ROSS EARLE & BONAN, P.A.

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REB LAW REVIEW

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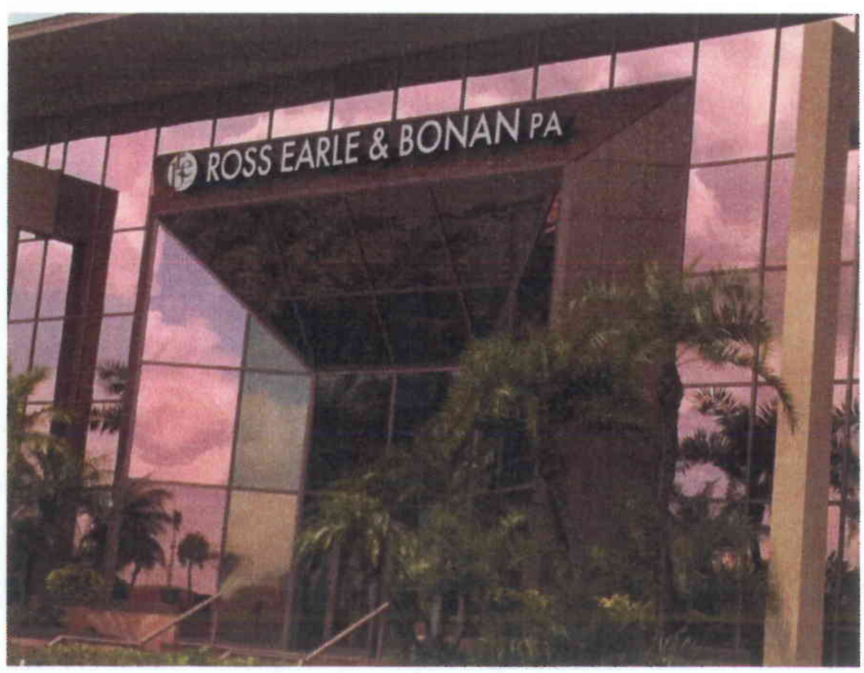
ROSS EARLE & BONAN NEWS

Ross Earle & Bonan celebrated it's 10th anniversary last September. Starting with the three founding shareholders, Deborah Ross, David Earle and Elizabeth Bonan, we have grown to now include shareholder Jacob Ensor; associates, John Carrigan and Michael Bonan; and Tom Gallagher, of counsel.

John Carrigan and his wife, Alexandra, welcomed their first child in August 2013. Theo is a happy, healthy little boy looking forward to celebrating his first birthday next month.

Michael Bonan, son of founding shareholder, Elizabeth Bonan, passed the bar exam and was admitted to the Florida Bar on November 6, 2013. He is engaged to marry Genevieve Napolitano, an attorney with Cathleen Scott & Associates in Jupiter. Michael and Genevieve plan to wed on November 9, 2014.



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LEGISLATIVE CHANGES AFFECTING COMMUNITY ASSOCIATIONS EFFECTIVE JULY 1, 2014

Florida House of Representatives Bills 807 and 7037 and Florida Senate Bill 440 were signed into law and became effective July 1, 2014. The following is a summary of the important changes contained in the bills.

CONDOMINIUM ASSOCIATIONS

Right to Access Units – Florida Statute 718.111

Section 718.111(5) has been amended to allow an Association to enter an abandoned unit to inspect the unit and adjoining common elements, make repairs as needed, turn on the utilities, or otherwise maintain, preserve and protect the unit and adjoining common elements. A unit is presumed abandoned if: (a) the unit is in foreclosure and no tenant has resided there for four consecutive weeks; or (b) no tenant has resided in the unit for two consecutive months, and the Association is unable to contact the owner or determine the whereabouts of the owner.

If the Association intends to enter an abandoned unit, it must give the Owner two days notice of its intent to enter the unit at the last known address for the Owner. Any expenses incurred by the Association are chargeable as an assessment, and the Association may collect the same by Claim of Lien.

The Association may also petition a Court to appoint a receiver to lease out the abandoned unit for the benefit of the Association and offset the rental income against the unpaid assessments and the costs to maintain, preserve and protect the unit and adjoining common elements.

Reconstruction, Repair or Replacement After Insurable Events – Florida Statute 718.111

Florida Statute 718.111(11)(j) has been amended to clarify that in the absence of an "insurable event", the Association or the unit owners shall be responsible for reconstruction, repair, or replacement, as determined by the provisions of the declaration or bylaws. What this means is that if repairs are necessary due to an insurable event, such as a windstorm, the provisions of the statute apply. If repairs are necessary due to any other reason, such as normal wear and tear, the governing documents of the Association apply.

Disclosure of Personal Identifying Information – Florida Statute 718.111

Section 718.111(12)(c)(5) has been amended to allows unit owners to consent in writing to the disclosure of additional personal identifying information by the Association, such as email addresses, telephone numbers, facsimile numbers, emergency contact information, and alternative addresses.

The amendment further clarifies that the Association's unit owner directory may disclose all telephone numbers for each unit owner, unless the Owner requests in writing that his/her number be excluded from the directory.

Relinquishment of Official Records – Florida Statute 718.111

Section 718.111(12)(f) has been added to require that outgoing Board Members or Committee Members must relinquish all official records and Association property in their possession or control to the incoming Board of Directors within five days after the election.

Board Member Appearances by Phone – Florida Statute 718.112

Florida Statute 718.112 (2) (b) 5 has been amended to provide that a member of the board or a committee may participate in a meeting of the board or committee by telephone, real-time videoconferencing, or similar real-time electronic or video communication. That person will be counted towards the quorum and may vote as if physically present. A speaker must be used so that the conversation of such participants may be heard by all attending in person.

Board Member Communication via Email – Florida Statute 718.112

Florida Statute 718.112 (2) (c) has been amended to allow members of the Board to use email as a means of communication, however, members of the board may not cast a vote on an Association matter via email.

Certain Provisions of Chapter 718 Are No Longer Applicable to Nonresidential Condominiums

718.112(2)(a)2 has been amended to provide that its provisions regarding written inquiries by unit owners and the use of general proxies do not apply to nonresidential condominium associations.

718.112(2)(d) has been amended to provide that the eligibility criteria for candidates for the Board of Directors does not apply to nonresidential condominiums.

718.112(2)(k) has been amended to provide that mandatory arbitration provisions do not apply to nonresidential condominiums.

718.112(2)(l) has been amended to provide that the requirement for fire sprinkler retrofitting does not apply to nonresidential condominiums.

718.113(5) has been amended to provide that the hurricane protection provisions of this statute do not apply to nonresidential condominiums.

718.1255 has been amended to provide that its mandatory arbitration provisions do not apply to nonresidential condominiums, unless otherwise specifically provided for in the declaration of the nonresidential condominium.

Units Acquired by Association through Foreclosure – Florida Statute 718.116

Section 718.116(1)(a) has been amended to provide that a present unit owner is liable for assessments that came due prior to a condominium association's acquisition of the unit through foreclosure or deed in lieu of foreclosure. The unit owner is not liable for assessments coming due during the time the association owned the unit.

COOPERATIVE ASSOCIATIONS

Disclosure of Personal Identifying Information – Florida Statute 719.104

Section 719.104(2)(c)(5) has been amended to allow parcel owners to consent in writing to the disclosure of additional personal identifying information by the Association, such as email addresses, telephone numbers, facsimile numbers, emergency contact information, and alternative addresses.

The amendment further clarifies that the Association's parcel owner directory may disclose all telephone numbers for each parcel owner, unless the Owner requests in writing that his/her number be excluded from the directory.

Relinquishment of Official Records – Florida Statute 719.104

Section 719.104(e) has been added to require that outgoing Board Members or Committee Members must relinquish all official records and Association property in their possession or control to the incoming Board of Directors within 5 days after the election.

Preparation of Annual Financial Report – Florida Statute 719.104

Florida Statute 719.104 (4) has been amended to provide that within 90 days following the end of the fiscal year, the board shall prepare a financial report covering the preceding fiscal year. Within 21 days after the financial report is completed, but no later than 120 days after the end of the fiscal year, the Association shall provide each member with a copy of the annual financial report or a written notice that a copy of the report is available upon request at no charge. Additionally, the statute has been modified to provide that an Association with total annual revenues between $150,000 and $299,999 shall prepare a compiled financial statement; an Association with total annual revenues between $300,000 and $499,999 shall prepare a reviewed financial statement; and an Association with total annual revenues of $500,000 or more shall prepare an audited financial statement. An Association of fewer than 50 units or total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures. An Association may waive these requirements upon a vote of a majority of the voting interests present at a duly called meeting. However, an Association may not waive the financial reporting requirements for more than 3 consecutive years. Upon approval by a majority of the voting interests represented at a meeting, a higher or lower level of financial reporting may be approved by the membership.

Board Eligibility – Florida Statute 719.106

Section 719.106(1)(a)(2) has been amended to provide that a person who has been suspended or removed by the Division or is delinquent in the payment of any monetary obligation due to the association for more than 90 days, is not eligible to be a candidate for board membership and may not be listed on the ballot. Likewise, a person who has been convicted of any felony in Florida or in any United States District court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. In addition, a director or officer charged by information or indictment for a felony theft or embezzlement offense involving the association's funds or property is suspended from office.

Emergency Powers – Florida Statute 719.128

Section 719.128 has been added to permit the board of directors to exercise emergency powers in response to damage caused by an event for which a state of emergency is declared. These powers can be exercised unless specifically prohibited by the governing documents for the association. The list of powers is expansive and you should consult an attorney in the event of an emergency.

HOMEOWNERS ASSOCIATIONS

Handicap Access to Board Meetings and Member Meetings – Florida Statute 720.303 & 720.306

Section 720.303(a) has been amended to require that Board Meetings must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has the right to attend the meeting.

Section 720.306(1)(a) has been amended to require that Members Meetings must be held at a location that is accessible to a physically handicapped person if requested by a physically handicap person who has the right to attend the meeting.

Disclosure of Personal Identifying Information – Florida Statute 720.303

Section 720.303(5)(c)(5) has been amended to allow parcel owners to consent in writing to the disclosure of additional personal identifying information by the Association, such as email addresses, telephone numbers, facsimile numbers, emergency contact information, and alternative addresses.

The amendment further clarifies that the Association's parcel owner directory may disclose all telephone numbers for each parcel owner, unless the Owner requests in writing that his or her number be excluded from the directory.

Notice of Adopted Amendments – Florida Statute 720.306

Prior to July 2014, Florida Statute 720.306 (1) (b) had required that within 30 days after recording an amendment to the governing documents, the Association shall provide copies of the amendment to the members. The statute has been amended to provide that if a copy of the proposed amendment was provided to the members before they voted on the amendment and the amendment did not change before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number of the recorded amendment and notifying members that a copy of the amendment is available at no charge upon request.

Emergency Powers – Florida Statute 720.316

Section 720.316 has been added to permit the board of directors to exercise emergency powers in response to damage caused by an event for which a state of emergency is declared. These powers can be exercised unless specifically prohibited by the governing documents for the association. The list of powers is expansive and you should consult an attorney in the event of an emergency.

MISCELLANEOUS ITEMS APPLICABLE TO ALL COMMUNITY ASSOCIATIONS

Managers and the Unauthorized Practice of Law – Florida Statute 468.431

Section 468.431(2) has been amended to specify that the following tasks are not the unauthorized practice of law:

(1) Determining the number of days required for statutory notices;
(2) Determining amounts due to the association before the filing of a civil action;
(3) Calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of the community association that have been created by statute or by a state agency;
(4) Drafting meeting notices and agendas;
(5) Calculating and preparing certificates of assessment and estoppel certificates;
(6) Responding to requests for certificates of assessment and estoppel certificates;
(7) Negotiating monetary or performance terms of a contract subject to approval by an association;
(8) Drafting pre-arbitration demands;
(9) Coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association; and
(10) Complying with the association's governing documents and the requirements of law as necessary to perform such practices.

However, they are "community" association management tasks that must be performed only be licensed community association managers.

468.4334(1) has been added to specifically impose a duty of good faith on community association managers and management firms.

468.4334(2) has been added to clarify the limits of indemnification clauses in community association management contracts.

Statutory Delinquent Assessment and Lien Forms

Chapters 718, 719 and 720 have been amended to create and mandate the use of specific statutory language for Delinquent Assessment Notices, Liens and other related documents.