Board can require owners to nominate himself/herself in advance of the balloting.

Homeowners' Associations—Developer Control and Assessments

- Prior to turnover, the Board controlled by the developer may not levy a special assessment unless a majority of the parcel owners other than the developer have approved the special assessment by a majority vote at a duly called special meeting of the membership at which a quorum is present.

NOT-FOR-PROFIT CORPORATION IMPACTS

- Amends §617.0721 to provide that subsections (1), (5), and (6), dealing with voting by members, do not apply to associations regulated by Chapters 718, 719, and 720. Subsections (2), (3) and (4) will apply to associations regulated by Chapters 718, 719, and 720. Subsection (2) deals with voting by proxy, subsection (3) deals with the participation of owners in meetings by electronic means, and subsection (4) deals with voting by corporate members. These provisions will apply to condominium, cooperative, and homeowners' associations unless inconsistent with the community association statutes, in which case, the community association statutes will control.
- Amends §617.0808, dealing with removal of directors, to state that it does not apply to any associations regulated by Chapters 718, 719, and 720, Florida Statutes.
- Creates §617.1606 to provide that §617.1601-§617.1605, dealing with access to records, does not apply to associations regulated by Chapters 718, 719, and 720, Florida Statutes.

Note: The previous version of the statute provided that subsections (1), (2), (5), and (6) of §617.0721, dealing with voting by members, did not apply to associations regulated by Chapter 720, Florida Statutes (i.e. homeowners' associations). However, there was no mention of condominium and cooperative associations, and therefore, those subsections presumably applied to condominium and cooperative associations. The intent of the new law is to make this part of the corporation not-for-profit statute consistent with respect to condominium, cooperative, and homeowners' associations.

HB 663—RELATING TO BUILDING SAFETY

Effective Date: July 1, 2010

This bill addresses a number of issues including, but not limited to, elevator safety, home inspection services, mold assessment and remediation, building code inspections and enforcement; Florida Building Commission authority; Florida Building Code provisions relating to air conditioning systems and classroom lighting; inspection services, product evaluation and approval system, and roof and opening protections for exposed mechanical equipment or appliances; requirements for carbon monoxide alarms and pool pump motors; authority of State Fire Marshal; establishment of Fire Code Interpretation Committee; nonbinding interpretations of Florida Fire Prevention Code; training and recertifying building code inspectors, plan inspectors, building code administrators, and fire safety inspectors; inspection procedures for fire hydrants; terms of Fire Code Advisory Council members; and requirements for 5-year inspections of condominium improvements.

The following summarizes some, but not all of, HB 663.

- Amends the Elevator Safety Act (Chapter 399, Florida Statutes) to state that the Department of Business and Professional Regulation ("DBPR"), Division of Hotels and Restaurants ("Division of Hotels") may enter and have reasonable access to all buildings and rooms or spaces in which an existing or newly installed conveyance and equipment are located.
- Division of Hotels may grant variances for undue hardship, but may not grant a request for a variance unless it finds that the variance will not adversely affect the safety of the public.
- Provides that updates to the Safety Code for Existing Elevators and Escalators, ASME A17.1 and A17.3, which require Phase II Firefighters' Service on elevators may not be enforced until July 1, 2015, or until the elevator is replaced or requires major modification, whichever occurs first, on elevators in condominiums or multifamily residential buildings, having a certificate of occupancy issued before July 1, 2008. This exception does not prevent an elevator owner from requesting a variance and does not prohibit the division from granting variances.
- Permits building owners to install a uniform lockbox containing keys to all public elevators, in order to allow access to the lockbox by emergency responders.
- Repeals §718.113(6) which is the provision requiring buildings 3 stories in height to have prepared an inspection report every 5 years.

Note: The extension of time for elevator upgrades is similar to the extension of time provided by SB 1196. See discussion regarding SB 1196 for further explanation regarding the elevator upgrade extension of time.

The two most significant changes made by HB 663 are (1) the repeal of the requirement for an inspection report for buildings more than 3 stories in height and (2) the ability to install a lockbox for keys to public elevators, instead of re-keying all of the elevators.

HB 713—RELATING TO DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Effective Date: July 1, 2010

Impacts on community associations include:

- Establishes the Home Inspection Services Licensing Program and the Mold-Related Services Licensing Programs within the DBPR.
- Allows DBPR to approve distance learning courses as an alternative to classroom courses to satisfy the prelicensure or postlicensure education requirements for Community Association Managers ("CAMs") and for real estate brokers and sales associates. DBPR may not require centralized examinations for completion of education requirements for CAMs and real estate brokers and sales associates.
- Allows DBPR to approve distance learning courses as an alternative to continuing education requirements for CAMs, home inspectors, mold-related professionals, real estate brokers, sales associates, and appraisers.

- Effective July 1, 2011, persons may not offer to practice home inspection services unless the licensing requirements have been completed.
- Effective July 1, 2011, persons may not offer to perform mold assessment services unless the licensing requirements have been completed.

HB 1035—RELATING TO ELEVATOR SAFETY

Effective Date: July 1, 2010

- Updates the registration and licensing standards for certified elevator inspectors.
- Division may adopt rules to administer Chapter 399, Florida Statutes. Division may enter and have reasonable access to all buildings, rooms, or spaces in which conveyance and equipment are located.
- Division may grant variances for undue hardship pursuant to §120.542. Variance may not be granted unless it finds that the variance will not adversely affect the safety of the public.
- Updates to code requiring modifications for Phase II Firefighters' Service on existing elevators, as amended into the Safety Code for Existing Elevators and Escalators, ASME A17.1 and A17.3, may not be enforced on elevators in condominiums issued a certificate of occupancy by the local building authority as of July 1, 2008, for 5 years or until the elevator is replaced or requires major modification, whichever occurs first. Exception does not apply to a building for which a certificate of occupancy was issued after July 1, 2008. The exception does not prevent an elevator owner from requesting a variance before or after the expiration of the 5-year term, and does not prohibit the division from granting variances.

Note: The extension of time for elevator upgrades is similar to the extension of time provided by SB 1196. See discussion regarding SB 1196 for further explanation regarding the elevator upgrade extension of time.

HB 1411—RELATING TO TIMESHARE FORECLOSURES

Effective Date: May 27, 2010

- Establishes a "trustee foreclosure proceeding" as an alterative to judicial foreclosure of timeshare interests.
- The managing entity may foreclose a lien by either filing a judicial foreclosure, or as an alterative to initiating a judicial action, the managing entity may initiate a trustee procedure to foreclose an assessment lien under §721.855.
- The public offering statement must include a statement in conspicuous type which states that the managing entity has a lien to secure the payment of assessments, and that failure to make any required payments may result in the judicial or trustee foreclosure of an assessment lien and the loss of the timeshare interest. If the managing entity initiates a trustee foreclosure procedure, the purchaser will have the option to object and require the managing entity to proceed by filing a judicial foreclosure action.
- Provides that the managing entity is required to discharge his/her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar

circumstances, and in the manner he/she reasonably believes to be in the interest of the owners' association. An officer, director, or agent of an owners' association shall be exempt from liability for monetary damages as provided in §617.0834 unless such person breached or failed to perform his or her duties and the breach of, or failure to perform, constitutes a violation of criminal law, a transaction from which the person derived an improper personal benefit, or constitute recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

BILLS THAT WERE VETOED BY GOVERNOR CRIST

Governor Crist also vetoed several bills that impact community associations which were initially passed through the Florida House and Senate. SB 1964, relating to design professionals, and SB 2044, relating to property insurance, were both vetoed by Governor Crist in early June. CALL and our CALL members led the charge to have Governor Crist veto SB 1964, a bill which would have limited the ability of community associations and Florida consumers to recover damages when design professionals make mistakes. The Governor's veto letter for SB 1964 noted that the bill would grant unique privileges to design professionals by removing a consumer's right to bring a tort action against them for economic damages caused by their negligence. Other professionals, including accountants, doctors, and lawyers, cannot similarly limit their professional duty of care.

Again, thank you to the thousands of CALL members who contacted Governor Crist and demanded that he veto SB 1964. Thanks to the hard work of the CALL team and our CALL members, the voice of the people was heard loud and clear in Tallahassee!

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