

Recent Statutory Amendments Affecting Community Associations

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Each year the Florida Legislature enacts amendments to Chapter 718, Florida Statutes, Florida's Condominium Act and its counterpart for homeowners' associations, section 617.301 *et. seq.*, Florida Statutes, Florida's Homeowners Association Act. These statutory amendments affect all owners as well as all service providers to community associations, including managers, accountants and attorneys. The following is a brief summary of some of the amendments and their impact upon your community.

I. Condominiums

Section 718.112(2)(a)(2), Florida Statutes, was amended to expand the board's obligation to respond to "inquiries" as well as complaints. Upon receipt of an inquiry by certified mail, the board must provide a substantive response within 30 days or notify the inquirer that an opinion has been requested from legal counsel or the Division, and, thereafter, provide a timely response or be barred from recovering legal fees in connection with any proceedings arising out of the inquiry.

The amendments provide that the board is permitted to adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owners inquiries, one of which may be that the board is only obligated to respond to one written inquiry per unit in any given 30 day period. In such a case, any additional inquiry or inquiries must be responded to in subsequent 30 day period or periods, as applicable.

Section 718.112(2)(c), Florida Statutes, was amended to clarify that the board may hold private meetings with its attorney to discuss pending litigation or seek legal advice. The amendments now make clear that such meetings are protected by the attorney-client privilege and are not open meetings.

The mandatory non-binding arbitration sections have been significantly changed to reduce the jurisdiction of the Division . A "dispute" subject to arbitration now excludes the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duties by one or more directors; or claims of damages to a unit based upon the alleged failure of the board to maintain the common elements or condominium property. Other significant changes to this section include a new filing fee of \$50.00 as well as providing that the arbitrator may refer the "dispute" to non-binding mediation.

The above amendments to Florida's Condominium Act become effective October

1, 1997.

II. Homeowners Associations

Section 617.303, Florida Statutes, was amended to provide that directors may not vote by proxy or secret ballot at a board meeting, or any meeting of a committee or other similar body, except for the election of officers, when a final decision will be made regarding the expenditure of association funds or a vote to approve or disapprove architectural decisions is taken.

The fining provisions of section 617.305, Florida Statutes, were amended to increase the maximum amount of fines up to \$100.00 per violation (increased from \$50.00 per violation) and that continuing fines may be imposed after a single notice and opportunity for hearing, except that no such fine shall exceed \$1000.00 in the aggregate, unless otherwise provided in the governing documents. Another important sanction created in section 617.305, Florida Statutes, now allows associations, which are permitted to do so by their governing documents, to suspend the voting rights of a member for the nonpayment of regular annual assessments, if delinquent in excess of 90 days.

The above changes to Florida's Homeowners Association Act became effective July 1., 1997.

THE ABOVE IS NOT INTENDED AS SPECIFIC LEGAL ADVICE. IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT WITH AN ATTORNEY.

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