

# BABB

## Property Pro

For the community association industry, the *42 Session of the Legislature of Florida (2010)* was very significant, resulting in numerous new laws that will affect the day-to-day operation and affairs of community associations across the State of Florida.

**NEW LAWS.** The following is a summary of the bills that became law. The following is only summary in nature and it is recommended that you download and read the new statutes before taking any action. The text of the actual statutes may be accessed and downloaded via the internet at <http://laws.flrules.org/2011>. Please remember that Chapter 718 applies to condominium associations, Chapter 719 applies to cooperative associations and Chapter 720 applies to homeowner associations.

**CHAPTER 2010-174 LAWS OF FLORIDA (SB 1196/HB561), EFF. 7/1/2010).** This law makes substantial changes to Chapters 718, 719 and 720, Florida Statutes.

**§ 399.02: Elevator Firefighter Service.** Condominium and cooperative associations that had a certificate of occupancy granted as of July 1, 2008 are granted a five (5) year extension to comply with new firefighter control upgrade requirements or until the elevator is replaced or requires major modification, whichever occurs first.

**§ 627.714: Insurance Policies:** As to policies issued on or after July 1, 2010, a unit owner's residential property policy must include at least \$2,000 in property loss assessment coverage as a result of the same direct loss, regardless of the number of association assessments. There is a maximum deductible of \$250 per direct property loss. Coverage afforded by a unit owner's residential property policy is excess coverage over the amount recoverable under any other policy covering the same property.

**§ 633.0215: Manual Fire Alarm Systems.** Condominium and cooperative buildings less than four stories in height and which have a corridor providing an exterior means of egress is exempt from the requirements to install a manual fire alarm system under § 9.6 of the Life Safety Code.

**§ 718.110(13): Leasing Amendments.** The statutory limitation on Declaration leasing amendments is clarified. The statute now only applies to amendments that prohibit leasing, restrict the duration of leases or the number of times a unit may be leased during a specified time period. These leasing amendments will only apply to owners who consent to them or owners who acquire title to their units after the amendment is recorded in the public records.

**§ 718.110(14): Creation of Limited Common Elements.** A portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the declaration and shall not be considered an amendment falling into § 718.110(4). This is a clarification of existing law.

**§ 718.111(11): Condominium Insurance.** The Legislature repealed the requirement that a unit owner must insure the owner's unit and that associations must be named as an additional insured on owner's insurance policies. The special meeting notice requirement for insurance deductibles is repealed. Property not insured by the association must be insured by the unit owner. The Association is no longer required to survey its owners to verify that the owner has unit insurance. The association must determine the replacement cost for casualty insurance every 36 months.

**§ 718.111(12): Condominium Official Records.** Upon request of a unit owner, the association must remove the owner's email and telephone from its official records. Any person who knowingly or intentionally fails to create or maintain accounting records, with the intent of causing harm to association or one or more of its members is subject to a civil penalty. The association is not responsible for the use or misuse to information provided to it by a member unless the association has an affirmative duty not to disclose such information. Information newly exempt from owner access now includes the following: personnel records of the association's employees (disciplinary, payroll, health & insurance records), social security numbers, credit card numbers, driver's licenses numbers, email addresses, telephone numbers, emergency contact information, alternative addresses for owners other than required to fulfill the association's notice requirements, electronic security information used to safeguard data (passwords) and the software and operating systems (but not data).

**§ 718.111(13): Condominium Financial Reporting.** The Division must adopt rules creating standards for presenting a summary of reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method, unless pooled reserves have been previously authorized. An association with fewer than 75 units (formally 50 units) shall prepare a report of cash receipts and expenditures in lieu of financial statements required by the Condominium Act.

**§ 718.112(2)(d): Condominium Member Meetings.** If the number of the outgoing directors exceeds the number of director candidates, each outgoing director is eligible for reappointment and need not stand for reelection. Co-owners of a unit may serve at the same time on the board if they own more than one unit or if there are not enough eligible candidates to fill the vacancies on the board. A person who is delinquent in paying any assessment, fee, or *fine* is not eligible to serve as a director. The director certification form is no longer required. Within 90 days after election or appointment to the board, each new director must certify in writing to the secretary that the director has read the governing documents, that the director will work to uphold such documents to the best of his ability and that he will faithfully discharge his fiduciary duty to the members. In lieu of such written certification, the new director may complete an approved educational curriculum provided by the division-approved education provider. Failure to do either will result in the new director being temporarily suspended until he complies. The board

may temporarily fill the vacancy. The association must retain such certification or educational certificate for 5 years after the director's election.

**§ 718.112(2)(1): Condominium Fire Sprinklers.** The vote to opt-out of retrofitting the common elements with fire sprinklers has been reduced from 2/3rds to a majority (that is, more than half of all voting interests). The local fire marshal may not require a completion of retrofitting prior to 2019 (5 years added). By December 16, 2016, an association that is not in compliance with the fire sprinkler retrofit requirements and has not opted out must initiate an application for a building permit for the required retrofitting with the local governmental entity demonstrating that the association will become compliant by December 31, 2019. Electronic notice of such a meeting is now prohibited. A *vote to require fire sprinkler retrofitting* (after a successful opt-out vote has occurred) may be obtained at a special membership meeting called by 10% of the members. Such a vote may only be called once every three years. Electronic notice of such a meeting is prohibited.

**§ 718.112(2)(1)4: Condominium Elevator Generator or Pre-wiring.** An association may opt-out of the requirement to retrofit its elevators as required by § 553.509(2) (external generator or pre-wiring hook-up; & emergency operations plan) by the affirmative vote of a majority (that is, more than half) of the voting interests in the affected condominium.

**§ 718.112(2)(n): Condominium Director & Officer Delinquency.** Officers and directors more than 90 days delinquent in the payment of *any monetary obligation* due to the association shall be deemed to have abandoned the office.

**§ 178.112(2)(o): Condominium Director & Officer Crimes.** A director or officer charged by information or indictment with the felony theft or embezzlement offence involving association funds or property must be removed/suspended from office until the end of their term of office or the resolution of the charges without a finding of guilt, whichever occurs first.

**§ 718.115(1)(d): Condominium Communication Services.** Communication services, information services, and Internet services, provide pursuant to a bulk contract is a common expense and may be included in the association's annual budget.

**§ 718.116(11): Condominium Collection of Rent from Tenant.** If the unit's assessments or other monetary obligations are delinquent, the association may send a letter to the tenant and owner and demand the tenant remit rent directly to the association up to the tenant's financial obligation to the owner. This statute applies to the future monetary obligations of units (that is, those coming due on or after July 1, 2010) only. The association may issue notices and evict the tenant for non-payment. Tenant has no voting or inspection rights in the association.

**§ 718.117: Condominium Termination.** The Condominium Act's termination statute is clarified so that it applies after a catastrophe or when it is no longer economically viable or feasible to continue the construction of a condominium. The termination of the condominium does not bar the filing of another declaration or an emended and restated declaration of condominium.

**§ 718.202: Condominium Developer Sales Deposits.** The developer is permitted to hold sales deposits in one or more escrow accounts. If only one escrow account is used, the escrow agent must maintain separate accounting records.

**§ 718.301: Condominium Association Transition of Control.** If transition of control to the members is triggered by the appointment of a receiver for the developer, a court may determine within 30 days after the appointment of the receiver that transfer of control of the association *will not occur* if the court determines that it would be detrimental to the association or its members.

**§ 718.303: Condominium Suspension of Use of Common Elements and Fines; Voting Rights.** If a unit owner is *delinquent more than 90 days* in paying a monetary obligation due to the association, *the association may suspend the right of a unit owners or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid.* This does **NOT** apply to limited common elements used only by that unit, utility services provided to the unit, parking spaces, or elevators. The association may not impose a fine or suspension without 14 days advance notice and an opportunity for a hearing to the owner and, if applicable, its occupant, licensee or invitee. If the committee does not agree with the fine or suspension, it may not be levied or imposed. Notice and hearing are not necessary if a fine or suspension is imposed as a result of the owner failing to pay monetary amounts due to the association. Such a fine or suspension must be approved at a duly-noticed board meeting. The association must notify the owner and the occupant, licensee, or invitee by mail or hand delivery of the fine or suspension. The association may also *suspend the voting rights* of a member due to nonpayment of any monetary obligation due to the association that is more than 90 days delinquent. The suspension ends upon full payment of all obligations.

**§ 718.708: Liability.** Original developer is not released from liabilities.

**§ 718.106(1)(d): Cooperative Directors.** Unless otherwise provided in the Bylaws, a director vacancy may be filled by a majority vote of the remaining directors. In the alternative, the board may elect to hold an election. A director appointed to fill a vacancy shall fill the vacancy for the unexpired term of office, unless otherwise provided in the bylaws. Vacancies caused by recall are filled in the manner provided by the Cooperative Act.

**§ 719.1055(5): Cooperative Life Safety Compliance.** The cooperative bylaws must include a provision for a certificate of compliance from a licensed electrical contractor or electrician and the certificate of compliance may be accepted by the board as evidence of the cooperative units with the applicable fire and life safety code provisions.

A cooperative association may opt-out of the obligation to retrofit the common elements or units of a residential cooperative with a fire sprinkler system if a majority of the unit owners in the affected cooperative so vote. Cooperatives that have not voted to opt-out by December 31, 2016 must initiate an application for a building permit for the required installation demonstrating that the cooperative will be in compliance by December 31, 2019.

A vote to forego retrofitting may be obtained by limited proxy or a ballot personally cast by the member, or by the execution of a written consent and is effective upon recording a certain

certificate in the public records. The cooperative must mail or deliver to each owner a written notice at least 14 days in advance. Within 30 days following a successful opt-out vote, notice of the vote must be mailed or delivered to each unit owner. Evidence of compliance with the foregoing must be made by affidavit and filed among the Association's official records. A copy of the notice must be provided by each owner to a new owner before closing and by each owner to a renter before signing a lease.

If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be at a special meeting called by at least 10% of the voting interests. Such vote may be called once every three years. Electronic transmission may not be used.

**§ 719.108: Cooperative Assessments and Claim of Lien.** The Cooperative Association's claim of lien now also secures (in addition to assessments and interest) late fees, costs for collection services and attorney's fees. The Cooperative Association may not file a claim of lien until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner. The notice must be sent to the owner at the address of the unit by regular US mail and if the most recent address of the owner is the unit, the notice must also be sent by registered or certified mail, return receipt requested. If the most recent address is in the US but is not the unit, the notice must be sent via registered or certified mail, return receipt requested to the unit owner at his or her most recent address. A notice is deemed delivered upon mailing.

A Cooperative Association is provided that same statutory right as a condominium association to collect rent from the tenant of a delinquent unit owner and must follow the same procedures as condominium associations.

**§720.303(2)(b): Closed HOA Board Meetings.** HOA law is clarified so that meetings between the board or a committee and the Association's attorney regarding proposed or pending litigation are closed to the membership. Meetings of the board held to discuss personnel matters remain closed.

**§ 720.303(b)(5): HOA Official Records.** Failure of a HOA to provide access to its records within 10 days after a receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the HOA willfully failed to comply with the law. If there is no photocopy machine available where the records are kept or the records to be copied exceed 25 pages, the Association may have copies made by a vendor or the HOA's management company personnel and may charge the actual cost of copying, including any reasonable costs involving personnel fees and charges at an hourly rate for vendor or employee time to cover administrative costs to the vendor or the HOA.

HOA exempt records now also include discipline, payroll, health and insurance records of employees, social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, any address of the owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, lot designation, mailing address and property address. Also excluded are electronic security measures used by the HOA to safeguard data and passwords, the software and operating systems of the HOA that allows the manipulation of data (but not the data).

**§ 720.303(6): HOA Budgets.** HOA reserve funding requirements are clarified. A majority of the members may vote to terminate a reserve account. Upon termination, the reserve account shall be removed from the budget. If the HOA's budget includes reserve accounts that are not created or established as provided for by statute, each financial report for the preceding fiscal year is required to include a certain disclosure notice as prescribed by statute.

**§ 720.303(12): Compensation Prohibited.** HOA directors, officers, and committee members may not directly receive any salary or compensation from the Association for performing their duties and may not in any other way benefit financially from service to the HOA. However, such persons may receive any fee authorized by the governing documents or as approved by a majority vote of the members present at a membership meeting, be reimbursed for out-of-pocket expenses and they may receive the same financial benefit accruing to all or a significant number of members as a result of lawful board actions.

**§ 720.304(2)(b): HOA Flags.** Flagpoles and displays of flags are subject to all building codes, zoning setbacks, and other applicable governmental regulations.

**§ 720.305(2): HOA Enforcement Obligations and Rights.** If a member is delinquent in paying a monetary obligation due the HOA, the HOA may suspend until such monetary obligation is paid, the rights of the member or member's tenants, guests, invitees or both, to use the common areas and facilities. A fine of less than \$1,000 may not become a lien against a lot. The HOA may not suspend the right to gain access to the lot or utility services. A fine or suspension may not be imposed without at least 14 days advance notice and an opportunity for a hearing before a committee. If the HOA imposes a fine or suspension, the HOA must provide written notice of such fine or suspension by mail or hand delivery to the owner and, if applicable, to the tenant, licensee, or invitee. The new statute deletes the requirement that notice and other requirements do not apply to the imposition of suspensions or fines due to the member's failure to pay assessments.

**§ 720.306(7) & (8): HOA Meetings and Voting.** Members' meetings may be adjourned to another date, time, and place. If the governing documents permit voting by secret ballot for the election of directors, such ballots must be placed in an inner envelope with no identifying markings and mailed or delivered to the HOA in an outer envelope bearing the member's name, lot number, and signature. Any vote received after the closing of balloting may not be considered.

**§ 720.306(9): HOA Director Terms.** Nominations in advance of the election of directors are authorized when absentee or secret ballots are used. If a director vacancy occurs other than by recall, the remaining directors may fill the director vacancy or call for an election by the membership. Unless otherwise provided by the Bylaws, the newly elected director shall serve for the unexpired term of office.

**§ 720.3085: HOA Collection of Rent.** HOA is provided the same right as condominium associations to collect rent from a tenant if the lot owner is delinquent in paying any monetary obligation to the HOA.

**§ 720.31(6): HOA Recreational Leaseholds and Facilities.** HOA is authorized to acquire leaseholds, memberships and other possessory use interests in other lands or facilities (including any country clubs, golf clubs, golf courses, marinas, parking areas and other recreational facilities). All such facilities existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to recording the declaration, agreements to acquiring leaseholds, membership, or other possessory or use interests not entered into within 12 months after recording the declaration must be approved as a material alteration of the common areas. If the declaration is silent, any such transaction requires the approval of 75% of the total voting interests of the HOA.

**§ 720.315: HOA Developer Special Assessments.** Before turnover, the board controlled by the developer may not levy a special assessment unless a majority of the lot owners other than the developer have approved the special assessment by a majority vote at a duly called special membership meeting at which a quorum is present.

**CHAPTER 2010-032, LAWS OF FLORIDA (HB 109/SB234), eff. 7/1/2010).**

#### **TOP TEN DBPR COMPLIANCE ISSUES FOR CONDOMINIUMS**

1. Failure to update the Frequently Asked Questions and Answers (Q&A) Sheet every 12 months.
2. Failure to adopt a hurricane shutter rule.
3. Failure to adopt a rule designating a specific place for posting notices.
4. Failure to have a document authority to levy fines, late fees, transfer fees, or security deposits.
5. Failure to obtain competitive bids on contracts that exceed 5% of the Association's annual budget.
6. Failure to disclose beginning and ending dates in the proposed annual budget.
7. Failure to propose full reserve funding in the proposed annual budget.
8. Failure to record a vote or abstention in the minutes for each director present at the board meeting.
9. Failure to provide a director candidate a receipt upon hand delivery of a written notice of intent to be a director candidate.
10. Failure to maintain a complete set of recorded condominium documents and certified copy of articles of incorporation.