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Memo

To: All Homeowner Association Clients
From: Jane L. Cornett, Esq.
Subject: 2011 Amendments to Florida Law - Summary
Date: July 19, 2011

1. Florida Statute 720.301 – Owner Participation at Board Meeting

This has now been amended so that the right to attend meetings includes the right to speak with reference to all “designated items.” Unfortunately, designated items are not specified or defined. Furthermore, since the statute doesn’t require an agenda for board meetings, it’s very difficult to know what was intended by the use of the term “designated items.” The statute does say, and said before, that the board can adopt rules concerning the rights of the Members to speak, governing the frequency and duration of Member statements, which rules could include the requirement that there be a signup sheet for Members who wish to speak.

2. Florida Statute 720.303(1) – Official Records

Fax numbers have been added to the list of owner information that is not open to other owners. Owner addresses, phone numbers and fax numbers may be disclosed to other owners if the association obtains written permission to disclose that information. If the association obtains that written permission once, you do not need to ask again. An owner may, in writing, revoke permission at any time.

3. Florida Statute 720.303(5) - Personnel Records

This section states that personnel records of the association are not open to Member inspection and has said this for a while. The revision states that personnel records of the association or management company are not open. The

records that are not open include disciplinary, payroll, health, and insurance records. However, the statute now says that written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee are open to inspection by an owner.

4. Florida Statute 720.305(3) – Suspensions for Delinquency

The right to vote can be suspended for anyone who is over ninety (90) days delinquent and the votes of the suspended Member do not count against the total votes required for any purpose, including quorums, elections or approving amendments. Suspensions for nonpayment do not require any kind of hearing or committee involvement although the statute does say that suspensions must be approved at a properly noticed board meeting and then the owner (and any tenant) must be notified in writing or in person of the suspension. The suspension automatically ends when all amounts due to the association are paid. This would include any fines in addition to delinquent assessments.

5. Florida Statute 720.306(9)(b) – Eligibility to be a Candidate

Any person who is delinquent for more than ninety (90) days in the payment of anything owed to the association is not eligible for board membership nor is a person who has been convicted of a felony and whose civil rights have not been restore at least five (5) years before the date of the election.

6. Florida Statute 720.3085 - Assessments

A subassociation or a successor that acquires title to a parcel due to a foreclosure of the subassociation lien is not liable for unpaid assessments owed to a master association. This new law probably does not apply to an existing community unless the declaration includes a provision that statutory changes are automatically incorporate.

7. Florida Statute 720.3085(8)(a) – Letter to Tenant

This requires that if a unit is occupied by a tenant and the owner is not paying, the association may collect from a tenant. There is now a statutory form that must be used and that is:

Pursuant to section 720.3085(8), Florida Statutes, we demand that you make your rent payments directly to the homeowners' association and continue doing so until the association notifies you otherwise.

Payment due the homeowners' association may be in the same form as you paid your landlord and must be sent by United

States mail or hand delivered to
_____ (full address), payable to
_____ (name).

Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to section 720.3085(8), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord.

8. Florida Statute 720.309(2) – Communication Services

This is a brand new section. If the association’s documents allow the association to bill and assess for the cost of communication services, then information services or internet services obtained pursuant to a bulk contract may be part of that association’s operating expenses. If the governing documents don’t specifically provide for communication services, the board can contract for the services and make them allocatable on a per unit basis. If for some reason the homeowner association documents allow charging assessments other than as an equal share (which is pretty rare in homeowner associations), the bulk contract costs could still be charged on an a per unit basis. If such a contract is not authorized in the documents but rather by a vote of the board, then it can be cancelled by a majority vote of the Members at the next regular or special meeting of the association. Any Member can make a motion to cancel the contract. The board is not required to ask the Members to vote on the contract but any Member can bring up the vote if he or she wishes. If the motion is not made at the very next meeting after the contract is signed, then the issue is closed and cannot be raised at a future date. Residents who are hearing impaired or legally blind may “opt out” of the contract. The cable companies are well familiar with those exceptions as they have existed in condominiums for many years.

Other Laws of Interest to Community Associations

9. Florida Statute 48.031 – Process Servers

A condominium, cooperative or other gated community must allow the unannounced entry of a Process Server into the community including the common areas and common elements, when the Process Server is attempting to serve process on a defendant or witness. The Process Server will have some type of identification to show that he/she is a licensed Process Server. Process Servers

are required to be licensed in the State of Florida and they will be certified by a local court. That could be the circuit court or it could be a federal court.

10. Florida Statute 95.11 – Suits Against your Insurance Company

An action for a breach of a property insurance contract must be brought within five (5) years from the date of the loss. This is somewhat of a limitation on what the prior law provided. The prior law said that it was five (5) years from the date that you knew or should have known of the incident that gives rise to the litigation. The legislature has intentionally made sure that this kind of lawsuit must be brought within five (5) years of the date of the event such as a fire, hurricane, flood, theft, vandalism, etc.

11. Florida Statute 626.70132 – Notice of a Windstorm or Hurricane Claim

The insurance company must receive notice of a claim for damages as a result of a hurricane or a windstorm within three (3) years of the date of the storm. The previous time limit was five (5) years.

12. Florida Statute 627.706 – Sinkhole Insurance

While sinkholes are not a common occurrence in this part of the state, they are a major problem in some areas. A policy holder is required to provide notice to the insurance company within two (2) years from the time the policy holder knew or should have known about a sinkhole claim.

13. Florida Statute 627.7011 – Homeowner Insurance Policies

In the event there is a total loss or total destruction of the property that is covered by the insurance, when the insurance policy is based on replacement cost, the insurance company must pay the complete replacement costs without any holdback for depreciation of value. In a case where it is less than the total loss and the policy is based on replacement cost, the insurer must pay the cash value of the insured loss less any deductible. Any other amounts are paid as expenses are incurred and work is performed.

14. Florida Statute 626.854 – Public Adjuster

Compensation to a public adjuster for a reopened claim or supplemental claim cannot exceed twenty percent (20%) of the reopened or supplement claim payment.

If you want to read these changes for yourself, the website is <http://www.flsenate.gov/Statutes/>. The majority of the changes are found in Senate Bill 1195.

If you have any questions, please don't hesitate to contact me, Robert Rydzewski or Michael Dermody.