



## New Legislation

### The 2009 Florida Legislative Session Is Nearing a Close

by Michael J. Gelfand, Esq.

**A**t least twenty-one different bills sought to increase regulation of Florida community associations. In addition, countless other proposals were intended to impact Florida community association governance. The 2009 Florida Legislative Session relating to non-budgetary bills did not end until the first of May.

With a press deadline days in advance of the end of session, this year as every year, it is difficult to forecast what bills will actually become law. In addition to passage by the Florida House of Representatives and the Florida Senate, each bill which becomes a legislative act must also be signed by the Governor in order to become a law. While it is anticipated that the Governor will not have a problem with any of the legislative acts affecting community associations, similar prophecies by pundits in the

past have left their proponents sputtering!

As a reminder, Florida's laws are organized in "chapters" which affect certain types of Florida communities. While amendments to Florida Statutes Chapter 617 usually affect all types of Florida community associations, amendments to three specific chapters affect specific types of Florida associations:

- Chapter 718 affects only condominium associations;
- Chapter 719 affects only cooperative associations; and,
- Chapter 720 affects only homeowners' associations.

With the above warnings, we proceed to review the only two Florida bills that are anticipated at press time to be enacted.

Senate Bill 714, if signed by the Governor, primarily affects Florida condominium associations, and shall be effective upon execution by the Governor. Significant provisions include:

- **§627.714: Loss Assessment Coverage.** Each residential condominium unit owner's property insurance policy

issued or renewed on or after July 1, 2009, shall include property loss assessment coverage of at least \$2,000 with a maximum \$250 deductible per direct property loss.

- **§633.0215(13): Alarms.** Condominiums of less than three stories in height with an exterior means of egress corridor are exempt from certain fire alarm systems.
- **§718.111(11): Insurance.** Condominium association insurance is amended as follows:
  - ~ *Group Coverage.* Policies or programs providing coverage to multiple condominium associations issued before January 1, 2000 and which have continued uninterrupted may not continue after July 1, 2010.
  - ~ *Approvals.* Special notice requirements for condominium association board of directors' meetings where policies are approved with a deductible, are deleted.
  - ~ *Property Coverage.* Personal property within a condominium unit serving just that unit and excluded from the condominium association's insurance coverage is expressly designated as the responsibility of the unit owner.
  - ~ *Unit Coverage.* The statutory requirement that condominium unit owners insure their units, that the Condominium Association enforce coverage, is deleted.
- **§718.112(2)(d)1: Elections.** If there are not a sufficient number of candidates for open condominium association directors' terms, then the existing directors are eligible for reappointment. In a condominium of more than ten units, co-owners of a unit may now serve as directors at the same time if they own more than one unit and are not co-occupants of a unit. A unit owner is not eligible to be a candidate if removed from office by the Division of Condominiums, or if delinquent in the payment of any fee, fine, special assessment or regular assessment.
- **§718.112(2)(d)3: Certification.** A condominium association director's certificate of reading and upholding the association's documents and policies no longer is to be provided with the notice of intent of candidacy information, but shall be provided within ninety days after a candidate is elected to a directorship. Alternatively, a director



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may provide proof of satisfactory completion of a Division of Condominium's approved condominium education provider program. Failure to provide the certification or educational proof disqualifies a director from service.

Senate Bill 880/House Bill 27, if signed by the Governor, affects Florida condominium, cooperative and homeowners associations, and shall be effective July 1, 2009. Significant provisions include:

- **§553.509(2): Elevators.** Emergency alternative power requirements for certain elevators is repealed.
- **§718.110(13): Leasing.** An amendment to a declaration of condominium prohibiting rentals or limiting the number of times a unit may be rented is not enforceable against units whose owners did not consent to the amendment, until the unit is transferred. The limitation on other leasing restrictions is deleted.
- **§718.111(12): Official Records.** Handling of a condominium association's records is clarified, including the civil penalty which may be imposed upon those who knowingly or intentionally fail to create or maintain accounting records with the intent of causing harm to the Association or one or more members. A condominium association is also not responsible for the use or misuse of information provided in compliance with the official records access provisions. Condominium Association records that are no longer normally accessible to unit owners are:
  - ~ Disciplinary, health, insurance and personnel records of the association's employees, and email addresses and other personal identifying information of a person though excluding, and thus allowing access to the person's name, unit designation, mailing address, property address, and other contact information.

- ~ Any electronic security measure that is used by the association to safeguard data including passwords.
- ~ Software used, licensed, or owned by the association.
- ~ Computer-generated reports that are not normally created by the association or kept by the association.
- **§718.111(13): Financial Reporting.** The Division of Condominiums is required to prepare standards concerning condominium association financial reporting.
- **§718.112(2)(d): Elections.** The provisions of Senate Bill 714, summarized above, concerning condominium association director eligibility and certification are substantially repeated.
- **§718.115(1)(d): CATV.** The Condominium Act's cable television service provisions are extended to include much broader protection for data, communication, information and internet service agreements.
- **§718.116(5)(b): Collection Costs.** A condominium association's lien may also secure a management company's charge for a delinquency notice not to exceed \$75.
- **§718.116(11): Tenancy and Assessments.** A condominium association may require a tenant to pay assessments that are delinquent for the leased unit. If the tenant refuses to pay, then the Association may proceed to evict the tenant.
- **§718.303: Fines.** A condominium association may suspend certain common element use rights which

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are not necessary for access or utilities if the owner of a unit is delinquent with a payment of assessments more than ninety days, and as the Declaration or By-Laws may require without providing additional notices. Voting rights may also be suspended when assessments are delinquent for over ninety days.

- **§718.103(16): Bulk Unit Sales.** A new Condominium Act definition is created for a bulk assignee and a bulk buyer.
- **§718.301(1)(f): Developer Receivership.** If a receiver is appointed for a condominium developer, and the receiver is not discharged within thirty days of appointment, then unless the appointing court determines it to be detrimental to the condominium association or its members, transfer of control to the receiver shall be triggered.
- **§718.701: Distressed Condominium Relief Act.** Part VII of the Condominium Act is created through July 1, 2011 to reduce statutory duties of certain bulk unit buyers, including enforcement of warranties because of the “massive downturn on the condominium market” for certain transactions.
- **§719.108: Cooperative Collection Costs.** Extends to cooperative associations the ability to lien for certain management company delinquency notices similar to the proposed Condominium Act’s provisions in §718.116(5)(b), above.
- **§720.304(2)(b): Flags.** Homeowners associations may require flag poles and displays to be consistent with

building codes, zoning setbacks and other regulations, including but not limited to noise and lighting ordinances.

- **§720.305(2): Elections.** Homeowners association directors’ qualifications, and suspension for non-payment of monies, is similar to the Condominium Act provisions set forth in proposed §718.112(2)(d)1, above.
- **§720.308(5): Tenancy and Assessments.** Homeowners associations may require tenants to pay for delinquent parcel assessments similar to the Condominium Act provisions set forth in proposed §718.116(11), above.
- **§720.303(2)(b): Meetings.** Homeowners association board and committee meetings to discuss proposed or pending litigation are not required to be open to homeowners association members.
- **§720.303(5): Records.** Access to homeowners association’s official records is clarified to require notice by Certified Mail, Return Receipt Requested. Reasonable duplication expenses, including personnel fees and administrative costs may be charged.
- **§720.303(6)(b): Reserves.** The creation, waiver and termination of homeowners association reserve accounts is clarified, including conspicuous warnings stated in financial statements if reserves are not fully funded.
- **§720.303(12): Compensation.** Homeowners associations may not provide salary, compensation or other financial benefit to directors, officers or committee members, except for: reimbursements; appropriate insurance proceeds; benefits also provided to a substantial number of members; as authorized by the Association’s governing documents; and, approved by the membership and developers.
- **§720.306(8)(b): Balloting.** Homeowners associations may adopt procedures for absentee secret ballots similar to, but not with the detail, required for condominium association elections in §718.112(2)(d).
- **§720.31(6): Additional Facilities.** Homeowners associations ability to acquire club and recreational facility interests is limited, similar to the Condominium Act provisions, to agreements occurring more than twelve months after a declaration of covenants is recorded unless acquired as set forth in the declaration, or if silent then by a vote of seventy-five percent of all of the owners.
- **§720.315: Pre-Turnover.** A homeowners association developer may not levy special assessments unless the levy is approved by a majority of owners other than the developer at a special meeting. Of course, please check our website, [www.gelfandarpe.com](http://www.gelfandarpe.com) for bills that are actually adopted, including whether condominium association staggered term restrictions and homeowner association assessment lien requirements, are changed.

These changes may propel your community to consider amending the “documents.” Condominium associations are likely to consider amendments mandating unit owner liability coverage, and staggered terms. Homeowners associations likely will desire to adopt amendments incorporating absentee ballot provisions and assessment lien priority. Both types of associations may desire to adopt provisions implementing tenant liability for paying rent to the association when assessments are delinquent. Check with your association counsel.

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