

FL Statute 718 Legislative Changes 2018

Detail Information Provided by Paul St. Clair

2018 Legislative changes, effective July 1, 2018, were introduced via the following bills:

- House Bill 841 – An Act Relating to Community Associations*
- House Bill 617 – An Act Relating to Covenants & Restrictions
- House Bill 29 – An Act Relating to Military & Veterans' Affairs

*This Bill impacts FL Statute 718, The Condominium Act, and is addressed here.

House Bill 841 – An Act Relating to Community Associations

On March 23, 2018, Governor Scott approved House Bill 841, amending a number of statutes regulating community associations. The following is a summary of House Bill 841 by topic:

1. Official Records of Condominiums – § 718.111(12)

- The amount of time that condominium associations must respond to written records requests is extended from 5 business days to 10 business days.
- Electronic records relating to voting by unit owners must be maintained in the official records for 1 year from the date of the election, vote or meeting to which the document relates.
- Condominium associations must permanently maintain the following documents from the inception of the association (instead of just for at least 7 years):
 - A copy of the articles of incorporation, declaration, bylaws and rules of the association;
 - Board & Unit Owner Meeting minutes; and
 - A copy of the plans, permits, warranties, and other items provided by the developer at turnover.

2. Condominium Websites – § 718.111(12)(g)

- The deadline for condominium associations to post certain documents to its website is extended from July 1, 2018 to January 1, 2019.
- The website must list all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility. Prior language indicated that the contracts/documents themselves need to be posted.
- After bidding for materials, equipment, or services has closed, a condominium association must post on its website a list of bids received within the past year.
- Summaries or complete copies of bids for materials, equipment, or services must be posted on the website only if they exceed \$500.

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- Instead of posting on its website proposed financial reports to be considered at a meeting, the association must post any monthly income or expense statement to be considered.
- Revises the provision regarding conflict of interest documents that must be posted on the association's website to include:
 - Contracts entered into by a CAM or firm, on behalf of an association, with any entity in which the manager or firm has a financial interest, and
 - Any activity that may reasonably be construed to be a conflict of interest.
- The association or its agent is not liable for disclosing protected or restricted information unless the disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information.
- The failure of the association to post required information is not in and of itself sufficient to invalidate any action or decision of the board or its committees.

3. Condominium Financial Reporting – § 718.111(13)(e)

- If a condominium association fails to comply with a request from the Division of Florida Condominiums, Timeshares, and Mobile Homes (the "Division") to provide, within five business days, a copy of the association's financial report to the Division and to a unit owner who reports the association's failure to provide a copy of such report within the required time, the association may not waive the annual financial reporting requirements for the fiscal year in which the unit owner's request was made and the following fiscal year.

4. Board Meeting Where Assessments are to be Considered – § 718.112(2)(c)1.

- The notice of any meeting at which regular or special assessments are to be considered must specifically state that assessments will be considered and provide the "estimated cost and description of the purposes for such assessments."

5. Notice of Board Meetings via Email – § 718.112(2)(c)1.

- Condominium association are allowed to adopt rules for noticing all board and unit owner meetings and meeting agendas on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to all unit owners whose e-mail addresses are part of the official records. Notice by website must be in addition to the other notice requirements.
- A condominium unit owner who consents to receiving notice by electronic transmission is responsible for removing or bypassing any filters that block receipt of mass e-mails sent to members on behalf of the association for the purpose of giving notice.

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6. Condominium Board Member Terms – § 718.112(2)(d)2.

- Amends existing condominium association term-limit language to provide that no board member may serve more than 8 consecutive years, unless approved by an affirmative vote of two-thirds of the voting interests voting in the election or unless there are not enough eligible candidates to fill the vacancies. Board members can serve terms longer than 1 year if permitted by the bylaws or articles of incorporation.

7. Condominium Board Member Recall – § 718.112(2)(j)

- A board must hold a meeting within 5 business days after the adjournment of the unit owner recall meeting or within 5 days after service of the written recall agreement. If the board determines that the recall is facially valid, the recall becomes effective upon the conclusion of the board meeting. (Note that the law does not define “facially valid”)
- If the board determines that the recall is not facially valid, the unit owner representative may file a petition for arbitration with the Division of Florida Condominiums, Timeshares, and Mobile Homes (the “Division”), challenging the board’s determination on facial validity.
- A recalled board member may challenge the facial validity of the written agreement to recall, the ballots filed, or the substantial compliance with the procedural requirements for the recall, by filing a petition with the Division.
- If an arbitrator determines the recall is invalid, the recall is null and void and the petitioning board member shall be immediately reinstated. A board member who successfully challenges a recall is entitled to recover reasonable costs and attorney fees from the respondents. An arbitrator may award reasonable costs and attorney fees to the respondents if the arbitrator determines a recalled board member’s request for arbitration is frivolous.

8. Alterations or Additions to Condominium Property – § 718.113(2)

- If a condominium’s declaration does not provide a procedure for approval of material alterations or substantial additions to condominium property, then approval by 75 percent of the voting interests must be obtained *before* the material alterations or substantial additions to the condominium property begin.

9. Electric Vehicles in Condominium Associations – § 718.113(8), § 718.121(2)

- Creates a new provision stating that a condominium association may not prohibit a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner’s limited common element parking area, subject to the following:
 - The installation must not cause irreparable damage to the condominium property.
 - Electricity for the electric vehicle charging station must be separately metered and payable by the unit owner installing the charging station.

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- The unit owner who is installing an electric vehicle charging station is responsible for the costs of installation, operation, maintenance, and repair including but not limited to hazard and liability insurance.
- If the unit owner or his or her successor decides there is no longer a need for the electric charging station, such person is responsible for the cost of removal of the station.
- The Association may require the unit owner to:
 - Comply with safety requirements consistent with applicable building codes or recognized safety standards.
 - Comply with reasonable architectural standards adopted by the Association that govern the dimensions, placement, or external appearance of the electric vehicle charging station.
 - Engage the services of a licensed and registered electrical contractor or engineer familiar with the installation and requirements of an electric vehicle charging station.
 - Providing a certificate of insurance naming Association as the additional insured on the owner's insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station within 14 days after receiving the association's approval to install the station.
 - Reimburse the Association for the actual cost of any increased insurance premium attributable to the electric vehicle charging station within 14 days after receiving the association's insurance premium invoice.
- The Association provides an implied easement across the common elements of the condominium property to the unit owner for purposes of installing the electric vehicle charging station and furnishing electric power, including any necessary equipment.
- The installation of an electric vehicle charging station may not be the basis for filing a construction lien under FL Statute Chapter 713 against the association, but a construction lien may be filed against the unit owner.

10. Conflicts of Interest – § 718.3026(3), § 718.3027(2)

- The conflict of interest provisions found in FL Statute 718.3026(3) regarding a director or officer, or a relative of a director or officer, who proposes to engage in an activity involving contracts for products and services, are moved to section 718.3027.
- In addition to other requirements in FL Statute 718.3027, the following applies:
 - The Association shall comply with the requirements of FL Statute 617.0832, and the disclosures required by 617.0832 shall be entered into the written minutes of the meeting.

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- Approval of the contract or other transaction requires an affirmative vote of two thirds of all other directors who are present.
- At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present.
- If the contract is canceled, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

11. Fines and Suspensions – § 718.303(3)(b)

- This change excludes additional people from serving on a fining committee. A condominium association's committee of unit owners who determine whether to confirm or reject a fine or suspension levied by the board must be made up of at least three members who are appointed by the board, and are not officers, directors, or employees of the association, or a spouse, parent, child, brother, or sister of an officer, director, or employee of the association.
- Majority vote requirement was added. A condominium association's committee of unit owners who determine whether to confirm or reject a fine or suspension levied by the board must approve the fine or suspension by majority vote, otherwise the association may not impose the fine or suspension.
- Adds method of delivering notice and includes tenant. The condominium and cooperative association must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.
- Sets the fine's due date. A fine approved by the committee of an HOA, condominium, or cooperative association is due 5 days after the date of the committee meeting at which the fine is approved.

12. Condominium Bulk Assignees and Bulk Buyer – § 718.707

- Removes the "sunset" date of July 1, 2018 in the condominium "bulk buyer" law, thereby making the bulk buyer law permanent.
- A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010.