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2017 FLORIDA CONDOMINIUM AND HOMEOWNERS ASSOCIATION LEGISLATION

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During the legislative session which ended on May 5, 2017, the Florida legislature passed 5 bills that will become law on July 1, 2017, unless vetoed by Florida's Governor Scott: Senate Bill 398, House Bill 653, House Bill 1237; Senate Bill 1520, and HB 6027. Below is a summary of the legislation which will be sent to the Governor.

Senate Bill 398: This bill changes the process and requirements relating to issuance of estoppel letters by condominium and homeowners associations as follows:

- The time period for responding to a request for an estoppel certificate is reduced from 15 days to 10 days, and if not delivered within 10 days no fee can be charged for the estoppel.
- The association's website must contain the name and street address or e-mail address of the person to whom requests for estoppel certificates are to be sent.
- Estoppel certificates must be delivered by hand, mail or e-mail on the date the estoppel is issued.
- Instead of being signed by an officer or agent of the association, an estoppel certificate may be completed by any board member, authorized agent or authorized representative of the association, which specifically includes an agent or employee of the association's management company.
- The statutes contain a statutory form of estoppel, and all estoppel certificates must be substantially in the form provided in the statute which includes general information, assessment information, and other information relating to capital contributions, required approvals to transfer a home or unit, and insurance.
- An estoppel certificate is effective for 30 days (35 if delivered by regular mail).
- The fee for an estoppel certificate may not exceed $250 unless (a) the estoppel is requested on an expedited basis and is delivered within 3 days, in which case an additional fee of up to $100 can be charged, or (b) delinquent assessments are owed in which case an additional fee of up to $150 can be charged. The statutorily set fees are to be adjusted every 5 years based on the CPI
- The statute contains provisions regarding estoppel certificates for multiple units owned by the same owner which are issued simultaneously.

House Bill 653: This bill addresses several condominium and homeowners association matters including:

- Certain condominiums that do not have a common area sprinkler system are required to install signage approved by the Fire Marshall warning of the lack of a common area sprinkler system.
- Condominium association officers, director and managers are specifically prohibited from accepting kickbacks, which could result in criminal penalties.
- Condominium election ballot and voting certificate forgery, theft of condominium funds, and destruction or refusal to allow access to official records of a condominium in furtherance of a crime are all subject to criminal penalties.

- New conflict provisions are added to the condominium statute including (a) an association's lawyer may not represent the association's management company, and (b) board members, managers, and management companies may not purchase a unit at an association lien foreclosure sale.
- Condominium official records are expanded to include bids for materials, equipment and services.
- By July 1, 2018, a condominium association with 150 or more units must have a secure website for which each owner must be provided a login and password. The website must contain the various condominium association official records including all condominium documents, rules and regulations, management and other agreements to which the association is a party, annual budget and proposed annual budget, financial reports, board certifications, notice of any unit owner meeting and the agenda within the statutory time periods which must be posted in plain view on the front page of the website or a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page along with any document to be considered and voted on by the owners during the meeting or any document listed on the agenda, notices of board meetings and agendas within the statutory time periods. Any information and documents which are restricted from being accessible to unit owners may not be posted on the website or, if posted, the protected information must be fully redacted.
- Condominium associations that operate fewer than 50 units and homeowners associations of less than 50 parcels can no longer opt to prepare a report of cash receipts and expenditures in lieu of financial statements and must comply with the financial reporting requirements based upon the total revenues of the association.
- Annual condominium financial reports must be provided within 5 days of request by a unit owner, and specific remedies and enforcement by the Division are provided for failure to meet this requirement.
- A condominium association, its officers, directors, employees, and agents may not use a debit card issued in the name of the association or billed directly to the association for payment of any association expense. Doing so can be prosecuted as credit card fraud.
- The fire sprinkler and engineered life safety systems requirements and retrofitting of condominiums for buildings above the 75 foot threshold are clarified by the bill; buildings 75 feet or less are exempt from such requirements.
- The percentage of voting interests that can object to and stop a plan of termination of a condominium from proceeding is reduced from 10% to 5%, and if so objected the amount of time that another plan of termination cannot be considered is increased from 8 months to 24 months. A plan of termination must be approved by the Division.
- Similar to condominium associations, board members of homeowners associations may communicate via email. However, unlike condominiums, board members may not vote by e-mail.
- The automatic sunset date of July 1, 2018 for Part VII of the Florida Condominium Act, the Distressed Condominium Relief Act, was removed, thus continuing the protections of bulk buyers and bulk assignees.
- Board members of homeowners associations may communicate via email, but may not vote by e-mail.
- Homeowners associations may provide notice of board meetings by posting on a website.
- Delinquent members of a homeowners association cannot escape their assessment obligation by including a restrictive endorsement on their check, such as "paid in full".

House Bill 1237: This bill pertains to condominium associations and echoes many of the provisions of HB 653 and, in addition, includes the following:

- A board member of a condominium association may not serve for more than 4 consecutive two-year terms unless approved by an affirmative vote of two-thirds of the total voting interests of the association, unless there are not enough eligible candidates to fill the vacancies.
- The recall provisions have been revised.
- Condominium associations cannot employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer or a

relative within the third degree of relation by blood or marriage of a board member or officer.

- A party contracting to provide maintenance or management services to a condominium after turnover may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments.
- Directors and officers of a condominium board and the relatives of such directors and officers must disclose to the board any activity that may be reasonably construed to be a conflict of interest; there are many listed occurrences which gave rise to a rebuttable presumption of a conflict of interest if there is no prior notice of such occurrences.
- The right of a condominium association to suspend voting rights of an owner for non-payment of a monetary obligation to the association is limited to a monetary obligation of more than $1000, and proof of such non-payment must be provided to the unit owner at least 30 days before such suspension takes effect.
- Condominium associations must provide an annual report to the Division containing the names of all of the financial institutions with which the association maintains its financial accounts.

Senate Bill 1520: This bill amends the condominium termination statute and echoes the provisions of HB 653 relating to Section 718.117, Florida Statutes.

House Bill 6027: This bill amends the financial reporting requires for condominium and homeowners associations and echoes the provisions of HB 653 relating to financing reporting requirements. These bills have not yet been sent to the Governor who, upon receipt, will either sign the bills, veto the bills, or do nothing in which case the bills will become law effective July 1, 2017.

For more information, please contact the author Jeffrey Margolis on our Business, Finance & Tax Team.

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