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GOVERNOR SIGNS CONDOMINIUM AND HOMEOWNERS ASSOCIATION LEGISLATION BUT VETOES LEGISLATION WHICH WOULD HAVE MODIFIED THE CONDOMINIUM SPRINKLER RETROFIT AND LIFE SAFETY REQUIREMENTS

June 26, 2017

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Citing to the recent London high-rise fire, Florida Governor Rick Scott vetoed House Bill 653 which, among other things, sought to amend the condominium fire sprinkler retrofitting and life safety systems requirements. However, the Governor signed House Bill 1237 and House Bill 6027 into law on June 26, 2016. The legislation signed by the Governor goes into effect on July 1, 2017 and adds several requirements and prohibitions to the Florida Condominium Act and Florida Statutes Chapter 720 governing homeowners associations as follows:

House Bill 1237

- Unless there are not enough eligible candidates to fill the vacancies on a condominium association board of directors, a board member of a condominium association may not serve for more than 4 consecutive two-year terms unless the prohibition is waived by an affirmative vote of two-thirds of the total voting interests of the association.
- The provisions and procedures for recall of condominium association board members have been changed.
- 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, and directors of a condominium association, may not acquire a unit at a foreclosure sale resulting from the any proceedings to enforce the condominium association's lien rights either at a foreclosure sale or by acquiring title by deed in lieu of foreclosure.
- Directors and officers of a condominium association 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. The legislation specifies several occurrences which gave rise to a rebuttable presumption of a conflict of interest if there is no prior notice of such occurrences.
- A condominium association may not hire an attorney who represents the association's management company.
- The right of a condominium association to suspend the 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 condominium association maintains its financial accounts.
- Condominium association officers, director and managers are specifically prohibited from accepting kickbacks, which could result in civil and criminal penalties. In addition, criminal penalties are imposed for forgery of election materials (ballot envelope or voting certificate), theft or embezzlement of condominium association funds, destruction of official condominium records, and refusal to allow inspection of official condominium records within the time periods provided by law. If an officer or director of a condominium association is charged with such misconduct, such officer or director is automatically removed from office and is not subject to election, appointment or reinstatement unless the charges are resolved without a finding of guilt.
- In addition to condominium unit owners, designated representatives of unit owners and tenants may inspect and copy condominium documents and records. Tenants, however, may only inspect and copy the condominium association's rules and by-laws.
- 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 official records are expanded to include bids for materials, equipment and services.
- Annual condominium financial reports must be provided within five (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.

House Bill 6027

This legislation amends the financial reporting requirements for condominium and homeowners associations, removing the exemption for condominiums containing less than 50 units and homeowners associations containing less than 50 parcels from providing financing statements prepared by an independent accountant. 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. However, the prohibition on condominium association from waiving the financial reporting requirements for more than three (3) years has been removed.

In addition to House Bill 1237 and House Bill 6027, on June 16, 2017, the Governor signed Senate Bill 1520 which amends various provisions of the condominium termination statute. Among other changes, the legislation decreases the percentage of voting interests that can object to and stop a plan of termination of a condominium from proceeding from 10% to 5%, and in the event of such objection, the amount of time that must pass for another plan of termination to be considered is increased from 18 months to 24 months. In addition, a plan of termination must now be approved by the Division of Florida Condominiums, Timeshares and Mobile Homes.

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

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