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LEGISLATIVE UPDATE OF NEW COMMUNITY ASSOCIATION LAWS

NUMERICAL INDEX SUMMARY OF LAWS AMENDED IN THE 2021 LEGISLATIVE SESSION

The following is our post-Legislative Session report on residential housing law changes from the 2021 Legislative Session. The Governor has not taken final action on some of the bills but is expected to sign all of bills. If a bill is vetoed, we will send a revised update. The full text of each bill, as well as applicable legislative staff reports, are available on the legislative web sites (www.flsenate.gov; www.myfloridahouse.com; and www.leg.state.fl.us.). Note: F.S. = Florida Statute. HB = House Bill. SB=Senate Bill. All changes are effective as of July 1, 2021 or as noted.

NOT FOR PROFIT CORPORATIONS (F.S. Chapter 617) (Applicable to condominium, homeowner and cooperative associations)

1. Quorum and Amendments – F.S.617.0725 / SB 602.

Clarifies that the quorum and amendment threshold amendment restrictions in the Statute do not apply to Chapter 718, 719 or 720 Associations.

2. Application of 617 to Community Associations – F.S. 617.1703(1)(a) / SB 602.

Clarifies that if Chapter F.S. 617 contradicts F.S. Chapters 718 (condominiums), 719 (cooperatives), 720 (homeowner associations), 721 (timeshares) or 723 (mobile homes) then those Chapters prevail over F.S. Chapter 617.

CONDOMINIUMS - (F.S. Chapter 718).

1. Official Records – F.S.718.111(12)(a)11d and (12)(a)17 / SB 630.

Bids for work to be performed or for materials, equipment, or services must be kept for at least 1 year after the receipt of the bid. Formerly bids had to be kept for at least 7 years.

2. Official Records – F.S.718.111(12)(a)17-18 / SB 630/SB 56.

The "all other written records of the association" catch-all category of official records formerly in subparagraph 15 has been renumbered subparagraph 17 and now provides "all

other written records not specified in subparagraphs 1 – 16 *which are related to operation of the association*."

A new official record has been added to the list - "all affirmative acknowledgements made pursuant to F.S. 718.121(4)(c)" which is discussed below but the "affirmative acknowledgment" is also added to the list of protected official record not available to Owners per 718.111(12)(c)3h.

3. Official Records – F.S.718.111(12)(c)1 / SB 630.

Renters now have the right to inspect and copy "only" the declaration of condominium, the bylaws and the rules. Formerly, renters had the right to inspect and copy the bylaws and rules and it was ambiguous whether they had the right to inspect other records. The law has also been clarified that any person with the right to inspect and copy official records may not be required to demonstrate any purpose or state any reason for the inspection.

4. Official Records – F.S.718.111(12)(g)1 / SB 630.

As of January 1, 2019 condominiums with 150 or more units were required to maintain a website and post certain documents on it. The new law now provides that the Association can, in lieu of posting on the website, make such documents available "through an application that can be downloaded on a mobile device." The downloadable application must be "independent" and operated by a "third party" provider and must be accessible through the internet and meet all other requirements imposed on the website by the Statute.

5. Illegal Discriminatory Restrictions – F.S.718.112(1)(c) / SB 630.

The Association may remove illegal discriminatory restrictions contained in the governing documents without an owner vote per F.S. 712.065.

6. 8-Year Director Term Limit – F.S.718.112(2)(d)2 / SB 630.

The law has been clarified to provide that the 8-year continuous years of service runs from service that commences on or after July 1, 2018.

7. Delinquent Board Candidate Eligibility Limited to Assessments Only – F.S.718.112(2)(d)2 / SB 1966.

Formerly, the law provided that a candidate that was delinquent in the payment of "any monetary amount" was not eligible to be a candidate to run for Board membership. Now, the law has been changed to provide that a candidate who is delinquent in the payment of "any assessment" is not eligible to be a candidate. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period.

8. Notice of Members Meetings – F.S.718.112(2)(d)3 / SB 630.

If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. This simply clarifies that all members meetings must be noticed at least 14 days in advance, not just the annual meeting. Further clarifies that the notice may be posted on condominium property or association property rather than only condominium property. Association property is deeded property owned by the association as opposed to condominium property identified in the Declaration of Condominium as common elements.

9. Annual Budget – F.S.718.112(2)(f)1 / SB 1966.

The Board shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the Board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation pursuant to the Division of Condominiums and the prior year's budget shall continue in effect until a new budget is adopted.

10. Transfer Fees/Security Deposits – F.S.718.112(2)(i) / SB 630.

The maximum transfer fee is raised from $100.00 per adult applicant to $150.00 per adult applicant. The fee will be adjusted every 5 years pursuant to the Consumer Price Index. The authority to charge a security deposit for a lessee, which formerly was required to be in the Declaration or Bylaws, may now also be authorized in the Articles of Incorporation.

11. Recalls – F.S.718.112(2)(j)4 / SB 630.

If the Board rejects a recall the owners voting for the recall may now also challenge the rejection in Court rather than only pursue recall arbitration through the Division of Condominiums.

12. Service Provider Conflicts of Interest with Director – F.S.718.112(2)(p) / SB 630.

This subparagraph has been eliminated as it was redundant with the conflict-of-interest law found in F.S. 718.3027.

13. Natural Gas Charging Stations – F.S.718.113(8) / SB 630.

Unit Owners may now install motor vehicle natural gas fuel stations in their Limited Common Element "or exclusively designated" parking spaces similar to electric vehicle charging stations. Like electric vehicle charging stations the Unit Owner must have the station separately metered and must comply with all federal, state and local laws and regulations for installation, maintenance and removal.

14. Natural Gas and Electric Vehicle Charging Stations Installed by the Association – F.S.718.113(9) / SB 630.

The Board of an association may make available, install, or operate an electric vehicle charging station or a natural gas fuel station upon the common elements or association property and establish the charges or the manner of payments for the unit owners, residents, or guests who use the electric vehicle charging station or natural gas fuel station. For the purposes of this section, the installation, repair, or maintenance of an electric vehicle charging station or natural gas fuel station under this subsection does not constitute a material alteration or substantial addition to the common elements or association property.

15. Notice of Intent to Lien and Notice of Intent to Foreclose – F.S.718.116(6)(b) / SB 56.

The notices of Intent to Lien and Intent to Foreclose the lien have been increased from 30 days to 45 days. This aligns them with the HOA Act.

16. Right to Contest Termination of Condominium – F.S.718.117(16) / SB 630.

An action contesting the termination of a condominium can be brought in arbitration with the Division of Condominiums or through pre-suit mediation and then a court of law. Formerly, terminations could only be contested through arbitration.

17. Construction Liens for Owner Installed Natural Gas and Electric Vehicle Charging Stations – F.S.718.121(2) / SB 630.

The contractor hired to install the stations on behalf of the Unit Owner cannot lien the Condominium Common Elements or Association property if the contractor is not paid for the work but can lien the Owner's Unit.

18. Courtesy Notice of Late Assessment Required Before Notice of Intent to Lien - F.S.718.121(4) / SB 56.

Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The unit owner may make the affirmative acknowledgment electronically or in writing.

An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies

the amount owed to the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a Board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468 provides a sworn affidavit attesting to such mailing. The Statute contains a form for the notice that must be used.

19. Alternative Dispute Resolution – F.S.718.1255 (4)-(7) / SB 630.

Mandatory nonbinding arbitration through the Division of Condominiums is no longer mandatory for disputes. The Association or the Unit Owner now has the option to go through arbitration with the Division OR go to pre-suit mediation just the same as in Chapter 720 Homeowners Associations and then file in Court if the matter is not settled in mediation. If all the parties agree, the arbitration ruling is final and binding. If they do not it is still non-binding and a trial de novo can be instituted. Election and recall disputes are not eligible for pre-suit mediation, however, and must be arbitrated or filed in in Court.

20. Emergency Powers – F.S.718.1265 / SB 630.

The emergency powers are now expressly applicable to an emergency declared due to a public health crisis such as Covid-19. The powers can now be used to prevent harm "anticipated" to be caused in connection with the emergency not just after the harm or damage has occurred. During a declared state of emergency, in addition to Board meetings, members meetings, committee meetings and elections can be held in whole or in part virtually via telephone, real-time video conferencing or similar real-time communication. The emergency powers CANNOT prohibit unit owners, tenants, guests, agents or invitees of a Unit Owner from accessing the Unit or the Common Elements or Limited Common Elements for the purpose of ingress and egress from the Unit when access is necessary in connections with (a) the sale, lease, or transfer of title of a unit or (b) the habitability of the Unit or for the health and safety of such persons unless a governmental order or public health directive from the CDC has been issued prohibiting such access to the unit. However, such access is subject to reasonable restrictions adopted by the association. The "disaster plan or emergency plan" can now be implemented "during" the emergency rather than just before or after the emergency. In determining to close or limit access to the Condominium Property the Board can now rely on the advice of "public health officials" not just an emergency management official or other licensed professional.

21. Developer Pre-Sales Deposits – F.S.718.202(3) / SB 630.

The law has long provided that purchase deposits can used for the "actual" construction of the condominium. The term is expanded to be "actual costs incurred by the developer" and the term "actual costs" is defined to include but not be limited to "expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property."

22. Fines and Suspensions – F.S.718.303(3)(b) / SB 630.

Payment of a fine approved by the fining committee is due 5 days after the "notice of the approved fine is provided to the unit owner or tenant" instead of 5 days after the date of the fining committee meeting.

23. Combining Declarations of One or More Condominium – F.S.718.405(5) / SB 630.

Clarifies existing law that 2 or more Condominiums can merge their Declarations of Condominium into a single document without merging the Condominiums into a single Condominium.

24. Authority of Division to Enforce Compliance by Developer – F.S.718.501(1) / SB 630.

After turnover, the Division has the authority to investigate complaints regarding the failure of the Developer to maintain or keep official records as required by law. Formerly, the authority only allowed investigation of financial issues, elections, and unit owner access to records.

25. Ombudsman's Office – F.S.718.5014 / SB 630.

The office no longer must be located in Leon County.

<u>COOPERATIVES (F.S. Chapter 719).</u>

1. Interest in a Cooperative Unit is Real Property – F.S.719.103(25) / SB 630.

Clarifies that an interest in a Cooperative Unit is an interest in real property.

2. Official Records – F.S.719.104(2)(c) / SB 630.

The law has been clarified to provide that any person with the right to inspect and copy official records may not be required to demonstrate any purpose or state any reason for the inspection.

3. Official Records – F.S.719.104(2)(c) / SB 56.

A new official record has been added to the list - "all affirmative acknowledgements made pursuant to F.S. 719.108(3)(b)3", which is discussed below, but the "affirmative acknowledgment" is also added to the list of protected official record not available to Owners per 719.104(2)(c)8.

4. Virtual Board Meetings – F.S.719.106(1)(b)5 / SB 630.

Conforms the law to Chapter 718 allowing Boards and Committees to hold meetings by real time video conferencing and vote.

5. Recalls – F.S.719.106(1)(f)4 / SB 630.

Conforms to Chapter 718 recall disputes allowing them to be filed in Court as well as arbitration through the Division.

6. Annual Budget – F.S.719.106(1)(j)1 / SB 1966.

The Board shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the Board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation pursuant to the Division of Condominiums and the prior year's budget shall continue in effect until a new budget is adopted.

7. Illegal Discriminatory Restrictions – F.S.719.106(3) / SB 630.

The Association may remove illegal discriminatory restrictions contained in the governing documents without an owner vote per F.S. 712.065.

8. Courtesy Notice of Late Assessment Required Before Notice of Intent to Lien - F.S.719.108(3)(b)1 / SB 56.

Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The unit owner may make the affirmative acknowledgment electronically or in writing.

An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed to the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a Board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468 provides a sworn affidavit attesting to such mailing. The Statute contains a form for the notice that must be used.

9. Emergency Powers – F.S.719.128 / SB 630.

The emergency powers are now expressly applicable to an emergency declared due to a public health crisis such as Covid-19. The powers can now be used to prevent harm "anticipated" to be caused in connection with the emergency not just after the harm or damage has occurred. During a declared state of emergency, in addition to Board meetings, members meetings, committee meetings and elections can be held in whole or in part virtually via telephone, real-time video conferencing or similar real-time communication. The emergency powers CANNOT prohibit unit owners, tenants, guests, agents or invitees of a Unit Owner from accessing the Unit or the Cooperative Property for the purpose of ingress and egress from the Unit when access is necessary in connections with (a) the sale, lease, or transfer of title of a unit or (b) the habitability of the Unit or for the health and safety of such persons unless a governmental order or public health directive from the CDC has been issued prohibiting such access to the unit. However, such access is subject to reasonable restrictions adopted by the association. The "disaster plan or emergency plan" can now be implemented "during" the emergency rather than just before or after the emergency. In determining to close or limit access to the Cooperative Property the Board can now rely on the advice of "public health officials", not just an emergency management official or other licensed professional.

HOMEOWNER ASSOCIATIONS (F.S. Chapter 720).

1. Board Adopted Rules – F.S.720.301(8)(c) / SB 630.

Board adopted rules and regulations have been removed from the definition of "Governing Documents" which means that amendments to the Rules no longer have to be recorded in the public records. The Governing Documents are now defined to include only the Declaration, the Articles of Incorporation, and the Bylaws.

2. Board Meeting Notice – F.S.720.303(2)(c)1 / SB 630.

In addition to any of the authorized means of providing notice of a meeting of the Board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on the association's website or an application that can be downloaded on a mobile device for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the association property. Any rule adopted must, in addition to other matters, include a requirement that the association send an electronic notice to members whose e mail addresses are included in the association's official records in the same manner as is required for a notice of a meeting of the members. Such notice must include a hyperlink to the website or such mobile application on which the meeting notice is posted. (NOTE: This is in addition to traditional notice that is still required).

3. Official Records – F.S.720.303(4)(l) / SB 630.

Ballots, sign in sheets, voting proxies, and all other papers relating to voting by parcel owners are official records and must be maintained for at least 1 year after the date of the election, vote, or meeting.

4. Official Records – F.S.720.303(4)(l) / SB 56.

A new official record has been added to the list - "all affirmative acknowledgements made pursuant to F.S. 720.3085(3)(c)3", which is discussed below but the "affirmative acknowledgment" is also added to the list of protected official record not available to Owners per 720.303(5)(c)8.

5. Official Records – F.S.720.303(4)(I)3 / SB 630.

Information an association obtains in a gated community in connection with guests' visits to parcel owners or community residents are protected official records and cannot be inspected and copied by Owners making official records requests.

6. HOA Reserves and the Year End Financial Report – F.S.720.303(6)(c)1 / SB 630.

If the HOA does not maintain Statutory reserves or the governing documents do not obligate the developer to create reserves, this must be noted on the year-end financial report with a bold all caps disclaimer. This has been the law for many years, but what was added is the term "governing documents".

7. HOA Statutory Reserves – F.S.720.303(6)(d) / SB 630.

Statutory reserves used to be established in three ways: (a) The developer initially established them prior to turnover in the Budget, (b) The governing documents as drafted by the Developer mandate reserves or (c) The members voted to establish them after turnover. The new law removes type (a) and Statutory Reserves are now only created if they are mandated in the governing documents or a vote of the members.

8. HOA Developer Reserves and Deficit Funding – F.S.720.303(6)(i)1-2 / SB 630.

While a developer is in control of a homeowners' association, the developer may, but is not required to, include reserves in the budget. If the developer includes reserves in the budget, the developer may determine the amount of reserves included. The developer is not obligated to pay for: (a) Contributions to reserve accounts for capital expenditures and deferred maintenance, as well as any other reserves that the homeowners' association or the developer may be required to fund pursuant to any state, municipal, county, or other governmental statute or ordinance; (b) Operating expenses; or (c) Any other assessments related to the developer's parcels for any period of time for which the developer has provided in the declaration that in lieu of paying any assessments imposed on any parcel owned by the developer, the developer need only pay the deficit, if any, in any fiscal year of the association, between the total amount of the assessments receivable from other members

plus any other association income and the lesser of the budgeted or actual expenses incurred by the association during such fiscal year. This law applies to all homeowners' associations existing on or created after July 1, 2021.

9. Recalls – F.S.720.303(10)(b)3 / SB 630.

A recall dispute can be filed in arbitration with the Division or in a Court. Formerly, recall disputes could only be filed with the Division. Mediation is not required before filing in Court.

10. Fines – F.S.720.305(2) / SB 630.

Payment of a fine approved by the fining committee is due 5 days after the "notice of the approved fine is provided to the parcel owner or tenant" instead of 5 days after the date of the fining committee meeting.

11. Notice of Amendments – F.S.720.306(1)(g) / SB 630.

Removes the requirement that notice of an adopted amendment being recorded must be mailed to the Owner's address as listed on the property appraisers' website. The notice may now be mailed to the mailing address the Association has listed in the Association's official records.

12. Rental Restriction Amendments – F.S.720.306(6)(h)1-5 / SB 630.

Any governing document, or amendment to a governing document, that is enacted after July 1, 2021, and that prohibits or regulates rental agreements applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing document or amendment. This aligns the HOA Act with the Condominium Act to some extent by grandfathering Owners that took title before the rental amendment and did not vote in favor of it or did not vote at all. However, unlike 718.110(13) for Condominiums, this applies to any amendment that "regulates rental agreements" and therefore is much broader than the Condominium Act provision which only applies to amendments that "prohibit unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units."

The new law also provides that notwithstanding the foregoing, an association may amend its governing documents to prohibit or regulate rental agreements for a rental term of less than 6 months and may prohibit the rental of a parcel more than three (3) times in a calendar year. Such amendments shall apply to all parcel owners.

For purposes of this new law and the grandfathering aspect being lost when the parcel is sold and there is a change of ownership, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes the parcel owner. The term "affiliated

entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish to the association a document certifying that this subparagraph applies and provide any organizational documents for the parcel owner and the affiliated entity which support the representations in the certificate, as requested by the association. For purposes of this paragraph, a change of ownership does occur when, with respect to a parcel owner that is a business entity, every person that owned an interest in the real property at the time of the enactment of the amendment or rule conveys their interest in the real property to an unaffiliated entity.

13. Elections – F.S.720.306(9)(c)1-5 and F.S.720.311(6)(h)1-5 / SB 630.

Election disputes may now be filed with the DBPR for binding arbitration OR a Court in the local jurisdiction. No pre-suit mediation is required prior to filing.

14. Courtesy Notice of Late Assessment Required Before Notice of Intent to Lien - F.S.720.3085(3)(c)1 / SB 56.

Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The unit owner may make the affirmative acknowledgment electronically or in writing.

An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed to the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a Board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468 provides a sworn affidavit attesting to such mailing. The Statute contains a form for the notice that must be used.

15. Discriminatory Restrictions – F.S.720.3075 / SB 630.

The Board may eliminate illegal discriminatory restrictions in the governing documents without a vote of the owners.

16. Emergency Powers – F.S.720.316 / SB 630.

The emergency powers are now expressly applicable to an emergency declared due to a public health crisis such as Covid-19. The powers can now be used to prevent harm "anticipated" to be caused in connection with the emergency not just after the harm or damage has occurred. During a declared state of emergency, in addition to Board meetings, members meetings, committee meetings and elections can be held in whole or in part virtually via telephone, real-time video conferencing or similar real-time communication. The emergency powers CANNOT prohibit parcel owners, tenants, guests, agents or invitees of a parcel owner from accessing the parcel or the Common Areas or facilities for the purpose of ingress and egress from the parcel when access is necessary in connections with (a) the sale, lease, or transfer of title of a parcel or (b) the habitability of the parcel or for the health and safety of such persons unless a governmental order or public health directive from the CDC has been issued prohibiting such access to the unit. However, such access is subject to reasonable restrictions adopted by the association. The "disaster plan or emergency plan" can now be implemented "during" the emergency rather than just before or after the emergency. In determining to close or limit access to the Property the Board can now rely on the advice of "public health officials", not just an emergency management official or other licensed professional.

TIMESHARES (F.S. Chapter 721).

No Changes.

MOBILE HOME PARKS (F.S. Chapter 723).

No Changes.

MISCELLANEOUS.

1. Condominium Insurance Subrogation – F.S. 627.714(4) / SB 630.

If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner in the association may not provide rights of subrogation against the condominium association.

2. Covid-19 Vaccine Proof Documentation – F.S. 381.00316(1) – (6) / SB 2006.

A business entity, as defined in s. 768.38 to include any business operating in this state, may not require patrons or customers to provide any documentation certifying COVID-19 vaccination or post-infection recovery to gain access to, entry upon, or service from the business operations in this state. This subsection does not otherwise restrict businesses from instituting screening protocols in accordance with state or federal law to protect public health. The department may impose a fine not to exceed $5,000 per violation. There is some debate as to whether this law applies to community associations because they may not be deemed a business entity. It is too early to predict whether this is the case and therefore

we do not believe a community association can require proof of vaccination to use the common amenities.

3. Covid-19 Liability Protection – F.S. 768.38 / SB 72. Effective date is now.

This law protects corporations including community associations from civil liability for damages, injury, or death which arises from or is related to Covid-19 as long as the Association "made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued." The Statute of Limitations to bring a claim against the Association is within 1 year after the damage, injury or death occurred.

4. Association Ad Valorem Tax Standing – F.S.194.011 / HB 649.

Restores the standing of a condominium, cooperative or mobile home owners association to challenge ad valorem tax increases on behalf of its members in a single joint filing if approved by the Board of Directors. F.S. 718.111(11)(3)(d) was also amended to correlate with this Statute. Note: This does not apply to F.S. 720 homeowner associations.

5. HOA Pools with 32 Lots or Less – F.S.514.0115(3) / HB 463.

Pools serving homeowners' associations and other property associations which have no more than 32 Lots and are not operated as a public lodging establishment are exempt from supervision under the Health Department except for supervision necessary to ensure water quality and compliance with F.S. 514.0315 (required safety features for pools and spas), 514.05 (fines for violations) and 514.06 (order to close pool for violations). This means the obligation to have restrooms does not apply.

6. Insurance Claims – F.S. 626.9373(3), 627.428(4), 627.428(4), 627.7011(5)(f)-(h), 627.70132, 627.70152, 627.70153 / SB 76.

<u>Prohibits:</u>

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;
- Offering or receiving consideration for referrals when property insurance proceeds are payable;
- Unlicensed public adjusting;
- Providing an authorization agreement to the insured without providing a good faith estimate.
- Licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license.

Actual Cash Value Coverage vs. Replacement Value Coverage.

Creates notice requirements when homeowner's insurance provides actual cash value (ACV) reimbursement for any loss under a property insurance policy. The insurer must provide to the policyholder an OIR approved form that fully advises the policyholder of the nature of the coverage. The policyholder must sign the form before the ACV policy or reimbursement schedule is issued. The insurer must also include with the policy or reimbursement schedule a notice that ACV coverage "...MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR PROPERTY. PLEASE DISCUSS WITH YOUR INSURANCE AGENT." At least once every 3 years the insurer must notify a policyholder that provides ACV coverage that replacement cost coverage is available. Unless the insurer obtains the policyholder's written acceptance of ACV coverage, the policy or reimbursement schedule is deemed to include replacement cost coverage.

Insurance Claims – Timing.

- A property insurance claim or reopened claim must be provided to the insurer within 2 years of the date of loss. This was formerly 3 years.
- A supplemental claim is not barred if notice is given while the claim it supplements remains open.
- Specifies that the date of loss for claims resulting from weather-related events are the date a hurricane makes landfall or when different types of weather-related events are verified by National Oceanic and Atmospheric Administration (NOAA) in the location of the property.
- Defines a reopened claim as a claim that was previously closed but has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.
- Defines a supplemental claim as a claim for additional loss or damage from the same peril the insurer has previous adjusted discovered while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

Attorney Fee Limits.

Award of Attorney Fees in Property Insurance Litigation Claimant for residential or commercial property insurance policies, excluding assignment litigation, are governed by dividing the claimant's recovery above the insurer's settlement offer by the disputed amount (difference between the claimant's and insurer's settlement offers). If the claimant's recovery above the insurer's settlement offer is at least 50% of the disputed amount, the insurer pays all the claimant's fees. If the recovery above the insurer's settlement offer is at least 20% but less than 50% of the disputed amount, then the insurer must pay the same percentage of the claimant's attorney fees and costs. If the claimant's recovery above the insurer's settlement offer is less than 20% of the disputed amount, there is no fee award. Attorney fees may not be awarded for those attorney fees incurred before a suit is dismissed for failure to provide the notice of intent to initiate litigation.

DISCLAIMER: The foregoing is a summary of the statutory changes and should not be relied on as legal advice or a complete explanation of the changes. Every situation is different, and you should seek qualified legal advice before making a decision.