

LAW OFFICES OF CORNETT, GOOGE & ASSOCIATES, P.A.

JANE L. CORNETT*
HOWARD E. GOOGE*
ROBERT G. RYDZEWSKI JR.
MICHAEL O. DERMODY**

CHARLES W. SINGER
OF COUNSEL

LYNN D. SCHWARTZ, CLA
MICHELLE GOOGE, FRP

401 SE OSCEOLA ST.
SUITE 101
RIVER OAK CENTER
STUART, FLORIDA 34994

MAILING ADDRESS:
POST OFFICE BOX 66
STUART, FL 34995-0066

(772) 286-2990
FAX (772) 286-2996

*CERTIFIED CIRCUIT CIVIL MEDIATOR
**ALSO ADMITTED IN NEW JERSEY

Memo

To: All Condominium Association Clients
From: Jane L. Cornett, Esq.
Subject: 2010 Amendments to Florida Law - Summary
Date: June 16, 2010

The Florida Legislature was quite busy this session and enacted a number of bills and laws that impact on the operation of a condominium. The following is a summary of those changes. At the end of this summary, I'll include the websites so if you have an opportunity (and can't sleep), you can read these statutes in their entirety.

1. Rental Amendment Limitations - 718.110(13)

This is a section that was added in 2004 to state that amendments relating to rentals applied only to future owners or people who approve the amendment. This section has been further changed to make it clear that this limitation applies only to amendments which prohibit unit owners from renting their unit, alter the duration of rental terms or set limits on the number of times a unit owner is entitled to rent his or her unit. In certain cases the statute had been given a very broad meaning and these amendments limit its possible application.

2. Common Elements Converted to Limited Common Elements - 718.110(14)

This section clarifies that portions of the common elements may be redesignated as limited common elements provided the designation is approved as an amendment to the Declaration. This is considered a clarification of existing law.

3. Insurance Appraisal - 718.111(11)(a)

This section of the law previously called for an appraisal for insurance purposes to determine “full insurable value.” The term “full insurable value” has been changed to “replacement cost.” Thus, the Association must, at least once every thirty-six (36) months, obtain an appraisal for insurance purposes, of the replacement cost of the condominium assets. Additionally, through out this section, the term “hazard insurance” has been changed to “property insurance.” That is a technical change that I think it is more in compliance with the terms used by of the insurance industry.

4. Meeting Notice to Set Insurance Deductible - 718.111(11)(c)3

This deletes the numerous technical requirements of the meeting at which the board intends to set the amounts of deductibles for insurance policies. The notice is no longer required to state the proposed deductible amount, the funds available to pay the deductible nor the estimate of a possible special assessment to meet the deductible. Apparently, the legislature has now accepted that directors are not mind readers nor can they predict the future.

5. Unit Owner Insurance - 718.111(11)(g)

Changes to this section of the law remove the requirement that an owner provide proof of insurance to the Board. This statute still specifies what must covered by the unit owner’s policy and that has not been changed. The owner is still required to have a policy and it must cover all those items which are excluded from the Association policy which include:

- Floor, Wall and Ceiling Coverings
- Electrical Fixtures
- Appliances
- Water Heaters
- Water Filters
- Built in Cabinets and Countertops
- Window Treatments

The owner’s policy must also include at least two thousand dollars (\$2,000.00) in loss assessment coverage with a deductible of no more than two hundred-fifty dollars (\$250.00). The requirements that the Association be an additional named insured on the owner’s policy and that the Association be required to keep track of the owners’ policies have been deleted.

6. Official Records - 718.111(12)(a)7

Email addresses and telephone numbers must be removed from the Association’s official records if an owner requests the removal.

A new sentence has been added that says the Association is not responsible for misuse of information provided to an Association member. Under the statute, unit owners are entitled to access to just about any kind of records held by the Association so it is only reasonable the Association should not have any liability for an owner's misuse of those records.

7. Record Inspection - 718.111(12)(b)

The information that is not open to unit owners for inspection and copying has always included attorney-client privilege documents, medical information and information obtained by the Association in connection with approval of a sale, lease or other transfer. Several years ago social security numbers, driver's license numbers and credit card numbers were exempt from owner inspection. New exceptions have been added and those include all personnel records of Association employees including disciplinary, payroll, health and insurance records. Also, email addresses, telephone numbers, emergency contact information and extra addresses are no longer open to inspection by other owners. The only personal information about a unit owner that can be obtained by other unit owners is the person's name, unit designation, mailing address and property address.

8. Financial Records – 718.111(13)

Associations of fewer than seventy-five (75) units may now opt for just a cash report regardless of the amount of revenue in one year. Unless the pooled method of funding reserves is used, the annual reserve summary with the budget must include a "good faith" estimate of needed reserves (didn't everyone do this all along?).

9. Unit Owner Meetings and Elections – 718.112(2)(d)

The process for cancellation of a director election when there are no more candidates than vacant terms is clarified. In the case where there is no election and not enough candidates, any outgoing directors can be reappointed even if they didn't submit their names in advance to be candidates. You'll note that it says "reappointment" therefore, whomever did submit her name as a candidate will have the ability to choose from among those existing directors. Co-owners still may not serve on the Board at the same time unless they own more than one unit or unless there aren't enough eligible candidates to fill vacancies on the Board at the time of the election. Any owner who is delinquent in the payment of anything to the Association, whether a fine, a special or regular assessment, is not eligible to run for the Board. Two years ago the statute required directors to sign a certification form before being a candidate. That has been changed so that this certificate form has to be signed and provided within ninety (90) days after being elected or appointed. The certification form must state that he or she has read the Association's declaration of condominium, articles of incorporation, bylaws and current policies; that he or she will work to uphold such documents and policies to the best of his or her ability; that he or she will faithfully discharge his or her

fiduciary responsibility to the Association members. A director may also attend an educational class and submit a certificate showing completion of that class in lieu of signing the certificate. The class must be approved by the State of Florida. The director who fails to either provide the certification or the educational certificate is not eligible to serve on the Board until he or she complies with this requirement. While that person is suspended the Board can temporarily fill the vacancy (who is going to want that job?). The certificate forms have to be maintained for five (5) years after the election.

10. Condominium Director Delinquencies – 718.111(2)(n)

A director or officer who is more than ninety (90) days delinquent in the payment of any monetary obligation to the Association is kicked off the Board. The vacancy can be filled by the other directors. The same is true for a director who is charged with a felony, theft or embezzlement offence involving the Association funds or property. If the charges are resolved and the term hasn't run out then the person can be reinstated.

11. Elevator Retrofit (Alternative Power Sources) – 718.112

A Condominium Association may vote to forego the retrofitting requirements of Florida Statute 753.509(2), which mandates an alternative power source for elevators, upon an affirmative vote of a majority of the voting interests in the affected condominium.

12. Condominium Fire Sprinklers for High-rises – 718.112

A number of years ago high-rise condominiums were required to retrofit the common areas with sprinkler systems unless there was a vote by 2014 to forego the retrofit. A high-rise building is a building that is greater than seventy-five (75) feet in height. The deadline has been extended so that the retrofitting has to be completed by 2019 unless prior to December 31, 2016, an Association votes to forego the retrofitting. If your condominium building is over seventy-five (75) feet in height and doesn't have a fire sprinkler system in the common areas, then you have a little over six (6) years in which to make that decision. The vote to forego the retrofit is a majority of everyone in the Association.

13. Communication Services – 718.115(1)(d)

While this section previously authorized a condominium association to enter into a master television or bulk cable service contract it has now been expanded to include all kinds of information services including internet. You still must have a bulk contract. The cost of any services under a bulk contract may be allocated on a per unit basis rather than percentage basis.

14. Obligations of Foreclosing Lenders - 718.116

A lender who acquires a unit as a result of a first mortgage foreclosure or deed in place of foreclosure will be required to pay twelve (12) months of past due assessments or one percent (1%) of the original principal mortgage balance, whichever is less. The statute previously provided for six (6) months but it has been changed to twelve (12). Unfortunately, since the one percent cap is still in place, this probably isn't going to help a lot of folks unless the mortgage principal is pretty high. We will be taking the position that this applies to any final judgment of mortgage foreclosure which is entered after July 1, 2010, the effective date of the statute.

15. Collection of Rental from Tenants – 718.116

In the same section of the statute there is a new subparagraph 11 which appears to be helpful. This states that if a unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation, the Association can make a written demand that the tenant pay all future rental amounts to the Association and the tenant must make the payments. Written notice is required to the tenant and to the owner demanding the payment. If the tenant has prepaid rent to the owner before receiving the demand from the Association and provides proof of that prepayment, then the tenant gets credit for that prepaid rent. If for some reason the tenant refuses to pay to the Association and doesn't provide proof that he has already prepaid to the owner, then the Association will have the ability to evict the tenant.

16. Suspension of Use Rights – 718.303

If a unit owner is delinquent for over ninety (90) days in the payment of any monetary obligation to the Association including any fine, the Association may use that as a basis for suspension of use rights for any of the common areas. You can't prevent an owner from coming and going, from parking or from using the elevator but if you have the practical ability to do so, you can suspend his access to other common stuff. Just like a fine, the suspension can only be imposed if you give fourteen (14) days advanced notice and an opportunity for a hearing. The notice and hearing are not required if the suspension is due to the failure to pay money but it must be officially approved at a Board of Directors' meeting. You may also suspend voting rights for non-payment of assessments but that doesn't reduce your quorum so I'm not sure if that is really helpful.

There are a number of other amendments to Florida Statute 718, the Condominium law, about things like condominium termination and Association transition but these are not relevant to the operation of existing communities. There is a lengthy amendment to the statute which is found in 718.701-708 which is called "the distressed condominium relief act." Hopefully this too has no application to any of

my clients. I have not covered these issues here as this summary is already too long but I'll be happy to answer questions on these sections.

In addition to changes to Florida Statute 718, the following statutes which affect some condominium associations have been amended as follows:

17. Fire Prevention Code - 633.0215

A condominium that is less than four-stories in height and has 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.

18. Elevator Retrofit - 399.09. This section creates a mandatory moratorium on the enforcement of amendments to the Safety Code for Existing Elevators and Escalators (ASMEA 17.1 and ASMEA 17.3) which require modifications to elevators in condominium and cooperatives. This law states that these retrofit requirements may not be enforced for a period of five (5) years starting July 1st, 2010, if the building had been properly issued a Certificate of Occupancy by July 1, 2008. Modifications will be required however, if the elevators are replaced or require major work before the five (5) years are up.

If you want to read these changes for yourself the website is <http://www.flsenate.gov/Statutes/>. The majority of the changes were found in Senate Bill 1196.

I'll be holding a seminar the second Wednesday in November to go over these statutory changes. Hopefully by then we'll have a little better understanding of what was intended by the legislature by some of these changes. In the meantime, if you have any questions, please don't hesitate to contact us.