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CLIENT NEWSLETTER / 2010 LEGISLATIVE UPDATE

Dear Members of The Board of Directors:

In an effort to keep our clients informed as to the current status of Florida law with regard to homeowners associations and condominium associations, we are pleased to provide our clients with this complimentary legislative update.

The 2010 regular session of the Florida Legislature resulted in the passing of Senate Bill 1196, which contains some of the most sweeping changes to condominium and homeowner association law in several years. The new law will take effect on July 1, 2010 and will impact the day-to-day operations of community associations. Please note that the information contained herein is intended to provide a brief overview of the most significant changes to Florida Statutes Chapter 720 (governing homeowners associations) and Florida Statutes Chapter 718 (governing condominium associations), is summary in nature and is not meant to be all inclusive. Should you have any specific questions or concerns with regard to the statutory changes discussed herein, or any issues pertaining to your association, we invite and encourage you to contact our office.

Senate Bill 1196

Condominium Associations

Amendments as to Leasing of Units - §718.110(13)

Any Amendment which *prohibits* the renting of units will apply only to those owners who consent to the amendment and owners who *acquire title* after the effective date of the amendment. Previously, any amendments which *restricted* the rental of units fell under the purview of the statute.

Amendments as to Common Elements - §718.110(14)

Except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the declaration as provided therein and shall not be considered a material alteration under §718.110(4).

Insurance - §718.111

Insurance deductibles must still be established by the Board at a duly noticed board meeting. The notice of the board meeting at which the deductible is to be determined no longer is required to include the amount of the proposed deductible, sums available to pay the deductible or proposed special assessment.

Unit owners are still required to insure all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and 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.

Associations are no longer obligated to require unit owners to provide evidence of insurance and the Associations no longer have the authority to purchase a policy of insurance on behalf of the unit owner.

Unit owners are no longer required to list the Association as an additional insured on casualty insurance policies.

Association's Official Records - §718.111(12)

The electronic mailing addresses and telephone numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information.

Any person who knowingly or intentionally defaces or destroys accounting records required to be created and maintained by this chapter during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain such accounting records required to be maintained by statute, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

Among other items previously listed in the statute, the following are part of the Association's official records but NOT accessible by unit owners:

Personnel Records of Association Employees

E-mail addresses, telephone numbers, emergency contact information, any addresses of a unit owner other than as 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.

Any Electronic Security Measure that is used by the Association to safeguard data, including passwords.

The Software and Operating System used by the Association which allows for the manipulation of data.

Unit Owner Meetings & Election of Directors / Board Eligibility - §718.112

If the number of board members whose terms have expired exceeds the number of candidates running for election, each board member whose term has expired is *eligible* for reappointment and need not stand for reelection (statute previously provided that such directors "shall be automatically reappointed").

A person who is more than 90 days delinquent in the payment of any monetary obligation to the Association, including any fee, fine, special or regular assessment is not eligible for board membership. (statute previously provided for the delinquency of regular assessments only).

In a condominium association of more than 10 units or in a condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

Candidate Certification Forms are no longer required prior to election. Certification must be made within 90 days after election. In lieu of this written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any action.

A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever

occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt the director or officer shall be reinstated for the remainder of his or her term of office, if any.

Firesprinkler Retrofitting - §718.112

A condominium association with a high rise building (greater than 75 feet high) may opt out of the obligation to retrofit with a majority vote of the membership (previously required a 2/3 vote of the membership).

If the requisite vote to opt out is not obtained, the Association must make application for a building permit for the retrofitting and must comply by December 31, 2016 and demonstrate that the Association will become compliant by December 31, 2019.

If a vote has been obtained to forego retrofitting a vote to proceed with retrofitting may be obtained at a special meeting of the owners called by at least 10% of the voting interests. Such vote may be called only once every three years.

Lender Liability - §718.116

The liability of a first mortgagee who acquires title to a unit through foreclosure or a deed in lieu of foreclosure has been increased to the lesser of 12 months of unpaid regular assessments or 1% of the original mortgage amount.

Collection of Rents - §718.116

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. 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. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association. The association shall, upon request, provide the tenant with written receipts for payments

made. 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.

(a) 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 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. (b) 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 10 days before the date the rent is due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the unit owner in the amount of monies paid to the association under this section. (c) The association may issue notices under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association.

However, the association is not otherwise considered a landlord under chapter 83 and specifically has no duties under s. 83.51. (d) 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. (e) A court may supersede the effect of this subsection by appointing a receiver.

Suspension of Use & Voting Rights - §718.303

If a unit owner is delinquent for more than 90 days in paying any monetary obligation to the Association, the Association may suspend the owner's or unit's occupant's right to use the common elements and the owner's right to vote until such sums are paid in full. Such suspension must be done at a duly noticed board meeting and the Association must provide written notice to the owner that the fine or suspension has been imposed. The Association cannot suspend use of limited common elements, common elements needed to access the unit, utilities to the unit, parking spaces and elevators.

Fining - §718.303(3)

Fining authority has been extended to "occupants" of unit and is no longer required to be in the association's Declaration or By-laws; the authority is now statutory. The fining procedure still requires a 14 day written notice and hearing before a committee of unit owners who are not board members.

As previously provided by statute, a fine may not exceed \$100.00 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. However, the fine may not in the aggregate exceed \$1,000.00.

NOTE: A 14 DAY NOTICE AND HEARING IS NOT REQUIRED FOR CONDOMINIUM ASSOCIATIONS WHERE THE FINE OR SUSPENSION IS FOR THE FAILURE TO PAY A MONETARY OBLIGATION TO THE ASSOCIATION, HOWEVER THESE FINES MUST BE LEVIED AT A DULY NOTICED BOARD MEETING AND NOTIFICATION OF THE FINE MUST BE MAILED OR HAND DELIVERED TO THE OWNER / OCCUPANT / INVITEE.

Bulk Assignees / Buyers §718.703

Newly created section of the statute defines bulk assignees and bulk buyers and the rights and obligations for each.

A "Bulk assignee" means a person who:

- (a) Acquires more than seven (7) condominium parcels as set forth in §718.707; and
- (b) Receives an assignment of some or all of the rights of the developer as set forth in the declaration of condominium or this chapter by a written instrument recorded as an exhibit to the deed or as a separate instrument in the public records of the county in which the condominium is located.

A "Bulk buyer" means a person who acquires more than seven (7) condominium parcels as set forth in s. 718.707, but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium; the right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer's acquisition of a bulk number of units; and the right to be exempt from

any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third party purchaser concerning one or more units.

As this newly created section is extensive, rather than recite the entire section, we encourage our clients to contact us if they have specific questions regarding the rights and obligations of bulk buyers and bulk assignees.

Homeowner Associations

Request for Inspection of Records - §720.303(5)

A request for the inspection of Official Records must now be made by certified mail – return receipt requested.

The Association may charge the owner the reasonable cost of personnel fees and charges at an hourly rate for vendor or employee time to cover administrative costs to the vendor or Association.

The following are part of the Association's official records but NOT accessible by owners:

Personnel Records of Association Employees

Social Security numbers, Driver License numbers, credit card numbers, e-mail addresses, telephone numbers, emergency contact information, any addresses of a parcel owner other than as 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.

Any Electronic Security Measure that is used by the Association to safeguard data, including passwords.

The Software and Operating System used by the Association which allows for the manipulation of data.

Budgets & Reserve Accounts - §718.111 and §720.303

Reserve Accounts may be terminated upon a majority vote of the voting interests of the Association.

Additional Statements are Required in Financial Reports as to Reserves.

Voluntary Reserves (i.e. a general reserve account for deferred expenditures, including capital expenditures and deferred maintenance) may be included in the Association budget in addition to those Reserves established pursuant to §720.303(6) and such reserves are not subject to the restrictions on use as set forth in the statute. Disclosure is required in the Association's Financial Report.

If the budget of the association does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year must contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL

EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

Compensation Prohibited for Directors, Officers or Committee Members §720.303(12)

A director, officer, or committee member of the association may not directly receive any salary or compensation from the association for the performance of duties as a director, officer, or committee member and may not in any other way benefit financially from service to the association.

This section does not preclude:

- (a) Participation by such person in a financial benefit accruing to all or a significant number of members as a result of actions lawfully taken by the board or a committee of which he or she is a member, including, but not limited to, routine maintenance, repair, or replacement of community assets.
- (b) Reimbursement for out-of-pocket expenses incurred by such person on behalf of the association, subject to approval in accordance with procedures established by the association's governing documents or, in the absence of such procedures, in accordance with an approval process established by the board.
- (c) Any recovery of insurance proceeds derived from a policy of insurance maintained by the association for the benefit of its members.
- (d) Any fee or compensation authorized in the governing documents.
- (e) Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by proxy at a meeting of the members.

(f) A developer or its representative from serving as a director, officer, or committee member of the association and benefitting financially from service to the association.

Flagpoles and Displays - §720.304(2)(b)

A parcel owner's right to display a freestanding flag pole is subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the governing documents.

Suspension of Use Rights and Fines- §720.305(2)

If a member is delinquent for more than 90 days in paying a monetary obligation due the Association, the Association may suspend the use right of the owner (and owner's tenants, guests and invitees) for the common areas until such obligation is paid. Note: This Section DOES NOT INCLUDE RIGHT TO SUSPEND INGRESS AND EGRESS OR UTILITY SERVICES .

FINES - Fining authority still applies to members, tenants, guests and invitees but such fining authority is no longer required to be in the association's Declaration or By-laws; the authority is now statutory.

A Fine of less than \$1,000.00 may not become a lien against a parcel. The statute now provides authority to lien for fines of \$1000.00, although a fine for a particular violation still cannot exceed \$1,000.00 in the aggregate unless otherwise provided for in the governing documents.

If the Association imposes a fine or suspension, the Association must now provide written notice by mail or hand delivery to the party fined.

A fine or suspension for homeowners associations requires a 14-day notice and opportunity for a hearing before a committee of at least three (3) members who are not officers, directors or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee of the Association even if the fine or suspension is solely as a result of the owner's delinquency in the payment of any monetary obligation to the Association. (Previously, the statute did not require such

notice and hearing if the fine or suspension was solely for delinquency). If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

Election of Directors / Vacancies - §720.306

If the governing documents permit voting by secret ballot by members who are not in attendance at a meeting of the members for the election of directors, such ballots must be placed in an inner envelope with no identifying markings and mailed or delivered to the association in an outer envelope bearing identifying information reflecting the name of the member, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting that ballot. If the eligibility of the member to vote is confirmed and no other ballot has been submitted for that lot or parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted. If more than one ballot is submitted for a lot or parcel, the ballots for that lot or parcel shall be disqualified. Any vote by ballot received after the closing of the balloting may not be considered.

Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s.720.303(10) and rules adopted by the division.

Collection of Rents - §720.3085

If the parcel is occupied by a tenant and the parcel 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 parcel. 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 parcel. The association must mail written notice to the

parcel owner of the association's demand that the tenant make payments to the association. The association shall, upon request, provide the tenant with written receipts for payments made. A tenant who acts in good faith in response to a written demand from an association is immune from any claim from the parcel owner.

(a) If the tenant prepaid rent to the parcel owner before receiving the demand from the association and provides written evidence of paying the rent to the association within 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 parcel owner to the association. (b) 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 10 days before the date the rent is due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the parcel owner in the amount of monies paid to the association under this section. (c) The association may issue notices under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association.

However, the association is not otherwise considered a landlord under chapter 83 and specifically has no duties under s. 83.51. (d) The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a parcel owner to vote in any election or to examine the books and records of the association. (e) A court may supersede the effect of this subsection by appointing a receiver.

Special Assessment By Developer Prior to Turnover - §720.315

Prior to Turnover, the Developer may not levy special assessments unless a majority of the parcel owners other than the developer have approved the special assessment by a majority vote at a duly called special meeting of the membership at which a quorum is present.