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2021 LEGISLATIVE UPDATE FOR FLORIDA HOMEOWNERS' ASSOCIATIONS

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The 2021 Florida legislative session produced several bills that made numerous changes to homeowners' association law (Chapter 720, Florida Statutes; the Homeowners' Association Act) that will affect the operation of homeowners' associations across the State. Below is a summary of the changes to the Homeowners' Association Act law made pursuant to Senate Bill 56, House Bill 463, Senate Bill 602, and Senate Bill 630, which all managers, Board members, and homeowners' association residents need to become familiar with before the changes become effective on July 1, 2021.

Note: House Bill 463, 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.

SENATE BILL 56 ("SB 56")

1. Official Records – Section 720.303(4)(I), F.S., (SB 56, Page 6)

The affirmative acknowledgments of parcel 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 parcel owners as an official record.

2. Assessments and Statements of Account – Section 720.3085, 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 parcel 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 parcel owners at least 30 days before it sends the invoice for assessments or the statement of account by the new delivery method.

(c) Parcel 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.

3. Courtesy Notice of Late Assessment – Section 720.3085 (3)(c)1, F.S., (SB 56, Page 12)

There is a new statutory form notice of late assessments that must be delivered to the parcel 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 parcel 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.

HOUSE BILL 463 (“HB 463”)

Pools serving homeowners’ associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments are now exempt from supervision by the Health Department, except for supervision necessary to ensure water quality and compliance with Section 514.0315, Florida Statutes, and are subject to Sections 514.05 and 514.06, Florida Statutes.

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 homeowners’ associations governed by Chapter 720, Florida Statutes.

2. Conflicts between Chapter 720, Homeowners’ Association 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 Homeowners’ Association Act (Chapter 720) will prevail in any conflict with the provisions governing the Florida Not for Profit Corporation Act (Chapter 617).

SENATE BILL 630 (“SB 630”)

1. Notice of Board Meetings – Section 720.303 (2)(c)1, F.S., (SB 630, Page 80)

The law has been amended to provide that, in addition to any of the authorized means of providing notice of a meeting of the Board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on the association’s website or an application that can be downloaded on a mobile device for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the association property. Any rule adopted must, in addition to other matters, include a requirement that the association send an electronic notice to the parcel owners whose e-mail addresses are

included in the association's official records in the same manner as is required for a notice of a meeting of the parcel owners. Such notice must include a hyperlink to the website or such mobile application on which the meeting notice is posted.

2. Official Records

(a) **Section 720.303(4)(l), F.S., (SB 630, Page 82)** – Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by parcel owners are official records and must be maintained for at least 1 year after the date of the election, vote, or meeting.

(b) **Section 720.303(5)c3, F.S., (SB 630, Page 84)** – Guest information obtained by the association in gated communities is now protected official records and not open to inspection by the parcel owners.

3. Reserves: Financial Report Disclaimers Regarding Reserves

(a) **Section 720.303(6)(c)1, F.S., (SB 630, Page 85)** – The statute provides that disclaimer language is now also required when the Declaration, Articles of Incorporation, or Bylaws do not obligate the developer to create reserves.

(b) **Section 720.303(6)(c)1, F.S., (SB 630, Page 85)** – The statute has revised the disclaimer required in the association's year-end financial reports when the budget of the association does not provide for statutory reserves or if reserves are not fully funded.

(c) **Section 720.303(6)(c)2, F.S., (SB 630, Page 85)** – The statute has also revised the disclaimer required when the association provides for voluntary reserves.

4. Reserves: Establishment of Statutory Reserves – Section 720.303(6)(d), F.S., (SB 630, Page 87)

The statute now provides that statutory reserves are only established when mandated by the governing documents or by a vote of the parcel owners. The statute previously provided that the association was deemed to have provided for reserve accounts if they were "initially established" by the developer, which is believed to have prevented developers from establishing reserves, whether Board-controlled or otherwise, out of the concern of liability associated with statutory reserves.

5. Reserves: Developer – Section 720.303(6)(i), F.S., (SB 630, Page 87)

The developer may now establish reserves other than statutory reserves. The statute now provides that, while in control of the association, the developer may, but is not required to, include reserves in the budget. If the developer includes reserves in the budget, the developer may determine the amount of reserves. The statute now also provides that the developer is not obligated to pay for: a) contributions to reserve accounts for capital expenditures and deferred maintenance, as well as any other reserves that the homeowners' association or the developer may be required to fund pursuant to any state, municipal, county, or other governmental statute or ordinance; b) operating expenses; c) any other assessments related to the developer's parcels for any period of time for which the developer has provided in the Declaration that, in lieu of paying any assessments imposed on any parcel owned by the developer, the developer need only pay the deficit, if any, in any fiscal year of the association, between the total amount of the assessments receivable from other members plus any other association income, and the lesser of the budgeted or actual expenses incurred by the association during such fiscal year. This law applies to all homeowners' associations existing on or created after July 1, 2021.

6. Board Recalls – Section 720.303(10)(b)(3), F.S., (SB 630, Page 89)

Parcel 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.

7. Fines Due Date – Section 720.305(2)(b), F.S., (SB 630, Page 92)

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 the approved fine is provided to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

8. Notice of Amendment – 720.306(1)(g), F.S., (SB 630, Page 93)

A notice of amendment is now required to be sent to the parcel owner’s mailing address in the official records of the association or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission. Previously, if the notice was mailed, it was required to be sent to the mailing address on the property appraiser’s website.

9. Amendments to Rental Restrictions – Section 720.306(1)(h), F.S., (SB 630, Page 93)

New governing documents or amendments enacted after July 1, 2021, that prohibit or regulate rentals of 6 months or more will not apply to existing parcel owners that do not vote to approve the amendment. However, the association may still prohibit or regulate rentals of less than 6 months and prohibit the rental of a parcel for more than 3 times in a calendar year. This change in the law does not affect associations of 15 or fewer parcel owners.

However, this “grandfathering” protection for existing parcel owners is lost upon a change of ownership. The statute provides that a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity; when beneficial ownership of the parcel does not change; or when an heir becomes the parcel owner. The term “affiliated entity” means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish to the association a document certifying that this subparagraph applies and provide any organizational documents for the parcel owner and the affiliated entity that support the representations in the certificate, as requested by the association. However, with respect to a parcel owner that is a business entity, a change of ownership does occur when every person that owned an interest in the real property at the time of the enactment of the amendment or rule conveys their interest in the real property to an unaffiliated entity.

10. Election Dispute – 720.306(9), F.S., (SB 630, Page 94)

An election dispute may now be filed in court or submitted to the Division for binding arbitration.

11. Transition of Association Control (i.e. Turnover) – 720.307, F.S., (SB 630, Page 95)

The statute was amended to clarify that turnover is triggered 3 months after 90% of the parcels in all phases of the community that will ultimately be operated by the homeowners’ association have been conveyed to

parcel owners other than the developer. The same clarification was made with respect to the 50% threshold that allows parcel owners other than the developer to elect at least one person to the Board.

12. Illegal Discriminatory Restrictions – Section 720.3075(6), F.S., (SB 630, Page 98)

The association 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).

13. Emergency Powers – Section 720.316, F.S., (SB 630, Page 98)

This bill:

(a) Amends Section 720.316(1), F.S., to extend a homeowners' 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 and decisions 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 associations to also consult with public health officials when determining whether any portions of the common area or facilities will be unavailable for entry or occupancy.

(f) Creates Subsection 720.316(3), F.S., to provide that during a declared state of emergency, homeowners' associations may not prohibit parcel owners, tenants, guests, agents, or invitees of a parcel owner from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel when access is necessary in connection with the sale, lease, or other transfer of title to a unit; or the habitability of the parcel; 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 parcel. Any access is subject to reasonable restrictions adopted by the association.

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 chrishoppe@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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