



ROSS EARLE BONAN & ENSOR, P.A.

Royal Palm Financial Center, 789 South Federal Highway Suite 101, Stuart, Florida 34994
Mailing Address: Post Office Box 2401, Stuart, Florida 34995
Telephone: (772) 287-1745, Fax (772) 287-8045

REBLAW REVIEW

Volume 13, July 2017

Ross Earle Bonan & Ensor, P.A. News

Jacob Ensor and his wife, attorney Lori Steger, welcomed their fourth daughter, Ella, in November 2016. Jacob is very blessed...and out-numbered!

In January 2017, John P. Carrigan became a shareholder of the firm. John has been with the firm since September 2009.

About the Firm

Formed in September of 2003 by three long-time local practitioners, the Law Firm and its seven attorneys conduct a general civil practice which concentrates in civil and commercial litigation, contracts, construction law, labor and employment law, real estate, land use, administrative law, condominium and community association representation and general corporate representation.

Disclaimer: The contents of this review is for general information purposes only and should not be construed as legal advice for any individual case or situation.

Inside This Issue

*Estoppels Changes -
Page 2*

*Financial Statements –
Page 3*

*Omnibus Condo Bill –
Page 4*

*Criminal Penalties –
Page 4*

*Conflicts of Interest –
Page 4*

*Official Records –
Page 6*

*Financial Reports –
Page 6*

Debit Cards – Page 6

Term Limits – Page 7

Recalls – Page 7

Arbitration – Page 7

*Suspension of Voting
Rights – Page 8*

Termination – Page 8

*Fire Sprinkler Retrofit –
Page 8*

LEGISLATIVE CHANGES AFFECTING COMMUNITY ASSOCIATIONS EFFECTIVE JULY 1, 2017

ITEMS APPLICABLE TO ALL COMMUNITY ASSOCIATIONS

Senate Bill 398 – Estoppels

This new law makes substantial changes to the Florida statutes governing “estoppel certificates” (also known as payoff letters) for community associations. Specifically the bill has amended Chapter 718.116 (condominiums), Chapter 719.108 (cooperatives), and Chapter 720.30851 (homeowner’s associations). The changes made to these statutes are summarized as follows:

- Revises the period within which an association must respond to a request for an estoppel certificate from 15 days to 10 business days.
- Requires an association to designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate.
- Provides an estoppel certificate delivered by hand, mail, or e-mail has a 30-day effective period, and a certificate sent by regular mail has a 35-day effective period.
- Identifies the persons who may complete the estoppel certificate on behalf of the board or association.
- Specifies the information the association must provide in the estoppel certificate.
- Prohibits an association from charging a fee for an amended estoppel certificate, and provides a new effective period of 30 days or 35 days, depending on the method used to deliver the amended certificate.
- Provides an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and his or her successors and assigns, who in good faith relies upon the certificate.
- Prohibits an association from charging a fee for preparing and delivering an estoppel certificate that is requested, if it is not delivered within 10 business days.
- Authorizes the use of a summary proceeding pursuant to s. 51.011, F.S., to compel compliance with the estoppel certificate requirements for a cooperative association, as existing law provides for condominium and homeowners’ associations.
- Permits an association to charge a maximum fee of \$250 for the preparation and delivery of an estoppel certificate, if there are no delinquent amounts owed to the association.

- Permits an association to charge an additional \$100 fee for an expedited estoppel certificate delivered within 3 business days after a request for an expedited certificate.
- Permits an association to charge an additional maximum fee of \$150, if there is a delinquent amount owed to the association.
- Specifies the maximum fee an association may charge when it receives simultaneous requests for estoppel certificates for multiple units or parcels owned by the same person and there are no past due monetary obligations owed to the association.
- Provides a lender or purchaser who pays for the preparation of an estoppel certificate may not waive the right to reimbursement if the closing does not occur and the prevailing party in a suit to enforce a right of reimbursement shall be awarded damages, attorney fees, and costs.
- Authorizes a cooperative to charge a fee for preparing and delivering an estoppel certificate but the authorization must be established by a written resolution adopted by either the board or a written management, booking, or maintenance contract (as is required for condominiums and homeowner's associations).
- Requires the Department of Business and Professional Regulation to adjust the estoppel certificate fees for inflation every five years, rounded to the nearest dollar, and to publish the adjusted amounts on its website.

The above changes have altered the deadlines, procedures, and requirements surrounding the estoppels process dramatically. New forms and resolutions must be utilized to ensure compliance under the new statutes. A review of your current procedures will be necessary to avoid potential liability or waiver of rights. Please contact us at your earliest convenience to discuss how we can help provide a smooth and effective transition under the new laws.

House Bill 6027 – Financial Statements

Under existing law, community associations must prepare annual financial statements. The complexity of these statements is based on the annual revenues of the association (i.e. associations having larger revenues must prepare more complex financial statements).

Association members may vote to allow the association to prepare less complex financial statements, but in condominiums and cooperatives this lesser reporting was not permitted for more than three consecutive years. This bill repeals the three-consecutive-year limit.

The bill also repeals the provisions of law that allowed associations having fewer than fifty (50) units or parcels to prepare a report of cash receipts and expenditures. Therefore, all associations, regardless of size, must prepare the appropriate financial report based on the association's revenues, unless waived in advance by the membership.

CHANGES AFFECTING CONDOMINIUM ASSOCIATIONS ONLY

House Bill 1237 – Omnibus Condo Bill

HB 1237 enacts significant changes to Chapter 718, Florida Statutes. These changes are summarized below:

Criminal Penalties

- 718.111 - An officer, director, or managers who solicit kickbacks are now subject to criminal penalties if applicable.
- 718.111(1) - Forgery of a ballot envelope or voting certificate used in an election is punishable as provided in s. 831.01 (third degree felony).
- 718.111(1) - The theft or embezzlement of funds of a condominium association is punishable as a crime as provided in s. 812.014.
- 718.111(1) - The destruction of, or the refusal to allow inspection or copying of, an official record of the association in furtherance of any crime is punishable as tampering with physical evidence or as obstruction of justice.
- 718.111(1) - Any officer or director *charged* by information or indictment with one of the above crimes must be removed from office and the vacancy shall be filled as provided in Section 718.112(2)(d)(2).
- 718.111(1) - If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or director and may not have access to the official records of the association, except pursuant to court order.
- 718.111(1) - If the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

Conflicts of Interest

- 718.111(3) - An association may not hire an attorney who represents the management company of the association.
- 718.111(3) - A board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.
- 718.112(2)(p) - An association may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of

consanguinity by blood or marriage of a board member or officer. This does not apply if the board member or officer (or relative as described) owns less than 1 percent of the equity shares of the conflicting provider.

- 718.3025(5) - A party contracting to provide maintenance or management services to an association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.
- 718.3025(5) - If 50 percent or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, which is not a timeshare condominium association, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be cancelled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party.
- 718.3027 - Establishes new conflict of interest provisions for directors and officers of an association that is not a timeshare condominium association, as well as the relatives of those directors and officers. Directors, officers, and their relatives must disclose to the board any activity that may reasonably be construed to be a conflict of interest.
- 718.3027 - A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice: (a) a director or officer, or a relative, enters into a contract for goods and services with the association, or (b) a director or an officer, or a relative, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.
- 718.3027 - If a director or officer, or a relative, proposes to engage in an activity that is a conflict of interest, the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this provision, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.
- 718.3027 - A contract entered into between a director or an officer, or a relative, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required, is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

- 718.3027 - For purposes of the conflict of interest provisions, the term “relative” means a relative within the third degree of consanguinity by blood or marriage (e.g. parents, children, siblings, grandparents, grandchildren, great-grandparents, great-grandchildren, aunts, uncles, nieces, and nephews).

Official Records

- 718.111(12) - Bids for materials, equipment or services are now an official record.
- 718.111(12) - A renter of a unit has the right to inspect and copy the association’s bylaws and rules.
- 718.111(12) - By July 1, 2018, an association with 150 or more units, which does not manage timeshare units, must have a website and post digital copies of its official records on its website. An exact list of website requirements and official records to be posted can be found in the text of the statute.

Financial Reports

- 718.111(13) - An association must provide a requesting owner, without charge, a copy of the most recent financial report (or a notice that the report will be mailed) within five (5) business days after receiving the request.
- 718.111(13) - A unit owner may provide written notice to the division of the association’s failure to mail or hand deliver a copy of the most recent financial report within five (5) business days after submission of a written request. If the association failed to timely provide the most recent financial report to the owner, the division shall notify the association that it has five (5) business days to comply. An association that fails to comply with the division’s request may not waive the financial reporting requirement provided in the statute.
- 718.71 - An association shall provide an annual report to the department containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the department upon written request of any association member.

Debit Cards

- 718.111(15) - An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

- 718.111(15) - The use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud pursuant to s. 817.61.

Term Limits

- 718.112 – The statute has been amended to include the following language, “A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.” This language is unclear in its application to associations that have established one-year terms for board members. Questions also remain as to the effect this change will have for board members who have already served four consecutive two year terms. If you have any questions regarding this change, please contact us to discuss your options in further detail.

Recalls

- 718.112(2)(j) - After an effective recall, the recalled board members have ten (changed from five) full business days after the recall vote to turn over any and all records and property of the association in their possession.
- There are additional changes to the recall process that create some uncertainty. If you are involved in a recall, we strongly recommend contacting our office for clarification.

Arbitration of Disputes

- 718.1255(4) - The Division may, but is no longer required to employ full time attorneys to act as arbitrators. Instead, they may contract with certified arbitrators. The statute was also amended to clarify the requirements for being certified by the Division as an arbitrator and to prohibit the Division from contracting with a non-certified arbitrator unless no certified arbitrators are available within 50 miles of the dispute.
- 718.1255(4) - Assigned arbitrators shall conduct a hearing within 30 days after being assigned unless the petition is withdrawn or a continuance is granted for good cause shown.
- 718.1255(4) - The arbitration decision must now be rendered within 30 days of the hearing.
- 718.1255(4) - An arbitrator’s failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

Suspension of Voting Rights

- 718.303(5) - Voting rights may only be suspended for a delinquency of more than \$1,000 that is also more than 90 days delinquent. Proof of such delinquency must be provided to the unit owner or member 30 days before such suspension can take effect.

Receivers

- 718.303(8) - A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association.

Senate Bill 1520 – Termination Bill

This bill enacts changes to Chapter 718.117, Florida Statutes, in order to increase the thresholds necessary for a successful condominium termination.

Previously the statute required ten percent (10%) of voting interests in order to veto a termination plan – the statute has been amended to now require only five percent (5%). Additionally, if a veto occurs, a new termination plan cannot be considered for twenty-four (24) months (increased from 18 months). The bill added some other consumer protections as well. Please contact our office for additional information if needed.

Governor’s Veto of House Bill 653 – Fire Sprinkler Retrofit Issue

The Florida Fire Prevention Code requires that all Florida condominiums that meet the definition of a “high rise building” be protected by either (1) a complete automatic fire sprinkler system or (2) an “Engineered Life Safety System” (ELSS), by the deadline of December 31, 2019. A “high rise building” under the fire code is seventy-five (75) feet or higher. An ELSS is defined as a system developed by a registered professional engineer in life safety design that includes any or all of the following (1) partial automatic sprinkler protection (2) smoke detection systems (3) smoke control systems, (4) compartmentation, or (5) other approved systems.

Fla. Stat. 718.112(2)(l) allows condominiums to opt out of the fire sprinkler retrofit, but is silent as to whether an association could also opt out of the Engineered Life Safety System requirement. One of the purposes of HB 653 was to amend Fla. Stat. 718.112(2)(1) to clarify that condos could also opt-out of the ELSS requirements. Unfortunately, this bill was vetoed, so the law remains silent as to whether high rise condominiums will need to install ELSS systems by December 2019. If you are a “high rise” condominium taller than seventy-five (75) feet, please contact our office to discuss the implications of this veto in more detail.