

Broward Coalition

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A BUSY 2017 LEGISLATIVE SESSION Change Is In the Air

Recently, the Florida legislature has passed three bills set to become law on July 1, 2017, unless vetoed by Florida's Governor Scott: Senate Bill 398, pertaining to estoppels that is applicable to condominium, homeowners', and cooperative associations; House Bill 1237, applicable to condominium associations only which provides for numerous new requirements including criminal penalties and onerous and costly website requirements for those condominiums with 150 or more units and so much more; and House Bill 653, which brings more parity to laws governing different community associations, addresses fire sprinkler retrofit, perfects transferring developer rights absent obligations of failed condominium projects, and addresses the rights of board members to communication via email in a way you are sure to like. The far reaching scope of these three bills cannot be explained fully in this short article. Rather, this information is intended as a summary only. Future articles will provide more specific details.

Senate Bill 398 provides for an overhaul of the estoppel issuance process. It provides community associations a mere 10 days to issue an estoppel or forfeit payment for providing it later. Estoppel fees are strictly limited to the statutory limits. The massive amount of information that must be contained in the estoppel is unimaginable. Associations will need to work with their legal counsel to create a template for this massive amount of information that will need to be in the estoppel. This piece of legislation was clearly enacted to benefit realtors and purchasers, only.

House Bill 1237 pertaining to condominium associations only, is, in part, the result of a few bad board members in the Miami-Dade County area for which the entire rest of the state will suffer. Parts of this Bill, by way of analogy, is akin to going to the doctor for removal of a small wart on your finger and the doctor cuts off your entire arm. For instance, there are new criminal penalties for taking kickbacks, forging voting certificates or ballots, and embezzling association funds.

A condominium association, its officers, directors, employees, and agents may not use a debit card issued in the name of the association or building directly to the association for payment of ANY association expense. Doing so can be prosecuted as credit card fraud. These new criminal penalties should not be an impediment to serving on the board absent an individual with malicious intent.

Board members, managers, and management companies may not purchase condominium units at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or by taking title by deed in lieu of foreclosure. In addition to the existing requirement that bids for work to be performed be part of the association's official records, bids for materials, equipment, or services are now required to be part of the association's official records.

Effective 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 documents including the rules and regulations, the management agreement, all contracts to which the association is a party, summaries of all bids for materials equipment and services, the annual budget, the proposed annual budget, financial reports, proof of board of

member certification, and notice of any unit owner meeting and the agenda no later than 14 days prior to the meeting and such notice must be posted in plain view on the front page of the website or a separate sub page of the website labeled notices which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least seven days prior to the meeting at which the documents or information within the document will be considered. Also, notices of board meetings, agendas, and any other document required for the board meeting must be posted no later than the date of the regular meeting notice requirements, meaning either 48 hours for 14 days depending on the requirements of the meeting notice. Associations now have an affirmative duty to ensure that no protected information or information restricted from being accessible to unit owners is included in the documents that are required to be posted on the website, and if so, then the association has the duty to ensure such information is fully redacted.

Condominium associations that operate fewer than 50 units can no longer opt out of preparing a report of cash receipts and expenditures simply because they have 50 or fewer units. Rather, they will be minimally required to comply with the financial reporting requirements based upon the total revenues of the association.

Notably, a board member may not served for more than four 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. While not addressed in the legislation, it is oddly apparent that any directors serving only one year terms can serve an unlimited number of such terms. Additionally, the recall provisions have been completely revised which is already causing confusion.

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 consanguinity by blood or marriage of a board member or officer.

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 and there are a host of occurrences which gave rise to the need to make such a disclosures that are set out in the legislation.

Provisions are made for lawyers who are board certified in the area of community association law to be contracted by the Division of Florida Condominiums, Timeshares, and Mobile Homes (the "Division") to be arbitrators. This certification was recently approved by the Florida Supreme Court, and the process to become a board certified community association lawyer will begin this summer.

Finally, 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.

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House Bill 653, in part, echoes a few of the provisions in House Bill 1237. It continues to make Chapter 719 of the Florida Statutes, otherwise known as the "Cooperative Act," more synonymous with Chapter 718 of the Florida Statutes, otherwise known as the "Condominium Act." Many readers will be happy to learn that board members of both homeowners' and cooperative associations will be able to lawfully communicate via email, but not vote, as such is already provided for condominium association board members. Needed clarifications were provided to the fire sprinkler and engineered life safety systems requirements and retrofitting of condominiums and cooperatives for those buildings above the 75 foot threshold. For those that are less than 75 feet, it is made clear that they are exempt. The laws governing the transfer of developer rights saw a significant change. The "bulk buyer" laws, that were initially enacted to help rescue failed condominium construction projects by transferring developer rights but not prior developer obligations, were originally intended to "sunset." The automatic sunset provision of these "bulk buyer" laws were deleted, meaning that failed condominium projects may see a brighter future forever more. Chapter 720 of the Florida Statutes, otherwise known as the "Homeowners' Association Act," was clarified to provide that a delinquent member cannot escape their assessment obligation by including a restrictive endorsement on their check, such as "paid in full".

As to what happens next, Governor Scott can sign these Bills into law, do nothing in which case the Bills become law on their effective date of July 1, 2017, or veto the Bills. Stay tuned for future articles and our upcoming legal update class schedule during which these Bills and others being considered by the Florida legislature will be discussed if and when they become law.