



June 30, 2010

RE: 2010 Legislative Changes to Condominium Statutes

Dear Board Member:

This letter is written for purposes of providing your condominium association with a summary of the most recent and relevant changes (SB 1196) effectuated by the Legislature and Governor of the State of Florida to chapter 718, Florida Statutes, and other Florida Statutes which affects condominiums.

With an effective date of July 1, 2010, SB 1196 provides the following changes to your community in these specific topics:

1) Rental Restrictions:

- a) Beginning July 1, 2010, amendments that prohibit renting or leasing of units, change the permissible rental term, or specify or limit the number of times a unit may be rented within a certain period will only apply to unit owners who consent to the amendment and owners who acquire title to their units after the effective date of the amendment. Any other amendment relating to the rental or leasing of units will apply to all owners regardless of owner consent or date of title acquisition.

2) Official Records:

- a) Email addresses and telephone numbers for owners must be removed from association official records if the owner revokes consent to receive association notices in this manner.
- b) An association is not responsible for the use or misuse of information provided to an owner or authorized representative of an owner in compliance with a request for records inspection, unless the association discloses information that it has a duty not to disclose.
- c) Any person who knowingly or intentionally harms or destroys any accounting records required to be created or maintained in accordance with statute during the period that such records are required to be maintained, or who knowingly or intentionally fails to create or maintain such records with the intent to cause harm to the association or one or more of its members, is subject to civil penalty.
- d) Records not accessible to owner inspection are extended to include:
 - i) Personnel records of association employees, including but not limited to disciplinary, payroll, health and insurance records;
 - ii) E-mail addresses, telephone numbers, emergency contact information, and addresses of unit owners other than those provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address and property address;
 - iii) Electronic security measures used to safeguard data, including passwords
 - iv) The software and operating system used by the association allowing manipulation of data, even if the owner have a copy of the same software. However, the data itself is considered part of the official records.

3) Elections and Directors Eligibility:

- a) Where the number of board seats expiring is greater than the number of candidates running for those seats, each board member whose term has expired is eligible for reappointment without standing for reelection.
- b) The restrictions upon co-owners serving on the board is relaxed to allow co-owners to serve where such co-owners own more than one (1) unit, or where there are not enough eligible candidates to fill the vacancies on the board.
- c) The director delinquency restriction is expanded to include any person delinquent more than ninety (90) days in the payment of any monetary obligation to the association, including fines, fees, and regular or special assessments. Such persons are not eligible for board membership.
- d) Removes the candidate certification requirement, and replaces it with a certification required from all directors within ninety (90) days after being elected. Each newly elected or appointed director must certify in writing within 90 days after being elected or appointed that he or she has read the association's governing documents (declaration, bylaws, articles of incorporation and current roles/policies), and that he or she will



work to uphold these documents to the best of his or her ability, and faithfully discharge his or her fiduciary duty to the association and its members.

- e) In lieu of written certification, a director may submit a certificate of satisfactory completion of the educational curriculum from a condominium education provider approved by the Division.
- f) Directors who do not submit proper certification are suspended from board service until they comply with this requirement, and the board may appoint an interim replacement.
- g) The Secretary must maintain the director's certifications for five (5) years after their election.
- h) Directors charged by information or indictment with a felony theft or embezzlement offense involving association funds must be removed from office until the end of the period of the suspension or the end of the director's term, whichever occurs first.

4) Collection of Assessments:

- a) The liability of a Lender (First mortgage) that acquires title to a unit through foreclosure or a deed in lieu of foreclosure has increased from six (6) months to *twelve (12)* months of unpaid assessments.
- b) With the statutory change, Lender liability will be limited to the lesser amount of either twelve (12) months of unpaid assessments coming due prior to the issuance of the Certificate of Title or one (1%) percent of mortgage debt.
- c) This change will take effect on foreclosed units in which a Lender acquires title after July 1, 2010.

5) Collection of Rents:

- a) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay the future monetary obligations related to the condominium unit to the association, and the tenant must make such payment.
- b) The demand is continuing in nature and, upon demand, the tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.
- c) The association must mail written notice to the unit owner of the association's demanding that the tenant make payments to the association.
- d) The association shall, upon request, provide the tenant with written receipts for payments made.
- e) A tenant who acts in good faith in response to a written demand from an association is immune from any claim from the unit owner.
- f) If the tenant prepaid rent to the unit owner before receiving the demand from the association and provides written evidence of paying the rent to the association within fourteen (14) days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the association to be credited against the monetary obligations of the unit owner to the association.
- g) The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least ten (10) days before the date the rent is due.
- h) The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord.
- i) The tenant's landlord shall provide the tenant a credit against rents due to the unit owner in the amount of amounts paid to the association.
- j) The association may issue notices under the Florida Residential Landlord and Tenant Act, and may sue for eviction as if the association were a landlord if the tenant fails to pay a required payment to the association.
- k) However, the association is not otherwise considered a landlord *under* the Florida Residential Landlord and Tenant Act and specifically has no duties there under.
- l) The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.
- m) A court may supersede the effect of this subsection by appointing a receiver.

6) Budget and Financial Reporting:

- a) The Division of Florida Condominiums, Timeshares, and Mobile Homes shall adopt revised rules setting , forth uniform accounting principles and standards to be used by all associations and shall adopt rules addressing the financial reporting requirements for multi-condominium associations to include the following:



- i) The revised rules must include standards for presenting a summary of association reserves including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method.
 - b) This disclosure is not applicable to reserves funded via the pooling method.
 - c) A condominium association that operates fewer than seventy-five (75) units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements.
- 7) **Finning:**
- a) Previously associations were permitted to levy fines only where their declarations or by-laws expressly authorized fining. The statutory change now authorizes all condominiums to levy fines pursuant to statute regardless of whether fining authority is included in the association's declaration or by-laws.
 - b) The basis for levying a fine remains limited to failures to comply with provisions in an association's governing documents.
 - c) The Condominium Act previously provided that fines could be levied "against a unit." The new amendment expands the scope of fining to permit fines to be levied against specific individuals who fail to comply with provisions in the governing documents - including owners, invitees, licensees and occupants. This means that associations can now fine any individual that is authorized to be on the property and who violates a covenant, restriction or rule and regulation of the association. The amended language fails to include the word "tenant" — but there is no reason to believe this was meant to exclude tenants who should fall under the umbrella of the word "occupants" and therefore similarly subject to fining.
 - d) Fines still may not exceed \$100 per violation and \$1000 in the aggregate, and the procedure for levying fines still requires a hearing upon at least fourteen (14) days' written notice, first be held before a committee of non-board member unit owners. The new amendment excludes fines relating to failure to pay amounts due to the association from notice and hearing requirements (and instead requires the fines to be imposed at a properly noticed board meeting with post-meeting notification of the fine sent to the owner/occupant/invitee by mail or hand-delivery).
 - e) The amendment expands fining authority to apply to unoccupied units, where previously it did not.
 - f) The amendment does not authorize lien and foreclosure as a method of collecting fines. Continuing inability to collect fines through lien and foreclosure leaves this remedy difficult to practically enforce.
- 8) **Suspension of Use Rights:**
- a) Condominium associations may suspend the use rights of unit owner in the limited circumstances where an owner is delinquent for more than ninety (90) days in the payment of any "monetary obligation" to the association.
 - b) The use rights that can be suspended include the right to use the common elements, the common facilities, and any other association property.
 - c) Voting rights may also be suspended due to non-payment of a monetary obligation to the association in excess of ninety (90) days. While an owner's voting rights are suspended, he or she is still counted toward the quorum requirement.
 - d) Use rights cannot be suspended regarding limited common elements, common elements needed to access the unit, parking spaces, elevators, or utility services provided to the unit. The statute is not clear as to whether cable and other bundled services are considered "utilities," or whether such services would be subject to suspension.
 - e) An association's right to suspend use rights extends to an owner's invitees, licensees, and unit occupants.
 - f) The notice and hearing requirements pertaining to the traditional levying of fines do not apply to the suspension of use rights associated with the failure to pay a monetary obligation to the association.
 - g) Instead, the suspension of use rights relating to monetary delinquency may be imposed at a properly noticed board meeting with post-meeting notification of the fine or suspension to the owner/occupant/invitee by mail or hand-delivery.
 - h) The suspension ends upon full payment of all monetary obligations due to the association.
- 9) **Casualty (Property) Insurance Requirements:**
- a) When applying for or renewing its casualty (property) insurance policy, a condominium association's board of directors must still determine the amount of the policy deductible.



- b) However, the board is no longer required to include in the Notice of Board Meeting to decide upon such deductible: the proposed deductible amount; the amount of available funds to meet such deductible; nor the estimate of potential assessment against each unit to meet such deductible.
 - c) Unit owners are still responsible for insuring their personal property within the unit, their limited common elements, and their floor, walls, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets, countertops, and window treatments including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit.
 - d) When applying for or renewing its casualty (property) insurance policy, a condominium association's board of directors must still determine the amount of the policy deductible.
 - e) Condominium associations are no longer required to request that each unit owner provide evidence of such unit owner's currently effective casualty (property) insurance and liability policy.
 - f) Condominium associations are no longer authorized to force place the purchase a policy of such insurance on behalf of such unit owner.
 - g) Unit owner property insurance policies are no longer required to name the association as an additional named insured and loss payee. As such, the unit owners need not obtain the association's endorsement for payments made by the unit owner's insurance carrier.
- 10) **Bulk Cable, Telephone, and Internet Contracts:**
- a) Expands the definition of "common expenses" which the association's board of directors may contract for on a bulk rate basis without unit owner approval beyond mere cable television and master antenna services.
 - b) Condominium associations are now free (without unit owner approval) to contract for other "Communication Services" which include high speed internet and telephone services.
 - c) However, such bulk rate contracts must be for a term of at least two (2) years.
- 11) **Fire Prevention Code (Fire Alarm System):**
- a) A condominium or cooperative that is less than Four (4) stories in height, and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system under section 9.6 of the Life Safety Code adopted under the Florida Fire Prevention Code.
- 12) **Fire Prevention Code (Sprinkler Retrofit):**
- a) A condominium or cooperative association may now vote to forego the retrofitting of the common areas in a high-rise building with a fire sprinkler system.
 - b) A high-rise building is defined as a building that is greater than seventy five (75) feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.
 - c) The term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway.
 - d) The vote to forego retrofitting is effective upon the recording of a certificate attesting to such vote in the public records of the county where the property is located.
 - e) A vote to forego retrofitting may be reversed in favor of requiring such retrofitting by a vote of the unit owners at a special meeting called by a petition of at least ten percent (10%) of all voting interests for such purpose. However, such vote to require such retrofitting may only be conducted once every three (3) years.
 - f) In the absence of such unit owner vote to forego retrofitting, the local authority may not require the completion of retrofitting with a fire sprinkler system before the end of 2019.
 - g) If the association is not in compliance with the requirements for a fire sprinkler system, and has not votes to forego retrofitting of such a system, the association must initiate an application for a building permit for the required installation with the local government having jurisdiction no later than December 31, 2016, demonstrating that the association will become compliant by December 31, 2019.

If you have any questions in regard to any or all of the foregoing matters or would like additional information with respect thereto, please do not hesitate to call and we will be ready to assist you.

Best regards,

Noel Duque