



## 2008 Legislative Session, Part 1

### Is It Safe to Come Out Now?

by Michael J. Gelfand, Esq.

**T**his has been an extraordinarily difficult legislative session for Florida community association leaders. The session began with a “Select” Committee on a seeming witch hunt intended to showcase all of the bad things that can occur in associations. There did not appear to be a recognition that most associations operate quite admirably. It did appear that a significant problem was created because those who volunteer to direct their communities rarely have additional time to attend legislative hearings; thus, only dissident voices were heard.

As of publication deadline, some bills had been passed. Other bills were awaiting legislative action. No bill concerning community associations was signed by the Governor, usually a need before a law is enforceable.

Nevertheless, there was some good that passed through the legislature. For example, Senate Bill 464/House Bill 391 declares as a matter of public policy that a seller cannot require every future owner to pay the original owner a fee for acquiring the property. The legislature aptly

recognized that such a provision would be reminiscent of the feudal past that was overthrown by the Magna Carta hundreds of years ago.

Bills having greater consequence to Florida community associations are briefly summarized:

**1. House Bill 995/Senate Bill 2084. (Effective October 1, 2008 if approved by the Governor) §468.41. Management Firm. Defines a "Community Association Management Firm."**

**§468.4315. Regulatory Counsel.** Re-organizes the Regulatory Counsel of Community Association Managers to include authority for continuing education.

**§468.43. Management.** As of January 1, 2009, all Florida community associations responsible for management of more than ten units/parcels or with a budget of \$100,000 or more, paying a manager must utilize a licensed community association manager or management firm.

**§468.463. Management Discipline.** Consolidates manager disciplinary

proceedings, requiring investigations within ninety days after receipt of a complaint.

**§718.111(1). Directors.** Directors who abstain from voting are presumed to have taken no action on the issue, and requires officers, directors, and agents to utilize the care of an ordinary prudent person in similar circumstances. A breach of duty includes a violation of criminal law, a transaction deriving an improper personal benefit, reckless acts or omissions in bad faith with malicious purpose, or exhibiting wanton and willful disregard for human rights, safety, or property.

**§718.111(12). Records.** Provides a civil penalty for a person who intentionally defaces or destroys association accounting records or knowingly or intentionally fails to create or maintain association accounting records. Official records must be kept for at least seven years within the county that the condominium is located or within forty-five miles of the condominium, except for timeshare condominiums. Alternatively, an association may offer access to records electronically. Personal identification information, such as social security, driver's license, and credit card numbers are not to be disclosed. The Division of Land Sales is empowered to adopt rules for records and accounting procedures, including addressing reserve status and special assessments. Reduced levels of financial reporting may be waived or reduced no more than three consecutive years which mandates associations with over \$400,000 of revenues to have an audit at least once every four years.

**§718.112(2)(b). Voting.** Prohibits an association from exercising voting interests allocated to a unit owned by the association.

**§718.112(2)(c). Directors' Meetings.** Requires the board of directors to address an item of business presented by a petition of 20 percent of an association's voting interest within 60 days of the receipt of a petition. Meetings considering a regular or a special assessment shall specifically state not only that assessments will be considered and the nature of the assessment, but also the estimated cost and description of the purposes of the special assessment.

**§718.112(2)(d). Members' Meetings.** Annual meetings must be held at the location specified in bylaws, or if silent, then within 45 miles of the condominium property except for time shares. Members must serve annual terms unless the bylaws permit staggered terms of no more than two years which

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are approved by a majority of the Association's voting interests. In condominiums of more than ten units, co-owners of a unit may not serve as association directors. An officer or director suspended or removed from office or who is delinquent in the payment of a fee or assessment is not eligible to serve on the board. Those also prohibited from serving as officers and directors are those who have been convicted of an offense in another jurisdiction, including another country that would be considered a felony if committed in Florida. Restoration of civil rights does not grant an owner a right to serve on a board unless the restoration has been effective for at least five years. Nominees for director shall certify in writing that the nominee has read and understands to the best of his or her ability the governing documents, the Condominium Act and State of Florida administrative rules.

**§718.112(2)(f). Budget.** A proposed budget must include estimated revenues as well as expenses. Proxies to be used for a vote to waive or reduce reserves must contain a conspicuous notice that waiving, reducing or utilizing reserves for other purposes may result in special assessments.

**§718.112(2)(n). Delinquency.** An officer or director more than ninety days delinquent in the payment of a regular assessment is removed from office.

**§718.112(2)(o). Crime.** An officer or director charged with felony theft or an embezzlement involving the association's funds or property shall be removed from office and is not eligible to return to office until the charges are resolved. If the person is innocent, then the position shall be restored.

**§718.1124. Receiver.** If a unit owner seeks to have a receiver appointed for a condominium association, then a notice in the form required by the Act must be provided to all unit owners.

**§718.113(2). Hurricanes.** Upon a majority vote, the association may install other hurricane protection that is compliant with code. An association

is prohibited from failing to approve installation or replacement of hurricane shutters if the request conforms with board approved specifications.

**§718.113(6). Inspections.** Any condominium building greater than three stories in height shall have an inspection report every five years from October 1, 2008. The report requirement may be waived by a majority of the interest present at a meeting before the deadline.

**§718.113(7). Religious Matters.** An association may not refuse a reasonable request by an owner to attach on a door, mantle, or frame a religious object not exceeding dimensions of 3 x 6 x 1.5 inches.

**§718.115. Hurricanes.** Clarification of hurricane shutter and protection policies as set forth.

**§718.121. Assessments.** Prohibits an association lien against a condominium unit until thirty days after a notice of intent to file lien is provided.

**§718.1224. SLAPP.** Strategic lawsuits against public participation, a provision already found in the Homeowners Association Act, is incorporated into the Condominium Act.

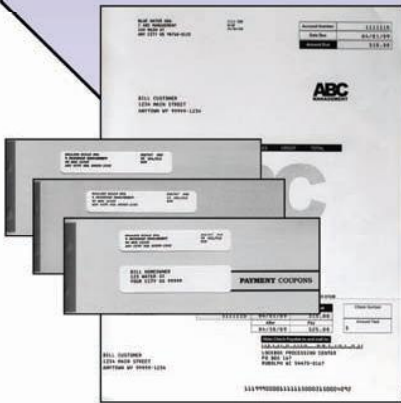
**§718.1265. Emergencies.** When necessary to protect the health, safety, and welfare of the association during a time of emergency, significant emergency powers are extended to boards of directors, including:

- Conduct meetings with notices as may be practicable, cancel and reschedule meetings;
- Name assistant officers;
- Relocate offices;
- Enter into agreements with counties and municipalities for debris removal;
- Implement a disaster plan including shutting off elevators, electricity, air conditioners, and utilities;

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- Determine portions of the condominium to be unavailable for entry as well as require evacuation;
- Contract for debris removal including in units for preventing spread of fungus;
- Contract on behalf of unit owners for efforts to prevent further damage to the condominium;
- Levy special assessment without a vote of owners;
- Borrow money and pledge assets as collateral to fund emergency repairs.

**§718.301. Turnover.** Turnover of an association shall occur when a developer files a petition seeking protection in bankruptcy or when a receiver is appointed by a circuit court and not discharged within thirty days after appointment. Developers also must provide a report by an architect or engineer analyzing common element features.

**§718.3025. Agreements.** Management agreements must disclose financial or ownership interests with a board member or any other party providing maintenance or management services. A condominium association's bylaws cannot exempt an association from competitive bidding processes. If officers or directors are financially interested in contracting matters, disclosures are a requirement and a super majority two-thirds directors' approval is required, allowing for members to cancel such a contract.

**§718.303. Fining.** Fining committee members cannot be board members or persons residing in a board member's household.

**§718.501. Division.** The Division of Land Sales has the

power to investigate complaints against associations under developer control; however, after turnover the Division has jurisdiction only to investigate complaints related to financial elections and access to association record issues. Developers who fail to pay fines on a timely basis may have their filings barred. The Division may order the removal of an officer or director when there is a willful and knowing violation of the Act or rules. If the Division has proof that an owner has requested access to official records and after ten days of a second request the Association refused to provide the records, then the Division shall issue a subpoena regarding protection. The Division is required to undertake education efforts. Directors, officers, employees, developers, managements, and firms have a duty to comply with the Division in any investigation.

**§718.50151. Council.** Renames the Advisory Council in Condominiums to the Community Association Living Study Council.

**§718.503. Pamphlet.** Seller of a condominium unit, including a developer, must provide the prospective purchaser a governance form created by the Division of Land Sales outlining owner and association's duties and obligations.

## 2. Senate Bill 1378/House Bill 857. (effective July 1, 2008 if approved by the Governor)

**§720.304. Flags.** Official flags to be flown at any time in a homeowners association on free standing flag pole no more than twenty foot high anywhere on the owner's real property with limited sight line and easement requirements, so long as the flag is no bigger than four and one half feet by six feet.

*Michael J. Gelfand is a partner in the law firm of Gelfand & Arpe, P.A., in West Palm Beach, Florida. You may reach him by email at Michael@flcaj.com or by phone at (561) 655-6224. ■*



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