

BIG CHANGES IN FLORIDA CONDOMINIUM LAW - 2008

The 2008 Florida Legislature made some dramatic changes in condominium law at the end of its legislative session. These changes all go into effect on Oct 1st, 2008. A summary of most of the new laws are listed below:

COMMUNITY ASSOCIATION MANAGEMENT: The new law requires anyone who receives payment for community association management services in communities with ten (10) or more units or where the annual budget exceeds \$100,000.00, to be licensed. The previous law allowed unlicensed persons to perform such services if the number of units was less than fifty (50) and/or where the budget did not exceed \$100,000.00.

BOARD MEMBER INDIVIDUAL LIABILITY: The new law requires Board members or officers to discharge their duties in good faith, with the care of an ordinarily and prudent person in a like position would exercise under similar circumstances, and in the manner he or she reasonably believes to be in the interests of the association. Officers and directors shall be liable for monetary damages if they breached their duties and the breach constitutes a violation of the criminal law, a transaction from which the officer or director received an improper personal benefit; 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.

ASSOCIATION RECORDS: The new law allows for civil penalties against any person who knowingly or intentionally destroys or defaces association accounting records or who knowingly fails to create or maintain accounting records that are required to be maintained pursuant to the Florida condominium statutes. The association is now required to maintain all association records for at least seven (7) years and they must be made available to unit owners either within the same county that the property is located or within 45 miles of the condominium. The association may now offer unit owners the option of making records available over the internet or by allowing the records to be viewed on a computer screen and printed at the unit owner's request. Social Security numbers, driver's license numbers, credit card numbers and other personal identifying information of any person are no longer accessible by unit owners who make document requests.

YEAR-END FINANCIAL REPORTING: The new law requires the Division of Florida Land Sales to adopt standards for associations to include financial disclosure of at least a summary of the reserve funds, including information as to whether or not reserves are being adequately funded to avoid a special assessment, and if not, the amount of assessments necessary to bring the reserves up to a level where a special assessment would not be necessary. The new law also allows the association members to waive year end audits for the fiscal year for which the vote is taken and the following fiscal year, but prohibits same from being waived for more than three (3) consecutive years.

VOTING RIGHTS: The new law prevents the association itself from voting on any issue, or in an election, by utilizing the voting powers of a unit that the association owns.

BOARD MEETINGS: The new law mandates that if 20% of the voting interests petition the Board to address an item of business, the Board of Directors at its next regular meeting or at a special meeting, but not later than sixty (60) days after receipt of the petition, must place the item on an agenda.

Notices for any meeting at which a special assessment will be considered must state that a special assessment will be considered and the estimated costs, description and purpose of the assessment.

ANNUAL MEETINGS: The term of each member of the Board shall expire at the annual meeting. Staggered terms will now only be allowed if the Bylaws state that the term is for two years and not longer, and a majority of the unit owners vote in favor of same. If no person is interested in running for a position of a Board member whose term has expired, such Board member whose terms has expired shall be automatically reappointed to the Board and need not stand for reelection. In a condominium of ten units or more, co-owners of a unit may no longer serve on the Board at the same time. A person who is delinquent in the payment of any fee or assessment is not eligible for Board membership. Convicted felons must have their voting rights restored for a period of no less than five years before being eligible for the Board. In addition to submitting a Notice of Intent to Be a Candidate for the Board, the unit owner must sign a certification form attesting that he or she has read and understands, to the best of his or her ability, the governing documents of the association and the provisions of Florida Statute 718.

BUDGETS: The proposed annual budget must now include estimated revenues in addition to the estimated expenses. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for other purposes shall contain the following statement: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

DIRECTORS AND OFFICERS: A director or officer more than ninety (90) days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy. A director or officer charged with a felony theft or embezzlement offense involving the association's funds or property shall be removed from office pending the outcome. Should no guilt be found, the director or officer shall be reinstated.

RELIGIOUS DISPLAYS: A unit owner is allowed to attach on the mantle or frame of their door, a religious object not to exceed 3 inches wide, 6 inches high and 1.5 inches deep.

PROPERTY INSPECTIONS: As to condos that are greater than 3 stories in height, at least every 5 years the Board shall have the condo inspected to provide a report under seal of an architect or engineer attesting to required maintenance, useful life, and replacement costs of common elements. This requirement can be waived by a majority vote of the membership.

COLLECTIONS: Prior to filing a lien against a unit for unpaid assessments, the association must send a unit owner 30 days advanced notice of its intent to file a lien by certified mail, return receipt requested.

TURNOVER: Upon turnover of control from the developer to the unit owners, the developer must now include a report, under seal of an architect or engineer, attesting to required maintenance, useful life and replacement costs regarding the: roof, structure, fire proofing and fire protection systems, elevators, heating and cooling systems, plumbing, electrical systems, swimming pool or spa and equipment, seawall, pavement and parking areas, drainage systems, painting and irrigation systems.