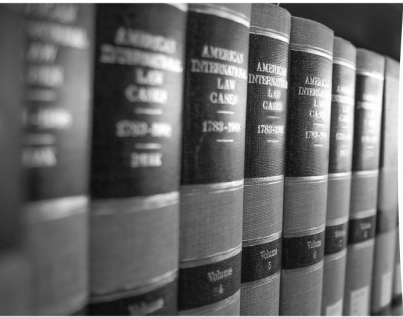




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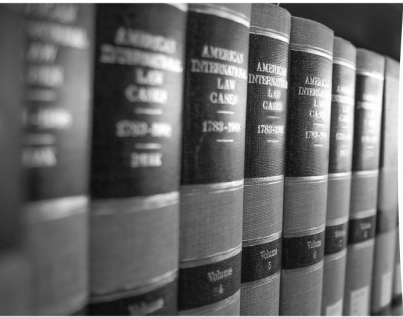
# LEGISLATIVE UPDATE 2013



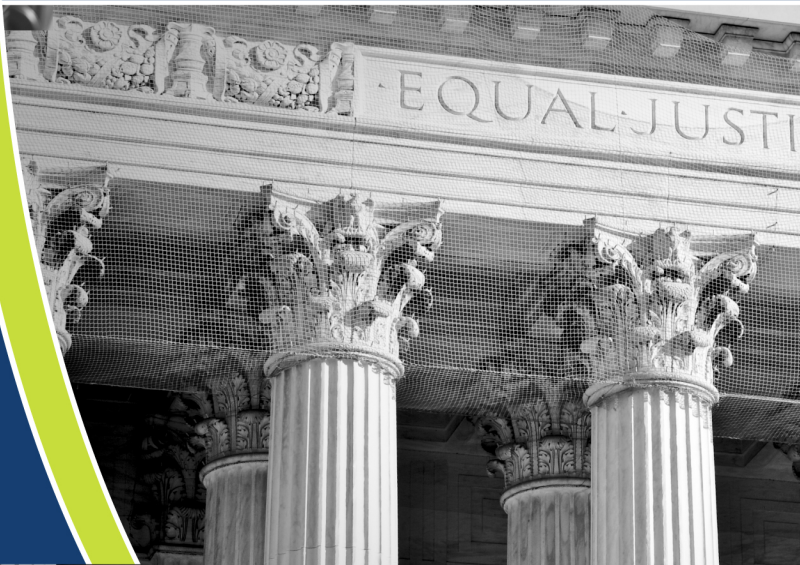




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# Changes Affecting All Associations



## IN THIS SECTION:

- F.S. 468.436
- F.S. 702.10



THE RUGGIERI LAW FIRM, P.A.

# F.S. 468.436(1)

## Community Association Management Discipline

- **CHANGE:** The statute was modified to create disciplinary consequences where a Community Association Manager is found to have violated any provision of Chapters 718, 719 or 720 while performing services as a Community Association Manager.
- **IMPACT:** For the first time, Owners and Associations can file complaints against CAM's alleging a violation of Chapter 718, 719 or 720 and the manager will face possible civil penalties if the Department of Business and Professional Regulation finds a violation has taken place.



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# F.S. 702.10(1)

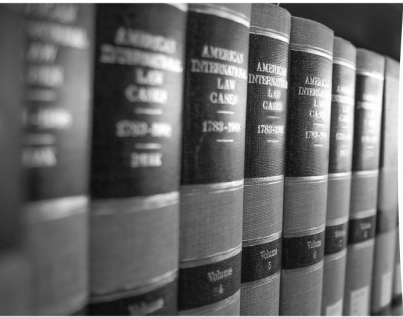
## Mortgage Foreclosures

- **CHANGE:** Changed to create a mechanism for Community Associations to compel a bank to complete their foreclosure.
- **IMPACT:** Associations are no longer powerless to compel a bank to complete their foreclosure. The Association can now proceed with a “show cause” proceeding whereby the bank and the homeowner must appear before the Court and show good cause why they should not be compelled to complete the foreclosure. Please note that this process is only available where the property is either vacant or occupied by a tenant. The remedy is NOT available if the property is occupied by the homeowner.

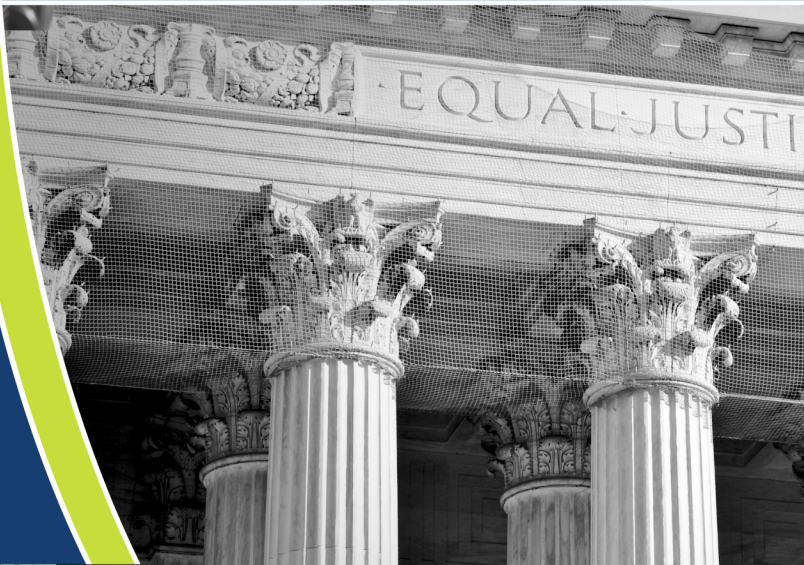




THE RUGGIERI LAW FIRM, P.A.



# Changes Affecting Condominiums



## IN THIS SECTION:

- F.S. 399.02
- F.S. 718.111
- F.S. 718.112
- F.S. 718.113
- F.S. 718.115
- F.S. 718.303
- F.S. 718.403
- F.S. 718.406



# F.S. 399.02(9)

## Elevator Safety Code

- **CHANGE:** The deadline to install a Phase II Firefighter Service for condominiums constructed prior to July 1, 2008 was modified from July 1, 2015 to the time the elevator requires “major modifications”.
- **IMPACT:** Condominium Associations should anticipate when major modifications will take place as part of their reserve study process and budget accordingly. This should include obtaining an estimate for the installation of a Phase II Firefighter Service and the estimates should be updated regularly as recommended by your Community Association Manager. The definition of “major modification” is currently in the rulemaking process.



# F.S. 718.111(8)

## Purchase of Leases

- **CHANGE:** Condominium Associations previously were permitted to purchase land or recreation leases with the same vote required to amend the Declaration. The change now requires that the Declaration contain provisions allowing the Association to acquire or lease country clubs, marinas, etc., and the vote needed to acquire land and recreation leases is the same as that required to acquire or lease country clubs and the like.
- **IMPACT:** Condominium Associations are no longer permitted to acquire land and recreation leases utilizing the same vote required to amend the Declaration. The Declaration must contain provisions which allow the Association to acquire land and recreation provisions pursuant to F.S. 718.114.



# F.S. 718.111(11)(g)(2)

## Insurance

- **CHANGE:** A Condominium Association's responsibility to repair damage to units is limited to "insurable events" and shifts maintenance responsibility of unit owners to repair any damage to portions of the unit which is required to be insured by unit owners or which are damaged by unit owners, their tenants, guests and invitees. Unit owners are also now responsible for repairs where the unit owner failed to report the damage prior to the time that the Association settled an insurance claim. The Association is also allowed in certain circumstances to assess units for the cost of repairs not paid by the unit owner.
- **IMPACT:** Condominium Associations are no longer responsible to make repairs to portions of a unit unless it is covered by the Association's liability insurance policy. Unit owners are also subject to assessment for the cost of repairs in connection with damage to condominium property caused by the owner or their guests, tenants or invitees.





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# F.S. 718.111(12)(c)

## Official Records

- **CHANGE:** Unit owners can now use portable devices such as cell phones, tablets, etc., to make copies of the official records and prohibits the imposition of a charge by the Association in connection with use of such a device.
- **IMPACT:** Portable devices can now be used and a charge may not be imposed.



THE RUGGIERI LAW FIRM, P.A.

# F.S. 718.111(12)(c)5

## Official Records

- **CHANGE:** Condominium Association can now generate a Community Directory providing the name, address and phone number of all unit owners. Unit owners may submit a written request to have their phone number excluded from the directory.
- **IMPACT:** Directories are permitted but a unit owner may have their phone number excluded. Unit owners should be advised in advance that a directory is being generated and their right to have their phone number excluded.



# F.S. 718.111(13)

## Financial Reporting

- **CHANGE:** The annual revenue thresholds for financial reporting requirements were increased as follows:
  - a) Annual revenue of less than \$150,000: report of cash receipts and expenditures
  - b) Annual revenue between \$150,000 and \$300,000: compiled financial statements
  - c) Annual revenue between \$300,000 and \$500,000: reviewed financial statements
  - d) Annual revenue in excess of \$500,000: audited financial statements
- **IMPACT:** The change may result in reduced financial reporting costs for some Condominium Associations.





# F.S. 718.112(2)(d)2 Bylaws

- **CHANGE:** Condominium Associations whose governing documents allow for staggered terms no longer need obtain majority approval of the unit owners to utilize staggered terms. If the documents allow for staggered terms, they can be implemented.
- Also changed to require that a unit owner be eligible to run for the Board at the time they submit their notice of intent to run and likewise makes unit owners ineligible if they are delinquent in *any* monetary obligation owed to the Association, not just fines and assessments.
- **IMPACT:** The odd requirement that majority approval be obtained to utilize staggered terms even if the governing documents already contained staggered terms has been removed. Additionally, unit owners must be eligible at the time their notice of intent to run is due. Previously, many unit owners would run for the Board while delinquent and become current at the eleventh hour.



# F.S. 718.112(2)(d)3 Bylaws

- **CHANGE:** Removed the requirement for physical posting of meeting notices for Condominium Associations that use closed circuit television to broadcast meeting notices.
- **IMPACT:** The duplicate meeting notice requirement has been removed. The statute previously required both broadcast of meeting notices via closed circuit television as well as physical posting.



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# F.S. 718.112(d)4 Bylaws

- **CHANGE:** Deleted the requirement that timeshare condominium directors be elected by secret written ballot or voting machine.
- **IMPACT:** Timeshare condominium directors may now use proxies in elections.





# F.S. 718.112(2)(d)4(b) Bylaws

- **CHANGE:** The statute was clarified to provide that Board members who serve uninterrupted consecutive terms are not required to satisfy the document certification or Board certification process.
- **IMPACT:** Provided Board members serve uninterrupted, consecutive terms, they are not required to repeat the document or Board certification requirements.



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# F.S. 718.112(2)(d)4(c) Bylaws

- **CHANGE:** Unit owners now have sixty (60) days from the date election results are announced to challenge an election.
- **IMPACT:** The time within which a unit owner can challenge an election is now limited. The challenge must be filed within sixty (60) days.



# F.S. 718.112(2)(j)1

## Bylaws

- **CHANGE:** Modified to require that the Board conduct a Board meeting within five (5) business days of the adjournment of the unit owner recall meeting. Any Board member recalled at the meeting must turn over any official records in their possession within five (5) business days after the effective date of the recall. Also modified to allow the unit owner representing the owners voting for recall to file for Arbitration if the Board either fails to hold the Board meeting or fails to file for Arbitration. The Petition must be filed by the unit owner within sixty (60) days of the deadline for Board review and filing. Lastly, the DBPR's review is now limited to review of the sufficiency of the recall records and the validity of the recall ballots.
- **IMPACT:** Creates a sixty (60) day deadline to file the Arbitration Petition and also creates a procedure for review of the recall. Note that the change only applies if a Board member is recalled and the Board either fails or refuses to hold a Board meeting or file for Arbitration.





# F.S. 718.112(2)(j)7 Bylaws

- **CHANGE:** A Board member who is recalled may now file their own Petition for Arbitration to challenge the recall. The Petition must be filed within sixty (60) days of the date the recall is certified.
- **IMPACT:** Recalled Board members may now challenge their recall provided the Petition is filed in a timely fashion.



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# F.S. 718.112(2)(j)8 Bylaws

- **CHANGE:** The DBPR is prohibited from accepting a recall petition filed outside of the sixty (60) day deadline.
- **IMPACT:** While somewhat redundant, this creates an express statutory prohibition against the DBPR accepting a tardy recall petition.



# F.S. 718.113(5)(a) - (c)

## Maintenance

- **CHANGE:** Condominiums whose documents require that the Association install and maintain hurricane shutters and glass may also install code compliant doors, windows and other hurricane protection mechanisms subject to a majority vote of the unit owners.
- **IMPACT:** May simplify the vote needed to install other hurricane protection mechanisms if the Association's material alteration vote is greater than a majority vote of the unit owners. Previously, a material alteration was needed and other budgetary constraint provisions may also have been implicated.





THE RUGGIERI LAW FIRM, P.A.

# F.S. 718.113(5)(d)

## Maintenance

- **CHANGE:** Unit owners are now permitted to install code compliant hurricane protection systems provided it is consistent with Association guidelines.
- **IMPACT:** Unit owners may now install hurricane protection systems subject to Board regulation. Guidelines should be adopted to control what unit owners may install.



# F.S. 718.115(1)(e)

## Common Expenses

- **CHANGE:** Clarifies that expenditures made by a Condominium Association in connection with installation or maintenance of hurricane protection systems where the documents require it is a common expense. Associations may also assess unit owners who fail to maintain those systems if the documents require unit owners to maintain them and they fail to do so. Any owner who previously installed these systems is entitled to a per unit cost credit if the Association replaces them. The credit is limited to the unit costs and not the costs associated with installation of the items on the common elements.
- **IMPACT:** Somewhat unnecessarily clarifies these costs are a common expense. Also creates a unit owner credit for the cost associated with installation of hurricane protection systems where the unit owner previously installed them but the credit is limited to the costs associated with the unit-related portions, not those associated with the common elements.



# F.S. 718.303(3)(a)

## Unit Owner and Occupant Obligations

- **CHANGE:** Associations are not permitted to suspend a unit owner's use of either limited common elements or portions of the common elements needed to gain access to the unit.
- **IMPACT:** Suspension of use rights is not permitted with respect to limited common elements (balconies, parking spaces) or portions of the common elements needed to gain access to a unit (community roadways, access gates or elevators).



# F.S. 718.403

## Phase Condominiums

- **CHANGE:** The requirement to add all phases to a phase condominium within seven (7) years of the date of recording by a surveyor and mapper pursuant to 718.104(3)(e) or the date of the first transfer of a unit to a retail buyer may be extended for up to an additional three (3) years by the same vote needed to amend the Declaration or two-thirds of the total voting interests.
- **IMPACT:** Provided the necessary vote is obtained, a Developer now has additional flexibility to develop a phased condominium.



# F.S. 718.406

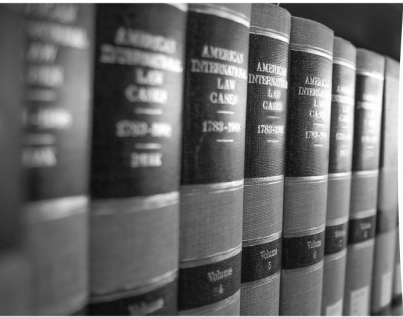
## Primary and Secondary Condominiums

- **CHANGE:** New provision which allows the development of “condominiums within condominiums”. The “sub-condominium” is referred to as the secondary condominium while the “master condominium” is referred to as the primary condominium.
- **IMPACT:** This only applies to condominiums created after the effective date of the change. Condominiums in existence prior to the date cannot be converted to this form of condominium.

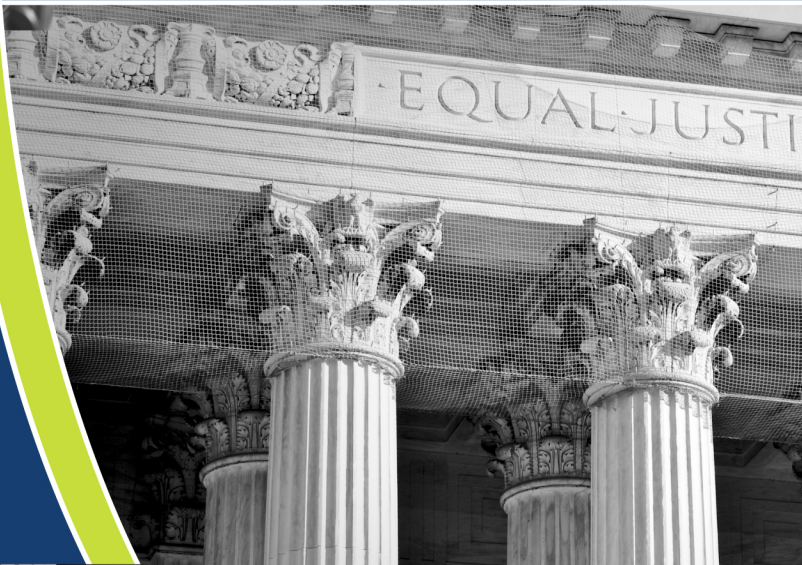




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# Changes Affecting Cooperatives





# Changes Affecting Cooperatives

- Official records must be maintained for seven(7) years and maintained within 45 miles, or within the county. Records can be made available electronically or online.
- Records custodian is subject to civil penalty for failing to make records available, destroying or defacing records, or knowingly failing to create accounting records with the intent to cause harm.
- Must make year-end financial information available at no charge, together with the governing documents.
- Owners can use portable devices for records inspection and charges are prohibited.



# Changes Affecting Cooperatives

- Privileged records (attorney and work product) are not subject to inspection.
- Disciplinary, payroll, health and insurance records of Association or management employees are not subject to inspection.
- Owner social security, drivers license, credit cards, e-mail, phone and fax information is protected as is Association/ Management electronic security measures and software.
- Owner directories are permitted as with condominiums.
- Mortgage holder consent to an amendment is NOT required for mortgages recorded after 7/1/13 unless the amendment affects the bank's lien or foreclosure rights OR the governing documents already require mortgage holder consent.



# Changes Affecting Cooperatives

- A mortgage holder that did not consent to an amendment has five years to challenge it.
- Board meetings conducted to discuss personnel matters are not open to the members.
- An election challenge must be brought within 60 days.
- New Board members must complete the certification process. The certification must be kept for 5 years.
- The unit owner representative may bring a recall petition where the Board fails to hold the required meeting provided it is brought within 60 days of the date the Board should have held their meeting. The Division's review is limited in the same fashion as condominiums.



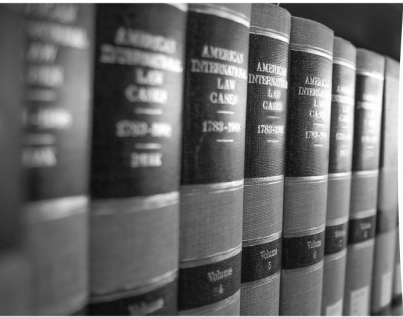
# Changes Affecting Cooperatives

- A recalled Board member may bring their own challenge to the recall. It must be brought within 60 days of the date the recall was certified.
- The Division is prohibited from accepting a recall petition filed after the 60 day deadline.
- Suspension of use rights does not apply to access (gate, parking space, elevators) or necessary utility services.
- The Division may now provide educational materials via electronic media.

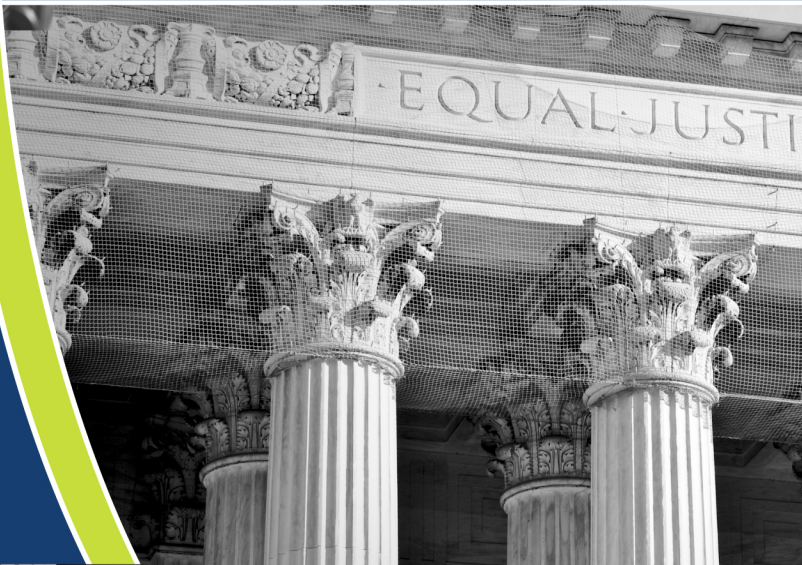




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# Changes Affecting Homeowners Associations



## IN THIS SECTION:

- F.S. 720.303
- F.S. 720.3033
- F.S. 720.305
- F.S. 720.306
- F.S. 720.307
- F.S. 720.3075
- F.S. 720.3085



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# F.S. 720.303(5) Official Records

- **CHANGE:** Owners may now use electronic devices to make copies and charges are prohibited.
- **IMPACT:** Use of electronic devices to make copies will save the Association time and money.



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# F.S. 720.303(5)(c)3 Official Records

- **CHANGE:** Association and management company “personnel records” are not subject to disclosure. This does not apply to employment or management contracts or records that disclose compensation.
- **IMPACT:** Provides protection of personal employee information.



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# F.S. 720.303(5)(c)(5) Official Records

- **CHANGE:** Owner directories are again permitted but an owner can submit a written request to redact their phone number.
- **IMPACT:** Directories are once again allowed.



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# F.S.720.303(6)

## Budgets

- **CHANGE:** Reserve accounts established by the developer must disclose the items for which the reserve account can be used in the budget.
- **IMPACT:** The developer's disclosure obligations for budgeting of reserves has been enhanced.





# F.S. 720.303(7)

## Financial Reporting

- **CHANGE:** The thresholds for financial reporting requirements have been raised as follows:
  - Annual revenue less than \$150,000: report of cash receipts and expenditures.
  - \$150,000 to \$300,000: compiled financial statements.
  - \$300,000 to \$500,000: reviewed financial statements.
  - Greater than \$500,000: audited financial statements.
- **IMPACT:** The cost of financial reporting for some Associations may come down.



# F.S. 720.303(10)(g)

## Recall of Directors

- **CHANGE:** The unit owner representing owners voting for recall may now file a recall petition with the DBPR if the Board fails to hold a Board meeting within the required timeframe (5 days). The petition must be filed within 60 days of the date the Board should have held the meeting. The DBPR's review is limited to sufficiency of service of the recall records and validity of the recall ballots.
- **IMPACT:** Owners now have the right to file their own recall petition where the Board fails to act in a timely fashion but the scope of the DBPR's review is limited.



# F.S. 720.303(13)

## Reporting Requirements

- **CHANGE:** A new reporting requirement now exists. Associations or their managers must file a report with the State **no later than November 22, 2013** which contains the following information:
  - Association name
  - FEIN
  - Mailing and physical address
  - Total number of Lots
  - Total revenue and expenses per the budget
  - The developer's name and number of developer-owned Lots if under developer control
- The Final Bill Analysis indicates this is intended as a one-time requirement as opposed to an annual one. The DBPR must establish an internet-based registration system and annual reporting by the DBPR is required.
- **IMPACT:** Implies that added regulation of Homeowners Associations and possible additional taxation measures may be on the horizon.



# 720.303(1)(k)(1) Recall of Directors

- **CHANGE:** A Board member who has been recalled may now challenge the recall provided the petition is filed within 60 days of the date the recall was certified. Also expressly prohibits the DBPR from accepting a tardy petition.
- **IMPACT:** A recalled Board member now has the ability to challenge the recall provided it's timely.



# 720.3033(1)(a) Officers and Directors

- **CHANGE:** Board members must certify in writing that they have read and agree to uphold the governing documents OR that they have taken a DBPR approved course within the year before or 90 days after their election or appointment. Failure to do so results in suspension of the Director but the Board can temporarily fill the vacancy until the requirement is met. The certificates must be maintained for five years. Board actions taken while a non-compliant Director is seated does not operate to invalidate those actions.
- **IMPACT:** Adds the condominium requirement to the Homeowners Association statute.



# F.S. 720.3033(2)

## Officers and Directors

- **CHANGE:** Adds the conflict of interest requirements of F.S. 617.0832 for any contract entered into between the Association and a Director or their company. The contract must be approved by two-thirds of the Board present at a meeting and must be disclosed to the owners at the next Board meeting. Owners also have the right to cancel the contract by majority vote at a membership meeting at which a quorum has been attained.
- **IMPACT:** Allows the Association to contract with their Directors provided the above requirements are met. Directors are often willing to provide discounted services or special expertise and this is now permitted to take place.





# F.S. 720.3033(3)

## Officers and Directors

- **CHANGE:** Expressly prohibits managers, officers and directors from soliciting benefits from Association vendors. The Board must remove any officer or director who does so. The vacancy must be filled per the Association's governing documents or state statute. Directors, officers and managers may still accept \$25 dollars or less worth of benefits such as food or giveaways at tradeshow.
- **IMPACTS:** "Incentives" for directors, officers and managers are now expressly prohibited.



# F.S. 720.3033(4)

## Officers and Directors

- **CHANGE:** A Director or Officer charged with felony theft from the Association is removed/suspended immediately unless and until they are adjudicated not guilty. The vacancy is to be filled per the governing documents or State Statute. If ultimately found not guilty, the Director or Officer resumes their position on the Board for the remainder of the term.
- **IMPACT:** The suspension is imposed automatically where the Director or Officer is *charged* with felony theft from the Association.



# F.S. 720.3033(5) Officers and Directors

- **CHANGE:** Associations are now required to bond all individuals who control Association funds. This includes any authorized signatory as well as the President, Treasurer and Secretary. This requirement may be waived by majority vote of the homeowners at a duly noticed and convened meeting.
- **IMPACT:** All individuals who control Association funds in addition to the Officers identified must be bonded or insured. The Treasurer and Secretary are not authorized signatories in all instances but must still be bonded.



# F.S. 720.305(2)(a)

## Obligations of Members

- **CHANGE:** Suspension of use rights does not apply to areas utilized to provide access to residences or essential utilities.
- **IMPACT:** Use of gates and roads, as well as parking, cannot be the subject of suspension of use rights for monetary obligations or violations. The statute does not apply to cable in my opinion and cable can therefore be suspended where the Association provides cable on a bulk basis.



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# F.S. 720.306(1)(b) Amendments

- **CHANGE:** Amendments must now be provided to the members within 30 days of recording.
- **IMPACT:** Associations must now mail or deliver copies of adopted amendments within 30 days of recording. It is unclear whether publishing the amendment electronically satisfies the statute.



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# F.S. 720.306(1)(d)

## Amendments

- **CHANGE:** A mortgage holder's consent to an amendment is not required for any mortgage recorded after July 1, 2013 unless the amendment affects the mortgage holder's lien priority or collection rights, even if the documents require mortgage holder consent. With respect to mortgages recorded before July 1, 2013, mortgage holder consent must still be obtained if the documents require it.
- **IMPACT:** The impossible requirement of obtaining mortgage holder consent for amendments has been significantly reduced and will progressively disappear with the passage of time.





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# F.S. 720.306(g)

## Right to Speak

- **CHANGE:** Homeowners no longer need to submit a written request to speak in advance of members' meetings.
- **IMPACT:** The Association is still free to adopt other rules regarding the frequency, manner and duration (may be limited to 3 minutes per agenda item) of member statements.



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# F.S. 720.306(9)

## Elections and Board Vacancies

- **CHANGE:** Homeowners now have 60 days to challenge an election.
- **IMPACT:** Creates a “statute of limitations” for election challenges.



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# F.S. 720.307(1)(c) - (f) Transition of Association Control

- **CHANGE:** Creates the right of the members other than the developer to elect a majority of the Board and take control of the Association earlier than would otherwise be required in certain instances where the developer has abandoned the Community or other financial conditions are triggered. The owners other than the developer can take control of the Board where the developer abandons the community, fails to pay assessments or the developer guarantee for two or more years, files Chapter 7 bankruptcy, or a receiver is appointed over the developer and is not discharged within 30 days.
- **IMPACT:** Creates relief for distressed communities where the developer has effectively abandoned the community or is creating a financial hardship. Previously, such communities were at a loss and would take control without knowing if the developer would return and attempt to resume control.



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# F.S. 720.307(2)

## Transition of Association Control

- **CHANGE:** Non-developer members are now entitled to elect at least one member to the Board when fifty percent (50%) of Lots in all phases of the Community have been sold to non-developer members.
- **IMPACT:** Allows non-developer members to gain participation on the Board sooner than under the previous version of the statute.



# F.S. 720.3075(5)

## Prohibited Clauses in Association Documents

- **CHANGE:** Prohibits developers from adopting amendments which are 1) arbitrary, capricious, or in bad faith and modify the scheme of development 2) prejudice the rights of non-developer members to use and enjoy the common areas, or 3) materially shifts the funding requirements from the developer to the homeowners.
- **IMPACT:** Provides additional protection to homeowners against pre-transition developer amendments. However, the “scheme of development” prohibitions are vague and may encourage litigation.



# F.S. 720.3085(2)(b)

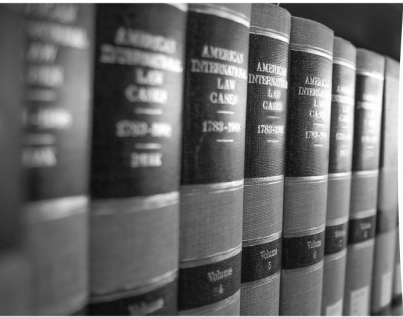
## Payment of Assessments

- **CHANGE:** Provides that when determining the current owner's liability for assessments, the term "prior owner" does not include the Association.
- **IMPACT:** This essentially allows Associations which have taken title in their own lien foreclosure to "reach back" to the delinquent homeowner from whom they obtained title to recoup the assessments they owed. Case law recently ruled that the current owner's liability could not include the "prior owner's" delinquent assessments. This is a legislative reversal of that decision.

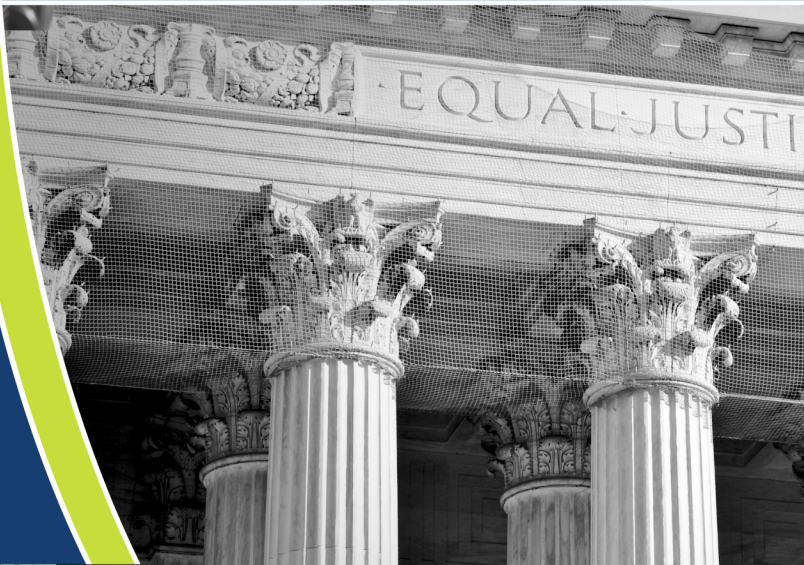




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## H.B. 1179



### IN THIS SECTION:

- F.S. 720.303
- F.S. 720.306



# H.B. 1179

- House Bill 1179 was adopted before House Bill 73. Pursuant to State Statutes, if two Bills are adopted which address the same statute, they should, if possible, both be applied. If they cannot due to an express conflict, the later adopted version supersedes.



# F.S. 720.303(5)

## Inspection and Copying of Records

- **CHANGE:** Modified to require that the official records be maintained within 45 miles of the Community, or within the County in which the Community is located. Also allows Associations the option of making the records available for inspection and copying within 10 business days of a written request or make them available electronically via the internet.
- **IMPACT:** The primary issue is whether Associations can make the records available electronically as this was not set forth in House Bill 73's version of the statute.



# F.S. 720.303(5)(c)

## Inspection and Copying of Records

- **CHANGE:** The statute was revised to allow Associations to charge the requesting owner for costs associated with personnel retrieving and copying records if it exceeds one half hour and the personnel cost is not greater than \$20 per hour. These costs cannot be imposed if the records request does not exceed 25 pages.
- **IMPACT:** This change was not in House Bill 73 and I therefore recommend that it not be relied upon.



# F.S. 720.306(9)

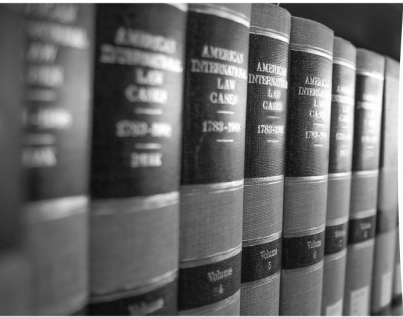
## Elections and Board Vacancies

- **CHANGE:** If the governing documents provide for election by absentee ballot, Associations need not allow for nominations from the floor. Additionally, elections are not required unless there are more candidates than vacancies exist.
- **IMPACT:** Absentee balloting would seem to imply that nominations from the floor are not necessary but this is a clarification. Once again, the absence of this provision from H.B. 73 makes it's implementation problematic.





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# Questions?





*“Devoted to the Personalized Representation  
Of Community Associations”*

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