

FIELDS & BACHOVE, PLLC

4440 PGA BOULEVARD, SUITE 308
PALM BEACH GARDENS, FL 33410
PHONE: (561) 625-1200
FAX: (561) 625-1259
www.fbhoalaw.com

GARY D. FIELDS, ESQUIRE
gary@fbhoalaw.com

EVAN R. BACHOVE, ESQUIRE
evan@fbhoalaw.com

2017 REVISIONS TO FLORIDA COMMUNITY ASSOCIATION LAW

July 21, 2017

(Via e-mail)

Dear Client:

It seems that the legislature made up for the relatively few statutory amendments that passed in 2016, as there are quite a few amendments to the statutes that passed in 2017 which will have an impact on your condominium or homeowners association. Please note that below is only a summary of some of the significant changes to the law and is not an exhaustive list of all changes that may affect your community. If you have any questions about a specific statutory provision or other laws that may or may not have passed, please contact our office.

The key 2017 revisions to the Condominium Act are as follows:

1. **Estoppels:** The following key changes have been made to the requirements for providing estoppel certificates:
 - a) They are due within 10 business days instead of 15 calendar days, and no fee may be charged if it is not provided within 10 business days;
 - b) The association must designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate;
 - c) The estoppel certificate must contain certain information, such as: whether there is a capital contribution fee; whether the Board has the right to approve transfers; and whether there is a right of first refusal;

- d) The estoppel must be valid for 30 days (if hand delivered or sent electronically) or 35 days (if sent by regular mail);
- e) The estoppel fee is capped at \$250, but an additional \$100 may be charged if it is requested on an expedited basis and delivered within 3 business days after the request; and an additional \$150 may be charged if the account is delinquent;
- f) The authority to charge an estoppel fee must be established by a written Board resolution OR provided by a written contract (such as the management agreement).
- g) A person who pays for the preparation of an estoppel certificate may request a refund if the closing does not occur. The refund request must be in writing and must occur no later than 30 days after the closing date. The refund must be provided within 30 days after receipt of a written request. The refunded fee may be treated like an unpaid assessment collectible from the owner of the property.

2. **Engineered Life Safety Systems:** This concerns a bill that was vetoed by the Governor. This bill would have pushed back the deadlines to retrofit and would have allowed high rise buildings to opt out of an Engineered Life Safety System (ELSS) with a vote of two-thirds of the owners. Even if your association took an opt out vote to forego retrofitting with sprinklers, you may still be required to install an ELSS. If your condominium is a high-rise building, it is recommended that you speak to the local fire marshal to determine whether an ELSS is necessary.

3. **Criminal Penalties:** The following acts could now subject you to criminal penalties:

- a) An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family;
- b) Forgery of a ballot envelope or voting certificate used in an election;
- c) Theft or embezzlement of funds of a condominium association;
- d) Destruction of or refusal to allow inspection or copying of the Association's official records in furtherance of a crime.

4. **Purchase of Units at Foreclosures:** A board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.
5. **Bids:** Bids for materials, equipment, or services must be maintained as official records for at least 7 years.
6. **Renter's Rights:** A renter of a unit has a right to inspect and copy the association's bylaws and rules.
7. **Websites:** By July 1, 2018, an association with 150 or more units (not including timeshares) must have a website that:
 - a) Contains digital copies of documents, including but not limited to: governing documents, all contracts (including management contracts), summaries of bids for 1 year, annual budget, financial report, director's certifications, notices of meetings and agendas;
 - b) Contains a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association;
 - c) Provides the unit owner with a username and password and access to the protected sections of the association's website.
8. **Financial Reporting:** An association that operates fewer than 50 units must prepare a financial statement based on its total annual revenues (whereas it used to be able to prepare a report of cash receipts and expenditures).
 - a) The association must provide an annual report to the DBPR containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the DBPR upon written request of any association member.
9. **Debit Cards:** An association or any officer, director, employee, or agent of an association may not use a debit card issued in the name of the association, or which is billed directly to the association, for the payment of any association expense. Use of a debit card issued in the name of the association or billed directly to the association for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud.

10. **Term Limits:** A board member may not serve more than 4 consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.
11. **Conflicts of Interest:** An association (not including timeshares) may not employ or contract with any service provider 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. This does not apply if the board member, officer, or relative owns less than 1% of the service provider.
 - a) Directors, officers, and their relatives must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption that a conflict of interests exists arises if a director, officer or relative enters into a contract with the association or holds an interest in a company that conducts business with the association.
 - b) An association may not hire an attorney who represents the management company of the association.
12. **Suspension of Voting Rights:** An association may only suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation if it is more than \$1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect.

The key 2017 revisions to the Homeowners' Association Act are as follows:

1. **Estoppels:** The following key changes have been made to the requirements for providing estoppel certificates:
 - a) They are due within 10 business days instead of 15 calendar days, and no fee may be charged if it is not provided within 10 business days;
 - b) The association must designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate;

- c) The estoppel certificate must contain certain information, such as: whether there is a capital contribution fee; whether the Board has the right to approve transfers; and whether there is a right of first refusal;
 - d) The estoppel must be valid for 30 days (if hand delivered or sent electronically) or 35 days (if sent by regular mail);
 - e) The estoppel fee is capped at \$250, but an additional \$100 may be charged if it is requested on an expedited basis and delivered within 3 business days after the request; and an additional \$150 may be charged if the account is delinquent;
 - f) The authority to charge an estoppel fee must be established by a written Board resolution OR provided by a written contract (such as the management agreement).
 - g) A person who pays for the preparation of an estoppel certificate may request a refund if the closing does not occur. The refund request must be in writing and must occur no later than 30 days after the closing date. The refund must be provided within 30 days after receipt of a written request. The refunded fee may be treated like an unpaid assessment collectible from the owner of the property.
2. **Financial Reporting:** An association that operates fewer than 50 units must prepare a financial statement based on its total annual revenues (whereas it used to be able to prepare a report of cash receipts and expenditures).

All of the above revisions are effective as of July 1, 2017. If there are any questions I can answer in this regard, please let me know.

Sincerely,

E. Bachove (e-mail signature)

EVAN R. BACHOVE