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2021 REVISIONS TO FLORIDA COMMUNITY ASSOCIATION LAW

June 28, 2021

(Via e-mail)

Dear Client/Property Manager:

As discussed in Part 1 of our Legislative Updates, there are several changes going into effect on July 1, 2021 that may have an impact on your homeowners association or condominium association. Below is a summary of the changes implemented by Senate Bill 630. Please note that below is only a summary of some of the significant changes in these new laws 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.

Effective as of July 1, 2021 (Changes applicable to condos only):

(1) §627.714(4) – **Insurance** - Added provision which states if the condominium association's insurance policy doesn't provide for rights of subrogation against the unit owners, then the individual unit owner's insurance policy also cannot provide for rights of subrogation against the condominium association.

(2) §718.111(12) – **Official Records** –

- Bids for work to be performed must be kept for at least one (1) year after receipt of the bid.
- Renters have the right to inspect and copy only the Declaration, Bylaws and Rules.
- The Association cannot require a member to demonstrate any purpose or state any reason for the inspection of records.

- For associations managing a condominium with 150 units or more, the Association can make the records available on a mobile app as an alternative to posting the records on the website.
 - The records available on the website or app must include any amendments to the Articles of Incorporation or other documents.

(3) §718.112 – **Various** -

- The Association may extinguish a discriminatory restriction in its governing documents as provided under §712.065 (including race, color, national origin, religion, gender, or physical disability). This means that if there is a discriminatory restriction appearing in a covenant or restriction, it may be removed from the covenant or restriction by an amendment approved by a majority vote of the board of directors, without a vote of the membership, notwithstanding any other requirements for approval of an amendment of the covenant or restriction.
- **Term Limits** – Provides long awaited clarification that only board service occurring on or after July 1, 2018 shall be used in calculating a board member’s term limit (8 consecutive years).
- Written notice of any meeting other than an annual meeting must include an agenda; be mailed, hand delivered or electronically transmitted to each unit owner; and be posted in a conspicuous place on the property within the time specified in the Bylaws. If the Bylaws don’t specify a timeframe, then notice must be provided at least 14 continuous days before meeting.
- The second notice of annual meeting/election must be sent at least 14 days but not more than 34 days before the date of the annual meeting/election.
- **Transfer Fees** – The fee that the Association may charge in connection with the sale, mortgage, lease, sublease or other transfer has been increased from \$100 to **\$150 per applicant**. (Note: This fee still may only be charged if the Association is required to approve such transfer and the fee is stated in the Declaration, Articles or Bylaws.)
 - Spouses or a parent or parents and any dependent children are considered one applicant.

- The fees must be adjusted every 5 years, which will be published by the DBPR on its website.
 - The Association can require a tenant to pay a security deposit if the authority appears in the Declaration, Articles or Bylaws. (Note: The amount of the security deposit cannot exceed 1 month's rent.)
 - **Recalls** – If the unit owner representative or a recalled board member wishes to challenge a recall, he/she can now file a court action as an alternative to a petition for arbitration.
 - The provision has been removed that prohibited the Association from contracting with a service provider that was owned or operated by a board member or by any person who had a financial relationship with a board member.
- (4) §718.113 – **Vehicle Charging Stations** -
- The protections for electric vehicle charging stations now apply to natural gas fuel stations as well.
 - The cost for supply and storage of the natural gas fuel must be paid by the unit owner installing the natural gas fuel station, and the owner must comply with all applicable federal, state or local laws and regulations.
 - A new provision allows for the Board of Directors to make available, install or operate an electric vehicle charging station or a natural gas fuel station in the common elements, and establish charges for the use of same. The installation, repair and maintenance of these stations does not constitute a material alteration or substantial addition to the common elements.
- (5) §718.1255 – **Alternative Dispute Resolution** -
- Besides election or recall disputes, the statute now allows for an aggrieved party to make a demand for presuit mediation as an alternative to mandatory arbitration. Election and recall disputes are not eligible for mediation, and still must be pursued through arbitration or litigation.
- (6) §718.1265 – **Emergency Powers** -
- Expands and clarifies the powers of the Board of Directors in response to damage or injury caused by or anticipated in connection with an emergency, including:

- Conducting meetings and elections, in whole or in part, by telephone, real-time videoconferencing or similar real-time electronic or video communication
- Allows for notice of meetings to be given in any practicable manner, and adds electronic transmission as an option
- Clarifies that during a state of emergency, the Association cannot prohibit owners, tenants, guests, agents or invitees from accessing the unit or common elements or the limited common elements for the purposes of ingress to and egress from the unit and when access is necessary in connection with the sale, lease or other transfer of title of a unit, or the habitability of the unit or for the health and safety of such person unless a governmental order or directive has been issued prohibiting such access to the unit.

(7) §718.303 – **Fines** -

- If a fine or suspension is approved, then the fine payment is due within 5 days after the notice of the approved fine is provided to the owner or the tenant, licensee or invitee.

(8) §718.501 – **DBPR Jurisdiction** -

- In addition to the DBPR’s existing right to investigate complaints related to financial issues and elections, the DBPR now has jurisdiction, after developer control, to investigate complaints related to maintenance of and unit owner access to official records.

Effective as of July 1, 2021 (Changes applicable to HOAs only):

(1) §720.301 – **Rules** -

- Removes the rules and regulations from the definition of “governing documents,” which has the effect that rules and regulations, and any amendments to the rules and regulations, do not have to be recorded in order to be effective.

(2) §720.303 – **Various** -

- Adds the ability of the Association to adopt, by rule, a procedure for posting the notice and agenda of board meetings on the website or a mobile app. The notice must be posted on the website or the mobile app for the same period of time as required for posting of notices. In addition,

the rule must include a requirement that the Association send electronic notice to members whose email addresses are included in the official records, and the notice must include a hyperlink to the website or mobile app.

- **Official Records** – All ballots, sign-in sheets, voting proxies and other records relating to voting by parcel owners must be maintained for at least 1 year after the date of the election, vote or meeting.
 - Adds provision that information which the Association obtains in a gated community in connection with guests' visits to parcel owners or community residents are not accessible to members.
- **Reserves** – Requires special language in the financial reports if the Association is responsible for repair and maintenance of capital improvements, but the budget does not provide for reserve accounts either under the statute or if the Declaration, Articles or Bylaws do not obligate the Developer to create reserves.
 - The provision has been removed that stated that reserve accounts were deemed established if they were initially established by the developer. Now reserve accounts are only deemed established if a majority of the total members voted to establish reserves.
- **Recalls** – When the Board or a recalled board member wishes to challenge a recall, it can now file a court action as an alternative to a petition for arbitration.

(3) §720.305 – **Fines** –

- If a fine or suspension is approved, then the fine payment is due within 5 days after the notice of the approved fine is provided to the owner or the occupant, licensee or invitee.

(4) §720.306 – **Various** –

- Notices to members must be provided to the address contained in the official records of the Association, instead of the address on the property appraiser's website.
- **Rental Amendments** - Any governing document or amendment to a governing document after July 1, 2021 which prohibits or regulates rental agreements applies only to: (1) owners who acquire title to a parcel after

the effective date of the governing document or amendment; and (2) to those owners who consents to the governing document or amendment.

- **Exceptions** – The Association may amend its governing documents to prohibit or regulate rental agreements for less than 6 months and may prohibit the rental of a parcel for more than 3 times in any calendar year, and such amendments apply to all parcel owners.
 - This provision does not affect amendment restrictions for associations of 15 or fewer parcels.
 - Clarifies that a change of ownership does not occur when the owner conveys the parcel to “affiliated entity”, when beneficial ownership of the parcel does not change, or when an heir becomes the parcel owner. See statute for definition of “affiliated entity”.
- **Election Disputes** – Any election dispute can now be filed in court as an alternative to arbitration.

(5) §720.3075 – **Discriminatory Restrictions** –

- The Association may extinguish a discriminatory restriction in its governing documents as provided under §712.065 (including race, color, national origin, religion, gender, or physical disability). This means that if there is a discriminatory restriction appearing in a covenant or restriction, it may be removed from the covenant or restriction by an amendment approved by a majority vote of the board of directors, without a vote of the membership, notwithstanding any other requirements for approval of an amendment of the covenant or restriction.

(6) §720.316 – **Emergency Powers** –

- Expands and clarifies the powers of the Board of Directors in response to damage or injury caused by or anticipated in connection with an emergency, including:
 - Conducting meetings and elections, in whole or in part, by telephone, real-time videoconferencing or similar real-time electronic or video communication
 - Allows for notice of meetings to be given in any practicable manner, and adds electronic transmission as an option

- Clarifies that during a state of emergency, the Association cannot prohibit owners, tenants, guests, agents or invitees from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel when access is necessary in connection with the sale, lease or other transfer of title of a parcel, or the habitability of the parcel or for the health and safety of such person unless a governmental order or determination has been issued prohibiting such access to the parcel.

If there are any questions I can answer in this regard, please let me know. Please stay safe and well.

Sincerely,

E. Bachove (e-mail signature)

EVAN R. BACHOVE