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2021 LEGISLATIVE UPDATE FOR FLORIDA CONDOMINIUM ASSOCIATIONS

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The 2021 Florida legislative session produced several bills that made numerous changes to condominium law (Chapter 718, Florida Statutes; the Condominium Act) that will affect the operation of condominium associations across the State. Below is a summary of the changes to the condominium law made pursuant to Senate Bill 56, Senate Bill 602, Senate Bill 630, and Senate Bill 1966, that all managers, Board members, and condominium residents must become familiar with before the changes become effective on July 1, 2021:

Note: Senate Bill 56, Senate Bill 602 and Senate Bill 630 have been signed by the Governor, so the changes are law effective July 1, 2021. As of this writing, Senate Bill 1966 has not yet been presented to the Governor.

SENATE BILL 56 (“SB 56”)

1. Official Records – Section 718.111(12)17, F.S., (SB 56, Page 6)

The affirmative acknowledgments of unit owners related to any change in the method of delivery for assessments must be maintained by the association as an official record, but such record is not accessible to other unit owners as an official record.

2. Notice of Intent to Foreclose – Section 718.116(6)(b), F.S., (SB 56, Page 9)

The period of time the condominium association must wait prior to foreclosing a claim of lien has been increased from 30 days to 45 days after the association gives written notice to the unit owner of its intention to foreclose the claim of lien.

3. Assessments and Statements of Account – Section 718.121(4), F.S., (SB 56, Page 11)

There are new requirements on how an association may deliver and change its method of delivery for assessments and statements of account:

- (a) An invoice for assessments or a statement of account must be sent by first-class mail or electronic transmission to the unit owner's email address maintained in the association's official records.
- (b) Before changing the method of delivery for any invoice for assessments or a statement of account, the association must deliver a written notice of such change to the unit owners at least 30 days before it sends the invoice for assessments or the statement of account by the new delivery method.
- (c) Unit owners must affirmatively acknowledge their understanding that the association has changed its method of delivering the invoices for assessments or statements of account to delivery in writing or by electronic transmission.

4. Courtesy Notice of Late Assessment – Section 718.121(5), F.S., (SB 56, Page 12)

There is a new statutory form notice of late assessments that must be delivered to the unit owner before the association can require the payment of attorney fees related to past due assessments. The notice must specify the amount owed and allow the unit owner at least 30 days to pay the past due assessments without paying additional attorney fees. A sworn affidavit by a Board member, officer, or agent of the association, or a licensed manager, attesting to the mailing will establish a rebuttable presumption that the association complied with these notice and delivery requirements for the notice of late assessments.

5. Notice of Intent to Lien – Section 718.121(6), F.S., (SB 56, Page 13)

The period of time a unit owner has to pay a monetary obligation is increased from 30 days to 45 days after receiving an association's notice of intent to record a claim of lien.

SENATE BILL 602 (“SB 602”)

1. Quorum and Amendments – Section 617.0725, F.S., (SB 602, Page 16)

The law clarifies that the quorum and amendment restrictions in Chapter 617, Florida Statutes (the Florida Not for Profit Corporation Act), do not apply to condominium associations governed by Chapter 718, Florida Statutes.

2. Conflicts between Chapter 718, Condominium Act, and Chapter 617, Florida Not for Profit Corporation Act (SB 602, Page 16)

The law has been clarified and expressly provides that the provisions in the Condominium Act (Chapter 718) will prevail in any conflict with the provisions governing the Florida Not for Profit Corporation Act (Chapter 617).

SENATE BILL 630 (“SB 630”)

1. Insurance Subrogation – Section 627.714(4), F.S., (SB 630, Page 5)

Section 627.714(4), F.S., has been amended to provide that a condominium unit owner’s insurance policy may not provide subrogation rights against the association operating the condominium in which the property is located, if the association’s insurance policy does not provide a subrogation right against the unit owners.

2. Official Records – Section 718.112(12), F.S., (SB 630, Page 5)

(a) The time period an association must maintain official records of bids for work, equipment, or services to be performed has been reduced from 7 years to 1 year after receipt of the bid. (Section 718.111(12)(a)11d, F.S. / SB 630, Page 7)

(b) The new law clarifies that a renter only has the right to inspect and copy the Declaration of Condominium, the Bylaws, and Rules. (Section 718.111(12)(c)1, F.S. / SB 630, Page 9)

(c) The association may not require a unit owner to demonstrate any purpose or state any reason for inspecting the official records of the association. (Section 718.111(12)(c)1, F.S. / SB 630, Page 9)

(d) Associations with 150 units may now provide certain specified documents through an application that can be downloaded on a mobile device, rather than posting them to the association’s website. (Section 718.111(12)(g)1, F.S. / SB 630 Page 12)

3. Illegal Discriminatory Restrictions – Section 718.112(1)(c), F.S., (SB 630, Page 16)

Condominium associations may extinguish a discriminatory restriction in the manner provided under Section 712.065, F.S., (i.e., a majority vote of the Board of Directors).

4. Board Member Term Limits – Section 718.112(2)(d)2, F.S., (SB 630, Page 17)

The law clarifies that only service on the Board of a condominium association that occurs on or after July 1, 2018, may be used when calculating a Board member’s term limit of 8 consecutive years.

5. Notice of Member Meetings – Section 718.112(2)(d)3, F.S., (SB 630, Page 19)

The law has been amended to provide that written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the Bylaws. If the Bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Note that notice may now also be posted on association property (i.e. property owned by the association that is not part of the condominium).

6. Transfer Fees/Security Deposits – Section 718.112(2)(i), F.S., (SB 630 Page 25)

The maximum permissible transfer fee has been increased from \$100 to \$150. For transfer purposes, spouses, a parent or parents, and any dependent children are considered one applicant. The amount of the transfer fee must be adjusted every 5 years in an amount equal to the total annual increases occurring in the

Consumer Price Index during that 5-year period. The Department of Business & Professional Regulation (“DBPR”) must periodically calculate the fees, rounded to the nearest dollar, and publish the adjusted amounts on its website.

7. Board Recalls – Section 718.112(2)(j)(4), F.S., (SB 630, Page 28)

Unit owners may now challenge a recall rejected by the Board of Directors in a court of law rather than pursue arbitration through the Division of Florida Condominiums, Timeshares, and Mobile Homes (“Division”) within the DBPR.

8. Conflicts of Interest – Section 718.112(2)(p), F.S., (SB 630, Page 29)

Section 718.112(2)(p), F.S., dealing with conflicts of interest, was repealed. The statute had previously expressly prohibited potential conflicts of interest even if the financial interest was disclosed or approved by the Board or the unit owners, and conflicted with Section 718.3027, F.S.

9. Alternative Fuel Charging Stations

(a) Natural Gas Charging Stations – Section 718.113(8), F.S., (SB 630, Page 30)

The statute was amended to permit a unit owner to install a natural gas fuel station, subject to the same requirements as a unit owner installing an electric vehicle charging station. The unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of an electric vehicle charging station or a natural gas charging station. The unit owner is responsible for the cost for the supply and storage of the natural gas fuel station.

(b) Exclusively Designated Parking Spaces – Section 718.113(8)(a), F.S., (SB 630, Page 30)

The locations where the association may not prohibit an electric vehicle charging station and a natural gas fuel station was expanded from the limited common elements to also include “an exclusively designated parking area.”

(c) Association Charging Stations – Section 718.113(9), F.S., (SB 630, Page 33)

The Board may make available, install, or operate an electric vehicle charging station or a natural gas fuel station upon the common elements or association property, and establish the charges or the manner of payments for the unit owners, residents, or guests who use the electric vehicle charging station or a natural gas fuel station. The installation, repair, or maintenance of an electric vehicle charging station or a natural gas fuel station under this subsection of the statute does not constitute a material alteration or substantial addition to the common elements or association property.

(d) Construction Lien – Section 718.121(2), F.S., (SB 630, Page 35)

This statute includes natural gas fuel stations in the prohibition against filing a lien against a condominium association for labor or materials related to the installation of an electric vehicle charging station.

10. Right to Contest Termination of Condominium – Section 718.117(16), F.S., (SB 630, Page 33)

A unit owner or lienor may contest a plan of termination through pre-suit mediation, and then file in a court of law as an alternative to arbitration with the Division.

11. Alternative Dispute Resolution – Section 718.1255, F.S., (SB 630, Pages 40 - 46)

(a) In lieu of initiating non-binding arbitration, a party may submit a dispute to the pre-suit mediation process in accordance with Section 720.311, F.S., and then file in a court of law, which is the same procedure currently used by homeowners’ associations. However, election and recall disputes are not eligible for pre-suit mediation and such disputes must be arbitrated by the Division or filed in a court of law. (Sections 718.1255 (4) and (5), F.S. / SB 630, Pages 41–46.)

(b) The statute now provides that arbitration is binding on the parties if all parties agree to be bound in writing. (Section 718.1255(4), F.S. / SB 630, Page 40)

12. Emergency Powers – Section 718.1265, F.S., (SB 630, Page 46)

This bill:

(a) Amends Section 718.1265(1), F.S., to extend a condominium association’s Board of Directors’ emergency authority to apply its response to injury and to an anticipated declared state of emergency.

(b) Authorizes the Board to conduct Board meetings, committee meetings, membership meetings, and elections, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication.

(c) Authorizes the association to give meeting notices by electronic transmission.

(d) Clarifies the term “emergency” to have the same meaning as in Section 252.34(4), F.S., which defines emergency to mean “any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.”

(e) Authorizes condominium associations to consult with public health officials when determining whether any portions of the condominium property are unavailable for entry or occupancy.

(f) Creates Subsection 718.1265(3), F.S., to provide that during a declared state of emergency, condominium associations may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements for the purposes of ingress to and egress from the unit. In addition, the association may not prohibit access that is necessary for the sale, lease, or other transfer of title to a unit; or the habitability of the unit; or for the health and safety of such persons. However, the association may deny access based on a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, prohibiting access to a unit. Any access is subject to reasonable restrictions adopted by the association.

13. Developer Use of Sales or Reservation Deposits Prior to Closing – Section 718.202, F.S., (SB 630, Page 50)

The law was amended to clarify and expand a developer’s right to use sales and reservation deposits placed in escrow. Previously, a developer could use such funds for actual construction, but the escrowed funds may now be used for the “actual costs” incurred by the developer in construction and development of the condominium property. The law defines the term “actual costs” to include, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural,

engineering, and surveying fees that directly relate to construction and development of the condominium property. The law prohibits the use of the escrow funds for marketing or promotional purposes, loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.

14. Fines Due Date – Section 718.303(b), F.S., (SB 630, Page 53)

The due date for a fine was changed from being due 5 days after the committee meeting at which the fine is approved, to being due 5 days after notice of an approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

15. Combined Declaration of One or More Condominiums – Section 718.405(5), F.S., (SB 630, Page 54)

The law clarifies that a multi-condominium association may adopt a consolidated or combined Declaration for the condominiums without being required to merge the condominiums into a single condominium.

16. Division Enforcement of Developers – Section 718.501(1), F.S., (SB 630, Page 54)

The Division now retains jurisdiction to investigate complaints against developers for failure to maintain the association’s official records. Previously, the Division only retained jurisdiction after turnover to investigate complaints against the developer related exclusively to financial issues, elections, and unit owner access to the official records.

17. Ombudsman’s Office – Section 718.5014, F.S., (SB 630, Page 65)

The law has been changed to allow the principal office of the Ombudsman to be located outside of Leon County, Florida.

SENATE BILL 1966 (“SB 1966”)

1. Board Candidate Eligibility – Section 718.112(2)(d)2, F.S., (SB 1966, Page 39)

The term “monetary obligation” was replaced with the term “assessment” for purposes of determining whether a person is ineligible to be a candidate to serve on the Board. This means a person is no longer ineligible to be a candidate because they are delinquent on fines, fees, or any other monetary obligation other than assessments.

Note, however, that Section 718.112(2)(n), F.S., was not amended and still provides that a director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law. As such, it is unclear how to treat a candidate running for the Board that is more than 90 days delinquent in a monetary obligation other than an assessment. It would appear that a person is eligible to be elected and then, immediately upon being seated, would be deemed to have abandoned his or her seat.

The law also now provides that a person is delinquent if a payment is not made by the due date as specifically identified in the Declaration of Condominium, Bylaws, or Articles of Incorporation. If a due date is not specifically identified in the Declaration of Condominium, Bylaws, or Articles of Incorporation, the due date is the first day of the assessment period.

2. Annual Budget – Section 718.112(2)(f)1, F.S., (SB 1966, Page 46)

The annual budget for condominium associations must be proposed to unit owners and adopted at least 14 days before the beginning of the fiscal year. The failure to adopt the annual budget a second time is a minor violation and the prior year’s budget will continue in effect until new a budget is adopted.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

Questions regarding the content of this article may be emailed to Christopher Pope at chrispope@paveselaw.com. To view past articles, please click “Publications” on our firm website. Mr. Pope is 1 of only 2 attorneys in Florida that is Florida Bar Board Certified in both Construction Law and Condominium and Planned Development Law. He is a partner and an experienced construction and real estate attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195; Fax: (239) 332-2243.

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