

2010 Legislative Update

It is important to note that we are not attorneys and any statements or perceived advice provided herein should not be construed as legal advice. The information below is being provided for your convenience to keep you updated in your role as a Board member. If you have questions regarding your association and any of these changes, your Board should contact the association's legal counsel. You can also view the specific language in these bills by visiting the Florida Senate's web site at www.flsenate.gov on the left side of your computer screen you can type in the bill number and view the **enrolled bill** in a PDF format. (Underlined words are additions and words ~~stricken~~ are deletions)

On June 1, 2010 Governor Crist signed Senate Bill 1196 into law to be effective on 7/1/10. This bill has some very positive changes to Chapter 718, 719 and 729 of the Florida Statutes. In addition to SB1196, one other bill of merit (HB1135) was also signed in to law and the key points are discussed below. Fourteen other bills were either withdrawn or died in committee during the 2010 Legislative Session.

The New Legislation

HB1135 – Elevator Safety – Effective 7/1/10 (7pages)

A number of important items in this Legislation are:

- Time to comply with violations cited on an elevator inspection report changes from 30 days to 90 days.
- A "grace period" where the retroactive requirement for adding or upgrading Phase II Fire Control Operation for elevators in condominiums and multifamily residential buildings, including some retirement facilities with apartments, will not be enforced for five years from the effective date.
399.02(9) Updates to the code requiring modifications for Phase 70 II Firefighters' Service on existing elevators, as amended into the Safety Code for Existing Elevators and Escalators, ASME A17.1 and A17.3, may not be enforced on elevators in condominiums or multi-family residential buildings, including those that are part of a continuing care facility licensed under chapter 651 or similar retirement community with apartments, issued a certificate of occupancy by the local building authority as of July 1, 2008, for 5 years or until the elevator is replaced or requires major modification, whichever occurs first. This exception does not apply to a building for which a certificate of occupancy was issued after July 1, 2008. This exception does not prevent an elevator owner from requesting a variance from the applicable codes before or after the expiration of the 5-year term. This subsection does not prohibit the division from granting variances pursuant to s. 120.542 and subsection (8). The division shall adopt rules to administer this subsection.

If you already have a temporary variance for Phase II Firefighter's Operation, this legislation will effectively extend it to July 1, 2015.

- Provides for access by State Employees to any building where regulated elevator equipment is located.
- Has provisions for greater enforcement by way of fines for non-compliance and for operating an elevator without a valid certificate of operation.

SB1196 Community Associations (including the Distressed Condominium Relief Act)

Effective 7/1/10 (103 pages)

This bill creates some major improvements over 2008 legislation as it related to insurance responsibility of the association. It eliminates the requirement for owners of condominiums to name the association as an additional insured and also removes the responsibility of the owner providing proof of insurance to the condo association. SB1196 redefines the term "developer", provides special consideration for "bulk buyers" and "bulk assignees", amends the manner in which a condo association discloses the insurance deductible and revises the requirement for retrofitting fire sprinkler systems in high rises. The bill further provides for both Condos and HOA's to collect rent from tenants whose owners are delinquent in their assessment payments to the association and defines what association records are no longer public information. This bill also allows HOA's to conduct secret ballot elections if their documents permit it as is the case for condominiums. Let's look at the high points of SB1196 below. As stated earlier, specific questions regarding this legislation should be directed to the association attorney. The intent of this legislative compilation is purely informational and no intent is made to interpret the Statutes.

The Not-For-Profit Corporation Act Ch. 617 F.S. – Correcting a 2009 error.

617.0721 Voting by members.— (7) Subsections (1), ~~(2)~~, (5), and (6) do not apply to a corporation that is an association, as defined in s. 720.301, or a corporation regulated by chapter 718 or chapter 719.

617.0808 Removal of directors.— (3) This section does not apply to any corporation that is an association, as defined in s. 720.301, or a corporation regulated under chapter 718 or chapter 719.

Section 4. Section 617.1606, Florida Statutes, is created to read: 617.1606 Access to records.—Sections 617.1601-617.1605 do not apply to a corporation that is an association, as defined in s. 720.301, or a corporation regulated under chapter 718 or chapter 719.

Section 5. Section 627.714, Florida Statutes, is created to read:

627.714 Residential condominium unit owner coverage; loss assessment coverage required.— (1) For policies issued or renewed on or after July 1, 2010, coverage under a unit owner's residential property policy must include at least \$2,000 in property loss assessment coverage for all assessments made as a result of the same direct loss to the property, regardless of the number of assessments, 306 owned by all members of the association collectively if such loss is of the type of loss covered by the unit owner's residential property insurance policy, to which a deductible of no more than \$250 per direct property loss applies. If a deductible was or will be applied to other property loss sustained by the unit owner resulting from the same direct loss to the property, no deductible applies to the loss assessment coverage.

Although not exactly a new law, the Legislature did clean up the language removing the word "hazard" and replacing it with the word "property" which more clearly defines the meaning.

633.0215 Florida Fire Prevention Code.—

(13) A condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system under s.337 9.6 of the Life Safety Code adopted in the Florida Fire Prevention Code.

Condo Changes and/or Corrections:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

(13) ~~An~~ ~~Any~~ amendment ~~prohibiting restricting~~ 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 during a specified period ~~owners' rights relating to the rental of units~~ applies only to unit owners who consent to the amendment and unit owners who acquire title to ~~purchase~~ their units after the effective date of that amendment.

Paragraph 14 is added to allow the reclassification of common elements that serve only one unit or a group of units as a limited common element upon the vote required to amend the declaration. This is clarification of existing law.

718.111 – Insurance

- The language has been cleaned up removing the word “hazard” and replacing it with the word “property”. Adequate insurance regardless of any declaration language must be based on the replacement cost and **not** the “full insurable value”.
- (c) 3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board. ~~Such meeting shall be open to all unit owners in the manner set forth in s. 718.112(2)(e). The notice of such meeting must state the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any. The meeting described in this paragraph may be held in conjunction with a meeting to consider the proposed budget or an amendment thereto.~~

The above change requires a 14 day notice to the owners that would state that the deductible amount is going to be discussed as part of the agenda.

- Effective 7/1/10 – The association’s insurance policy must exclude 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. Such property and any insurance thereupon is the responsibility of the unit owner.
- The requirement for each owner to provide evidence of a current insurance policy is deleted but it still does not allow the condominium owner to self insure. The policy must conform to 627.714 F.S..
- The requirement to have the association named as an additional insured and loss payee is deleted.

Official Records:

- Telephone numbers have traditionally been included in the association's directory or owner list. The roster list also includes email addresses of the members if they have consented (or requested) to receive notices and other association information by email. SB 1196 says that the email addresses and telephone numbers of the members must be removed from the association's records if the owner revokes consent to receive notice by electronic transmission. Please discuss modifications to the roster or creating a procedure for owner consent to include this information with association counsel, as many owners have come to rely upon the roster or directory to remain in contact with friends and neighbors.
- We know the association cannot publish debtor lists or use the delinquency records to embarrass or harass its members, but the board (or management) has little to no control over what happens to records once they are in the possession of a unit owner. SB 1196 says the association is not responsible for misuse of records properly obtained in connection with an owner's rights to inspect and copy.
- Personnel records for association employees such as payroll, disciplinary actions, health and insurance records are no longer accessible to members. **(This also applies to HOA's)**
- Private information such as email addresses, alternate addresses (*other than as provided to fulfill the association's notice requirements*), telephone numbers, emergency contact information, social security numbers, driver's license and credit card numbers of the owners are not accessible to members. **(This also applies to HOA's)**
- Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained by this chapter, 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).
- The Division of Condominiums must create standards to be used by all condominium associations for presenting a summary of association reserves including an estimate for disclosing the annual amount of reserve funds that would be needed for the association to fully fund reserves for each item based on the straight-line method. This disclosure is not applicable to pooled method reserve accounts.
- 2. An association ~~that which~~ operates ~~fewer less~~ than 75 ~~50~~ units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

718.112 Bylaws (d) *Unit owner meetings.*—

- If the number of board members whose terms have expired exceeds the number of eligible members showing interest in or demonstrating an intention to run for the vacant positions ~~no person is interested in or demonstrates an intention to run for the position of a board member whose term has expired according to the provisions of this subparagraph,~~ each such board member whose term has expired is eligible for reappointment ~~shall be automatically reappointed~~ to the board of administration and need not stand for reelection.

The last statement corrects a problem that if there were not enough candidates to fill the board vacancies, the outgoing board members were automatically reappointed for another term and thereby could not get off the board.

- In a condominium of more than 10 units, co-owners of a unit may not serve as members of the board 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.
- Candidates for election no longer have to complete the candidate certification form prior to the election. 718.112 (D)(3)(b). Within 90 days after being elected or appointed to the board, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. 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 newly elected director who fails to provide the written certification or educational certificate is suspended from service until he or she complies. The board may temporarily fill the vacancy during the period of suspension.
- A director or officer who is delinquent more than 90 days in the payment of any monetary obligation due the association shall be deemed to have abandoned the office.

Fire Safety

- The association may call a meeting of the unit owners for the purpose of voting to forego the retrofitting of the fire sprinkler system. Passage requires a majority of the voting interests to vote affirmatively. If by 12/31/16 the association is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system then they must initiate an application for a building permit for the required installation with their local jurisdiction demonstrating that the association will become compliant by 12/31/19.
- The local authorities may not require completion of retrofitting with a fire sprinkler system before the end of 2019.
- 2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.

Communications

- The contract costs for a bulk communications contract may be allocated on a per-unit basis rather than a percentage if the declaration so provides.

Financial

- A claim of lien secures all unpaid assessments from the time the lien is recorded through the entry of a final judgment as opposed to the old language of “entry of a certificate of title”.

718.116 (11) is created –

- (11) 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.
- (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.
- A condominium may be terminated because of economic waste or impossibility. The language in 718.117 addresses the issue some condominiums may be facing - where the developer walked away from the project.
- There are pages in SB1196 defining “bulk buyers” & “bulk assignees” and whether or not these types of buyers are responsible for liabilities incurred by the previous developer and when such buyers assume the role of the developer. These terms carry over in to the “Distressed Condominium Relief Act” 781.701 F.S.

Collections: A little relief to help force delinquent owners to pay.

- 718.303 (3) If a unit owner is delinquent for more than 90 days in paying a monetary obligation due to the association the declaration or bylaws so provide, the association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid. This subsection does not apply to limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The association may also levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

Normally before a fine or suspension is imposed, a fourteen (14) day written notice must be provided to the owner informing them of their right to a hearing. Newly created paragraph 4 of this statute removes that responsibility under certain circumstances.

- (4) The notice and hearing requirements of subsection (3) do not apply to the imposition of suspensions or fines against a unit owner or a unit's occupant, licensee, or invitee because of failing to pay any amounts due the association. If such a fine or suspension is imposed, the association must levy the fine or impose a reasonable suspension at a properly noticed board meeting, and after the imposition of such fine or suspension, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.
- (5) An association may also suspend the voting rights of a member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue the association.

718.701 – The distressed Condominium Relief Act

The new statute contains 10 pages of what amounts to incentive motivations for buyers to come in and purchase blocks of units for sale to quickly turn them so that the association begins to receive assessment payments from the new owners. The entire text of the new statute will be available on our website but we have reprinted the first paragraph below so you are aware of the Legislature's intent.

- 718.702 Legislative intent.— (1) The Legislature acknowledges the massive downturn in the condominium market which has occurred throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have failed or are in the process of failing such that the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to receive payment for their investments.
- (2) The Legislature recognizes that all of the factors listed in this section lead to condominiums becoming distressed, resulting in detriment to the unit owners and the condominium association due to the resulting shortage of assessment moneys available for proper maintenance of the

condominium. Such shortage and the resulting lack of proper maintenance further erodes property values. The Legislature finds that individuals and entities within this state and in other states have expressed interest in purchasing unsold inventory in one or more condominium projects, but are reticent to do so because of accompanying liabilities inherited from the original developer, which are by definition imputed to the successor purchaser, including a foreclosing mortgagee. This results in the potential successor purchaser having unknown and unquantifiable risks that the potential purchaser is unwilling to accept. As a result, condominium projects stagnate, leaving all parties involved at an impasse and without the ability to find a solution.

- (3) The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities for successor purchasers, including foreclosing mortgagees. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period.

Co-Ops

Language similar to Ch. 718 F.S. has been added to Ch. 719 as it relates to Cooperatives regarding board vacancies and fire sprinkler retrofitting and lien filing. There is also language added to this statute that permits the collection of rents from tenants of delinquent owners just like condominiums. It appears as though all of the improvements to Ch. 718 F.S. have carried over to Ch. 719 F.S. bring the two forms of ownership in to a sort of alignment with each other.

Homeowner's Associations

- 720.303 (2) (b) - Notwithstanding any other law, ~~the requirement that board meetings and committee meetings be open to the members is inapplicable to~~ meetings between the board or a committee and the association's attorney to discuss proposed or pending litigation, or with respect to meetings of the board held for the purpose of discussing personnel matters are not required to be open to the members other than directors.

Presumption:

- In HOAs the presumption that the association willfully failed to make records available if the records were not available within 10 business days only arises if the request was sent via certified mail, return receipt requested.

Record Inspection Costs :

- If the association does not have a copy machine at the record site, or the owner requests more than 25 pages of records, copies may be made by an outside vendor or management company personnel - in that case the association may charge for the actual costs of the copies **and** hourly charges for vendor or employee time to cover the administrative costs to the vendor or the association.
- All the rules related to which association records, software and contact information mentioned in the condo section now also apply to HOA's.

Budgets:

- 720.303 (6) BUDGETS.— (b) In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible. If reserve accounts are not established pursuant to paragraph (d), funding of such reserves is limited to the extent that the governing documents ~~do not~~ limit increases in assessments, including reserves. If the budget of the association includes reserve accounts established pursuant to paragraph (d), such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts pursuant to paragraph (d) in the budget, the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection. This section does not preclude the termination of a reserve account established pursuant to this paragraph upon approval of a majority of the total voting interests of the association. Upon such approval, the terminating reserve account shall be removed from the budget.
- (c)1. If the budget of the association does not provide for reserve accounts pursuant to paragraph (d) governed by this subsection 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 required by subsection (7) must ~~shall~~ 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 ~~THE PROVISIONS OF~~ SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.
- 2. 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.
- Language has been added similar to condominiums that prohibit compensation for a director or officer unless provided for in the covenants. This does not prevent a director or officer from seeking reimbursement for out-of-pocket expenses or any fee or compensation authorized in advance by a vote of the majority voting interest.

720.304 Rights of owners

- Previously, homeowners have been permitted to erect a freestanding flagpole no more than 20 feet in height regardless of any covenant restrictions. This has not changed however, language has been added with some additional guidelines.
 - The flagpole and display are 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.

720.305 is amended to read:

- Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights. — (2) If a member is delinquent for more than 90 days in paying a monetary obligation due the association ~~the governing documents so provide,~~ an association may suspend, until such monetary obligation is paid for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines of up to, ~~not to exceed~~ \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied for ~~on the basis of~~ each day of a continuing violation, with a single notice and opportunity for hearing, except that a no such fine may not ~~shall~~ exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may ~~shall~~ not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the nonprevailing party as determined by the

court. The provisions regarding the suspension-of-use rights do not apply to the portion of common areas that must be used to provide access to the parcel or utility services provided to the parcel.

- (a) A fine or suspension may not be imposed without ~~notice of~~ at least 14 days notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. If the association imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

The above paragraph is a little different than the condominium statute in that a hearing must be held prior to any suspension or imposition of a fine for a delinquency.

Voting:

- (b) 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.

Assessment Collection

All of the rules regarding collection of rent from tenants that apply to condominiums also applies to HOA's. The association may now notify the tenant that rent is to be paid directly to the association due to the homeowners delinquency. This does not give the renter any ownership rights, however.

- Section 6 has been added to 720.31 addressing the association entering in to recreational leaseholds. If this is of interest to your association you should review the statute and discuss your plans with the association attorney.

▪ **Section 28. Section 720.315, Florida Statutes, is created to read:**

- 720.315 Passage of special assessments.—Before turnover, the board of directors controlled by the developer may not levy a special assessment 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. This act shall take effect July 1, 2010.

Remember – Always consult with the association attorney prior to establishing policies or procedures based on new legislation. Only an attorney can interpret the meanings of laws and legal documents.

What is clear in the changes brought about by SB1196 is now Condo's, Co-Ops and HOA's have the ability to take some other type of action to get the assessment money they are owed by delinquent owners. Following the procedure outlined in the statutes and notifying the renter that all rents are now payable to the association, should help many associations with cash flow issues.

The ability to hold an owner vote to forego the retrofitting of fire sprinkler systems is a huge relief and will be a great expense savings to those condo's and Co-ops that were previously under the gun to comply with the law.

Several other changes to Ch. 399 F.S will also take effect on 7/1/10 including the postponement of the installation of the Fire Service Key.

Please be sure to read this new legislation and advise your clients accordingly.

If you are taking your CAM exam after 7/1/10 – the chances are very good that you will need this information. Answer the question asked based on the current laws on the date you took the exam if the question does not stipulate a date.