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NEW ELECTRONIC VOTING RULES FOR CONDOMINIUMS BRING ASSOCIATION VOTES INTO THE 21ST CENTURY

March 16, 2016

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Chapters 718 and 720 of the Florida Statutes were amended last year to authorize electronic internet based voting systems for condominium and homeowners association elections and other unit owner votes. Section 718.128 of the Florida Condominium Act and Section 720.317 of the Homeowners Association Act permit electronic voting if a unit owner or home owner consents to electronic voting in writing and the association provides the unit owner or home owner a method to (a) authenticate the owner's identity, (b) transmit an electronic ballot to the online voting system, and (c) confirm that the owner's electronic device can successfully communicate with the online voting system at least 14 days before the voting deadline. In addition, the electronic voting system must be able to (a) authenticate the owner's identity, (b) authenticate the validity of each electronic vote to assure that the vote is not altered in transit, (c) transmit receipt from the electronic voting system to each owner who casts an electronic vote, (d) separate any authentication or identifying information from the electronic ballot in an election of the board of directors so that it is impossible to tie an electronic vote to a specific owner, and (e) store and keep electronic votes accessible to election officials for recount, inspection and review purposes.

Electronic voting must be authorized by a resolution of the association's board which provides that all owners receive notice of the opportunity to vote through an electronic voting system, establishes reasonable procedures and deadlines for owners to consent, in writing, to electronic voting, and establishes procedures and deadlines for owners to opt out of electronic voting after giving consent. The notice requirements set forth in Sections 718.128 and 720.317 relating to the notice of the meeting at which electronic voting will be considered must be followed.

Consistent with Sections 718.128 and 720.317 of the Florida Statutes, the Division of Florida Condominiums, Timeshares and Mobile Homes has promulgated new election and electronic voting rules for condominium associations that go into effect on March 21, 2016. The rules are found in Sections 61B-23.0021, 61B-23.00211 of the Florida Administrative Code and provide the following:

> (1) An electronic voting system must provide the unit owner with a receipt for their vote, which receipt must include the specific vote cast, the date and time of submission of the vote, and the user identification.
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> (2) The electronic voting system must produce an official record to be maintained by the association identifying the specific votes cast on each ballot and the date and time of receipt of the electronically submitted ballot.
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> (3) For elections, electronic votes must not be accessible to the association prior to the scheduled election, the failure of which will void the election and the association must renotice the election.

Electronic voting is more convenient and Association's that adopt electronic voting may see an increase is owner participation in elections and other association matters.

For more information on this topic, please contact Jeff Margolis on the firm's Business, Finance and Tax Team.

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