

## Legislative Changes 2010

### Homeowner's Associations

- 720.303 (2) (b) - ..... Notwithstanding any other law, ~~the requirement that board meetings and committee meetings be open to the members is inapplicable to~~ meetings between the board or a committee and the association's attorney to discuss proposed or pending litigation, or with respect to meetings of the board held for the purpose of discussing personnel matters are not required to be open to the members other than directors.

### Presumption:

- In HOAs the presumption that the association willfully failed to make records available if the records were not available within 10 business days only arises if the request was sent via certified mail, return receipt requested.

### Record Inspection Costs :

- If the association does not have a copy machine at the record site, or the owner requests more than 25 pages of records, copies may be made by an outside vendor or management company personnel - in that case the association may charge for the actual costs of the copies **and** hourly charges for vendor or employee time to cover the administrative costs to the vendor or the association.
- All the rules related to which association records, software and contact information mentioned in the condo section now also apply to HOA's.

### Budgets:

- 720.303 (6) BUDGETS.— (b) In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible. If reserve accounts are not established pursuant to paragraph (d), funding of such reserves is limited to the extent that the governing documents ~~do not~~ limit increases in assessments, including reserves. If the budget of the association includes reserve accounts established pursuant to paragraph (d), such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts pursuant to paragraph (d) in the budget, the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection. This section does not preclude the termination of a reserve account established pursuant to this paragraph upon approval of a majority of the total voting interests of the association. Upon such approval, the terminating reserve account shall be removed from the budget.
- (c) 1. If the budget of the association does not provide for reserve accounts pursuant to paragraph (d) governed by this subsection and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) must ~~shall~~ contain the following statement in conspicuous type:

- THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO ~~THE PROVISIONS OF~~ SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN~~ A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.
- 2. If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:
  - THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.
- Language has been added similar to condominiums that prohibit compensation for a director or officer unless provided for in the covenants. This does not prevent a director or officer from seeking reimbursement for out-of-pocket expenses or any fee or compensation authorized in advance by a vote of the majority voting interest.

#### 720.304 Rights of owners

- Previously, homeowners have been permitted to erect a freestanding flagpole no more than 20 feet in height regardless of any covenant restrictions. This has not changed however, language has been added with some additional guidelines.
  - The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the governing documents.

#### 720.305 is amended to read:

- Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—  
(2) If a member is delinquent for more than 90 days in paying a monetary obligation due the association the governing documents so provide, an association may suspend, until such monetary obligation is paid for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines of up to, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied for on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that a no such fine may not shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may shall not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to

collect its reasonable attorney's fees and costs from the nonprevailing party as determined by the court. The provisions regarding the suspension-of-use rights do not apply to the portion of common areas that must be used to provide access to the parcel or utility services provided to the parcel.

- (a) A fine or suspension may not be imposed without ~~notice of~~ at least 14 days notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. If the association imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

The above paragraph is a little different than the condominium statute in that a hearing must be held prior to any suspension or imposition of a fine for a delinquency.

Voting:

- (b) If the governing documents permit voting by secret ballot by members who are not in attendance at a meeting of the members for the election of directors, such ballots must be placed in an inner envelope with no identifying markings and mailed or delivered to the association in an outer envelope bearing identifying information reflecting the name of the member, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting that ballot. If the eligibility of the member to vote is confirmed and no other ballot has been submitted for that lot or parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted. If more than one ballot is submitted for a lot or parcel, the ballots for that lot or parcel shall be disqualified. Any vote by ballot received after the closing of the balloting may not be considered.
- Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

### **Assessment Collection**

All of the rules regarding collection of rent from tenants that apply to condominiums also applies to HOA's. The association may now notify the tenant that rent is to be paid directly to the association due to the homeowners delinquency. This does not give the renter any ownership rights, however.

Provided by: Elliott Merrill Community Management, Inc.

- Section 6 has been added to 720.31 addressing the association entering in to recreational leaseholds. If this is of interest to your association you should review the statute and discuss your plans with the association attorney.

**Special Assessments:**

Section 720.315, Florida Statutes, is created to read:

720.315 Passage of special assessments.—Before turnover, the board of directors controlled by the developer may not levy a special assessment unless a majority of the parcel owners other than the developer have approved the special assessment by a majority vote at a duly called special meeting of the membership at which a quorum is present.

Elliott Merrill Community Management, Inc.