



# 2011 Legal Update Seminar



This Course is approved by the DBPR Council of Community Association Managers, for 2 hours of continuing education credit in the area of:

**LEGAL UPDATE**

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**Introduction**

This 2011 Legal Update Seminar includes changes to various statutes and administrative rules that were passed by the Legislature and signed into law by the Governor in 2010.

This year, we have included footnotes providing the section of the statute in which a specific change appears. It is very important that you read each footnote carefully as you review the text.

The content of this course is prescribed by the Department of Business & Professional Regulation. This course is not designed to cover every change made in statute or rule. It does not discuss variances and waivers issued by the Department. While it includes summaries of selected arbitration decisions and references Declaratory Statements, it is not meant to be a comprehensive guide to such decisions.

While our focus is primarily on those directly affecting community associations, we have also reviewed legislation that may indirectly affect your communities. We have summarized the statutory changes. The actual text of the legislation is incorporated into the applicable statute. We have not included F.S. 468, Part VIII, or F.A.C. 61B-14, the statutes and administrative rules pertaining to community association management licensure requirements, this year.

Many of changes in statutes or administrative rule are applicable solely to one type of association. Declaratory statements and arbitration decisions, while serving as a guide for other associations, only pertain exclusively to the association for which the opinion was requested.

Some of the information presented in this course may not apply to every community association managers, but only to those serving a specific type of community association. However, the DBPR requires that community association managers be familiar with the laws and rules governing all types of associations. Further, by doing so, a manager may find him- or herself more qualified to advance within the community association management profession.

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## 2010 Changes in Legislation & Administrative Rules

### • F.A.C. 61E14-2.001 (Standards of Professional Conduct)

- Removes the word “registrant.”
- Changes “Control of Others” to include management firms, and to cover violations of F.S. 455 or other applicable statutes or rules.
- Changes requirement to return records upon request of association to 10 business days after termination of any management or employment agreement and receipt of written request from association. Permits manager to retain records necessary to complete ending financial statement or report for up to 20 days.
- Failure of association to provide access or retention of accounting records relieves manager of responsibility or liability for preparation of statement or report.

### • SB 1196 (Chapter 2010-174): Effective date 07/01/2010

- Not-for-Profit Corporations:<sup>1</sup>
  - ♦ Amends F.S. 617.0721 to provide that certain sections of the Not-for-Profit Corporate Act regarding voting by members do not apply to condominiums, cooperatives or HOAs.
  - ♦ Amends F.S. 617.0808 to provide that the section dealing with removal of directors does not apply to condominiums, cooperatives or HOAs.
  - ♦ Creates F.S. 617.1606 to provide that certain sections dealing with access to records do not apply to condominiums, cooperatives or HOAs.
- Multifamily Residential Building Fire Alarm Systems:<sup>2</sup> 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 section 9.6 of the Life Safety Code adopted in the Florida Fire Prevention Code.
- Condominium Sales/Reservation Deposits:<sup>3</sup> All funds deposited into escrow pursuant to statute may be held in one or more escrow accounts by the escrow agent. If only one escrow account is used, the escrow agent must maintain separate accounting records for each purchaser and, if applicable, released to the developer pursuant to subsection (3). Separate accounting by the escrow agent of the escrow funds constitutes compliance even if the funds are held by the escrow agent in a single escrow account.
- Condominium Turnover from Developer:<sup>4</sup> Members other than the developer are entitled to elect at least a majority of the members of the board when a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members;

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<sup>1</sup> F.S. 617

<sup>2</sup> F.S. 633.0215

<sup>3</sup> F.S. 718.202(11)

<sup>4</sup> F.S. 718.301(1)(f)

- 1       ▪ Condominium Board Elections/Qualifications:<sup>5</sup>
- 2           ♦ Provides that board members are not automatically reappointed when number of el-
- 3           ligible candidates showing an interest in running for vacant positions, but are eligible
- 4           for re-appointment
- 5           ♦ Prohibits co-owners from serving on board unless they own more than one unit or
- 6           there are not enough candidates to fill vacancies at time of vacancy.
- 7           ♦ Provides that member delinquent in payment of fee, fine, special or regular assess-
- 8           ment at least 90 days is not eligible for board service.
- 9           ♦ Prohibits member from permitting any other person from voting his ballot
- 10          ♦ Provides that, within 90 days after being elected or appointed to the board, each
- 11          newly elected or appointed director shall certify in writing to the secretary of the as-
- 12          sociation that he has read the association's declaration of condominium, articles of
- 13          incorporation, bylaws, and current written policies; that he will work to uphold such
- 14          documents and policies to the best of his ability; and that he will faithfully discharge
- 15          his fiduciary responsibility to the association's members. In lieu of this written certifi-
- 16          cation, the newly elected or appointed director may submit a certificate of satisfactory
- 17          completion of the educational curriculum administered by a division-approved con-
- 18          dominium education provider.
- 19          ♦ Provides that a director who fails to timely file the written certification or educational
- 20          certificate is suspended from service on the board until he or she complies. Permits
- 21          the board to temporarily fill the vacancy during the period of suspension.
- 22          ♦ Requires the secretary to retain a director's written certification or educational certifi-
- 23          cate for inspection by the members for 5 years after a director's election; failure to
- 24          have such written certification or educational certificate on file does not affect the va-
- 25          lidity of any action.
- 26          ♦ Provides that director or officer charged by information or indictment with a felony
- 27          theft or embezzlement offense involving the association's funds or property must be
- 28          removed from office, creating a vacancy in the office to be filled according to law until
- 29          the end of the period of the suspension or the end of the director's term of office,
- 30          whichever occurs first. While director or officer has such criminal charge pending, he
- 31          may not be appointed or elected to a position as a director or officer. However, if
- 32          should the charges are be resolved without a finding of guilt, the director or officer
- 33          shall be reinstated for the remainder of his term of office, if any.
- 34       ▪ Condominium Insurance:<sup>6</sup>
- 35           ♦ For policies issued or renewed on or after July 1, 2010, coverage under a unit own-
- 36           er's residential property policy must include at least \$2,000 in property loss assess-
- 37           ment coverage for all assessments made as a result of the same direct loss to the
- 38           property, regardless of the number of assessments, owned by all members of the
- 39           association collectively if such loss is of the type of loss covered by the unit owner's
- 40           residential property insurance policy, to which a deductible of no more than \$250 per
- 41           direct property loss applies. If a deductible was or will be applied to other property
- 42           loss sustained by the member resulting from the same direct loss to the property, no
- 43           deductible applies to the loss assessment coverage.

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<sup>5</sup> F.S. 718.112(2)(d)

<sup>6</sup> F.S. 627.714 (HO-6 Policies)

- 1       ♦ Maximum amount of any unit owner's loss assessment coverage that can be as-  
2       sessed for any loss shall be an amount equal to that unit owner's loss assessment  
3       coverage limit in effect one day before the date of the occurrence. Any changes to  
4       the limits of a unit owner's coverage for loss assessments made on or after the day  
5       before the date of the occurrence are not applicable to such loss.
- 6       ♦ Regardless of the number of assessments, an insurer providing loss assessment  
7       coverage to a unit owner is not required to pay more than an amount equal to that  
8       unit owner's loss assessment coverage limit as a result of the same direct loss to  
9       property.
- 10       ♦ Every individual unit owner's residential property policy must contain a provision stat-  
11       ing that the coverage afforded by such policy is excess coverage over the amount  
12       recoverable under any other policy covering the same property.
- 13       ▪ Condominium Insurance<sup>7</sup>
- 14       ♦ Provides that replacement cost value must be determined no less than once every  
15       36 months.
- 16       ♦ "Hazard" changed to "property."
- 17       ♦ Member's policy must conform to F.S. 627.714 (above).
- 18       ♦ Notice of Board meeting at which insurance deductible is set: board no longer re-  
19       quired to state in notice proposed deductible and the available funds and the as-  
20       sessment authority relied upon by the board and estimate any potential assessment  
21       amount against each unit, if any.
- 22       ♦ Removes reference to insurance of improvements
- 23       ♦ Eliminate requirement that association require members to provide proof of insur-  
24       ance; that association be loss payee and additional insured on member policy, and  
25       that owner may force place insurance if member does not have insurance
- 26       ♦ Member responsibility only for items listed in F.S. 718.111(11) and documents.
- 27       ▪ Condominium & Cooperative Elevators:<sup>8</sup> Updates to the code requiring modifications for  
28       Phase II Firefighters' Service on existing elevators, as amended into the Safety Code for  
29       Existing Elevators and Escalators, ASME A17.1 and A17.3, may not be enforced on ele-  
30       vators in condominiums, cooperatives, or multifamily residential buildings issued a certifi-  
31       cate of occupancy by the local building authority as of July 1, 2008, for 5 years or until  
32       the elevator is replaced or requires major modification, whichever occurs first. This ex-  
33       ception does not apply to a building for which a certificate of occupancy was issued after  
34       July 1, 2008. This exception does not prevent an elevator owner from requesting a va-  
35       riance from the applicable codes before or after the expiration of the 5-year term. This  
36       subsection does not prohibit the division from granting variances pursuant to F.S.  
37       120.542. The division shall adopt rules to administer this subsection.

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<sup>7</sup> F.S. 718.111(11)

<sup>8</sup> F.S. 399.02(8)

- 1       ▪ Condominium: Generator for Elevators:<sup>9</sup> Notwithstanding F.S. 553.509,<sup>10</sup> association  
2       may not be obligated, and may vote to forego, retrofit of any improvements required by  
3       F.S. 553.509(2) by majority of total voting interests.
- 4       ▪ Condominium Bank Foreclosures:<sup>11</sup> Increases the amount that foreclosing first mortga-  
5       gee must pay to twelve (12) months of unpaid common expenses and regular periodic  
6       assessments or 1% of the original mortgage debt, whichever is lesser.
- 7       ▪ Condominium, Cooperative & HOA Collections from Tenants<sup>12</sup>: If member is delinquent  
8       in any monetary obligation to association (assessments, fines, late fees, etc.) and unit is  
9       leased to tenant, association may make written demand that tenant pay association “fu-  
10      ture monetary obligations” related to member’s unit. Association must mail written notice  
11      of its demand that tenant make payments to association to member, with copy to tenant.  
12      If the tenant prepaid rent to the parcel owner before receiving the demand from the as-  
13      sociation and provides written evidence of paying the rent to the association within 14  
14      days after receiving the demand, the tenant shall receive credit for the prepaid rent for  
15      the applicable period and must make any subsequent rental payments to the association  
16      to be credited against the monetary obligations of the parcel owner to the association.  
17      Tenant’s liability may not exceed amount due to member from tenant per month. Mem-  
18      ber must provide tenant with credit against rents due for all monies paid to the associa-  
19      tion. Association may sue for eviction, if tenant does not pay required monetary obliga-  
20      tions to association. Association does not bear responsibility for maintaining unit; that  
21      responsibility remains with member. The tenant does have any of the rights of member  
22      to vote in any election or to examine the books and records of the association. A court  
23      may supersede the effect of this subsection by appointing a receiver.
- 24      ▪ Condominium: Suspension of Use & Voting Rights<sup>13</sup>
- 25      ♦ Association may suspend voting rights of member due to nonpayment to association  
26      of any monetary obligation (assessment, fines, late fees, etc.), if member is in excess  
27      of ninety (90) days delinquent.
- 28      ♦ Association may suspend use rights for common elements if member is delinquent in  
29      excess of ninety (90) days in payment of any monetary obligation (assessments,  
30      fines, late fees, etc.). Excluded from the suspension are:
- 31      • Limited common elements included for use by only that member
- 32      • Utility services provided to unit
- 33      • Parking spaces
- 34      • Elevators
- 35      • Common elements necessary to access unit

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<sup>9</sup> F.S. 718.112(2)(l)4

<sup>10</sup> Requires high-rises over 75 feet and contain elevator to have at least one elevator capable of being operated on alternative power source for emergency purposes.

<sup>11</sup> F.S. 718.116(1)

<sup>12</sup> F.S. 718.116(11); F.S. 719.108

<sup>13</sup> F.S. 718.303(3)

- 1       ▪ Condominium Official Records:<sup>14</sup>
- 2           ♦ Requires electronic mailing addresses and telephone numbers provided by unit  
3           owners to receive notice by electronic transmission be removed from association  
4           records if consent to receive notice by electronic transmission is revoked.
- 5           ♦ Association is not liable for owner misuse of information obtained from official  
6           records unless the association had an affirmative statutory duty not to disclose such  
7           information
- 8           ♦ Amends to state that any person who knowingly or intentionally defaces or destroys  
9           accounting records required to be created and maintained statute during the period  
10          for which such records are required to be maintained, or who knowingly or intention-  
11          ally fails to create or maintain such records, with the intent of causing harm to the  
12          association or one or more of its members, is personally subject to a civil penalty.
- 13          ♦ Clarifies that bids for work are official records and must be maintained by associa-  
14          tion.
- 15       ▪ Condominium & HOA Official Records:<sup>15</sup>
- 16           ♦ Records no longer subject to member inspection include: Personnel records of asso-  
17           ciation employees, including, but not limited to, disciplinary, payroll, health, and in-  
18           surance records; e-mail addresses, telephone numbers, emergency contact infor-  
19           mation, any addresses of member other than as provided to fulfill the association's  
20           notice requirements, and other personal identifying information of any person, ex-  
21           cluding the person's name, unit designation, mailing address, and property address;  
22           any electronic security measure that is used by the association to safeguard data, in-  
23           cluding passwords, and software and operating system used by the association  
24           which allows manipulation of data, even if the member owns a copy of the same  
25           software used by the association. The data is part of the official records of the asso-  
26           ciation.
- 27       ▪ Condominium & Cooperative Fire Code/Fire Life Safety<sup>16</sup>
- 28           ♦ Association is not obligated to retrofit common elements, association property, or  
29           units with fire sprinkler system if members have voted to forego ("opt out") such re-  
30           etrofitting by affirmative vote of majority of total voting interest. Vote must be by ballot  
31           personally cast or limited proxy at duly called membership meeting, or by execution  
32           of written consent. Notice must be mailed or hand-delivered (no electronic transmis-  
33           sion) to each member at least 14 days prior to membership meeting. Within 30 days  
34           of opt-out vote, association must mail or hand deliver results to each member. Evi-  
35           dence of compliance with requirements must be made by affidavit executed by per-  
36           son providing notice and must be maintained in association records.
- 37           ♦ Copy of opt-out results must be provided by current owner to prospective owner and  
38           to lessee prior to execution of lease.
- 39           ♦ If association previously held vote to forego retrofit, vote to require retrofit may be ob-  
40           tained at special meeting of members call by petition of at least 10% of voting inter-  
41           ests. Such vote may only be called once every 3 years. Notice must be provided as

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<sup>14</sup> F.S. 718.111(12)

<sup>15</sup> F.S. 718.111(12); F.S. 720.303(5)

<sup>16</sup> F.S. 718.112(2)(l); F.S. 719.1055

- 1 for any regularly called member meeting. Electronic transmission cannot be used to  
2 notice meeting.
- 3 ♦ Local authority may not require completion of retrofit of fire sprinkler system before  
4 end of 2019. By December 31, 2016, associations which has not opted out and is  
5 not in compliance with requirements for fire sprinkler system must initiate building  
6 permit for installation, demonstrating that association will be in compliance by  
7 12/31/2019.
- 8 ▪ Condominium Rentals:<sup>17</sup> An amendment prohibiting members from renting their units or  
9 altering the duration of the rental term or specifying or limiting the number of times  
10 members are entitled to rent their units during a specified period applies only to mem-  
11 bers who consent to the amendment and unit owners who acquire title to purchase their  
12 units after the effective date of that amendment.
- 13 ▪ Condominium Limited Common Elements:<sup>18</sup> Except for those portions of the common  
14 elements designed and intended to be used by all members, a portion of the common  
15 elements serving only one unit or a group of units may be reclassified as a limited com-  
16 mon element upon the vote required to amend the declaration as provided therein or as  
17 required by statute.
- 18 ▪ Condominium Financial Reporting:<sup>19</sup>
- 19 ♦ Changes the requirement to prepare a cash basis report from 50 units to 75 units,  
20 regardless of the association's revenues.
- 21 ♦ Requires the DBPR to adopt rules setting forth uniform accounting principles and  
22 standards to be used by all associations and shall adopt rules addressing the finan-  
23 cial reporting requirements for multi-condominium associations. The rules must shall  
24 include, but not be limited to, standards for presenting a summary of association re-  
25 serves, including a good faith estimate disclosing the annual amount of reserve  
26 funds that would be necessary for the association to fully fund reserves for each re-  
27 serve item based on the straight-line accounting method. This disclosure is not appli-  
28 cable to reserves funded via the pooling method.
- 29 ▪ Condominium Common Expense:<sup>20</sup> Specifies that common expense now includes  
30 communication services such as high speed internet, telephone, etc., for which Board  
31 can enter into bulk rate.
- 32 ▪ Condominium Termination:<sup>21</sup>
- 33 ♦ Provides that condominium may be terminated due to economic waste when total es-  
34 timated cost of construction or repairs necessary to construct intended improve-  
35 ments, to restore improvements to further condition, or to bring into compliance with  
36 applicable laws or regulations exceeds combined fair market value of units after  
37 completion of construction or repairs.
- 38 ♦ Provides that termination of condominium does not prohibit filing of declaration of  
39 condominium or amended or restated declaration of condominium for same property.

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<sup>17</sup> F.S. 718.110(13)

<sup>18</sup> F.S. 718.110(14)

<sup>19</sup> F.S. 718.111(13)

<sup>20</sup> F.S. 718.115(1)

<sup>21</sup> F.S. 718.117

- 1       ▪ Distressed Condominium Relief Act<sup>22</sup>
- 2           ♦ Legislature, recognizing problems in selling units, and with delinquent members,  
3           created a public policy to protect interests of developers, lenders, members, and as-  
4           sociations, by enabling economic opportunities for successor purchasers, members,  
5           & condominium associations.
- 6           ♦ Assignment of developer rights to bulk assignee or bulk buyer does not release orig-  
7           inal developer from liabilities under Declaration or Condominium Act.
- 8           ♦ Defines:
- 9           · **Bulk Assignee:** Purchaser who acquires more than 7 parcels prior to July 1,  
10           2012, as determined by county records; receives assignment of some or all of  
11           rights of developer as set forth in declaration or statute, by written document rec-  
12           orded in county records.
- 13           · **Bulk buyer:** Purchaser who acquires more than 7 parcels, but does not receive  
14           assignment of developer rights other than right to:
- 15           · Conduct sales, marketing, & leasing activities within association.
- 16           · Be exempt from payment of working capital contributions arising out of, or in  
17           connection with, bulk buyer's acquisition of units.
- 18           · Be exempt from any rights of first refusal from association.
- 19           ♦ Assignment of developer rights to bulk assignee made by:
- 20           · Developer.
- 21           · Previous bulk assignee.
- 22           · Court on behalf of developer or previous bulk assignee.
- 23           ♦ Cannot be more than one bulk assignee at any one time, but may be more than one  
24           bulk buyer.
- 25           ♦ If more than one acquirer of parcels receives assignment of developer rights from  
26           same person, bulk assignee is acquirer whose documents recorded first with the  
27           courts.
- 28           ♦ Bulk assignee:
- 29           · Receives rights of developer to guarantee level of assessments & fund budgetary  
30           deficits, liable for all obligations of developer with respect to guarantee, including  
31           any applicable funding of reserves, as long as guarantee in effect.
- 32           · Must provide audit for period that he elects majority of board.
- 33           · Responsible for delivering documents & materials at the time he relinquishes  
34           control of majority board.
- 35           · Liable for duties & responsibilities of developer under declaration, together with  
36           any other duties or responsibilities of developer assumed in writing.
- 37           · Before offering units for sale or lease for term exceeding 5 years, he must pro-  
38           vide to prospective buyer or tenant:

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<sup>22</sup> F.S. 718, Part VII

- 1           • Updated prospectus or offering circular.
- 2           • Updated Frequently Asked Questions & Answers.
- 3           • Executed escrow agreement if required.
- 4           • Financial report for prior year, unless he cannot obtain records, in which case
- 5           he must include disclosure that records are not available<sup>23</sup>
- 6           • Disclosure statement with description of rights developer has assigned to
- 7           bulk assignee or bulk buyer.
- 8           • Statement regarding responsibility for warranties.<sup>24</sup>
- 9           • If a conversion, statement regarding obligations for converter reserves or
- 10          warranties.<sup>25</sup>
- 11          • Comply with requirements contained in declaration for transfer of units, including
- 12          sales, leases & subleases.
- 13          • Comply with developer requirements regarding contracts entered into while he
- 14          maintains control of board.
- 15          • Cannot:
- 16            • Waive or reduce reserves unless approved by majority of total members not
- 17            controlled by developer, bulk assignee, or bulk buyer.
- 18            • Use reserve funds for other purposes unless approved by majority of total
- 19            members.
- 20          ♦ Exempts bulk assignee from:
- 21            • Warranties of developer, unless performed by or on behalf of bulk assignee.
- 22            • Obligation to:
- 23              • Fund converter reserves for units not acquired by bulk assignee.
- 24              • Provide converter reserves on any portion of condominium property except
- 25              as provided in contract for purchase & sale with purchaser and pertaining to
- 26              design, construction, development, or repair work performed on behalf of bulk
- 27              assignee.
- 28              • Requirement to provide cumulative audit from date of formation of association
- 29          ♦ Acquirer of condominium parcels is not a bulk assignee or a bulk buyer if:
- 30            • Transfer made before July 1, 2010 with intent to hinder, delay or defraud any
- 31            purchaser or association, or
- 32            • Would be considered “insider”
- 33              • If individual:
- 34                • A relative or a general partner of debtor.
- 35                • A partnership in which debtor is a general partner.
- 36                • A corporation of which debtor is a director, officer, or person in control.

<sup>23</sup> See F.S. 718.706(1)(d) for disclosure language

<sup>24</sup> See F.S. 718.706 (2)(b)

<sup>25</sup> See F.S. 718.708(20)(c)

- 1           · If corporation:
- 2           · A director or officer of debtor.
- 3           · A person in control of debtor.
- 4           · A partnership in which debtor is a general partner.
- 5           · A relative of a general partner, director, officer, or person in control of
- 6           debtor.
- 7           · If partnership:
- 8           · A general partner in or relative of debtor.
- 9           · Another partnership in which debtor is a general partner.
- 10          · A person in control of debtor.
- 11          · An affiliate, or an insider of an affiliate, as if the affiliate were the debtor.
- 12          · A managing agent of the debtor.
- 13          ♦ Bulk assignee must transfer association to members under same provision as devel-
- 14          oper.
- 15          ♦ Failure of bulk assignee to comply with provision of Condominium Act results in loss
- 16          of all exemptions under this part.
- 17          ▪ Cooperative Associations Board Vacancies:<sup>26</sup> Unless otherwise provided in the bylaws,
- 18          a vacancy occurring on the board before the expiration of a term may be filled by the af-
- 19          firmative vote of the majority of the remaining directors, even if the remaining directors
- 20          constitute less than a quorum, or by the sole remaining director. In the alternative, a
- 21          board may hold an election to fill the vacancy, in which case the election procedures
- 22          must conform to the requirements of statutes for elections, unless the association has
- 23          opted out of the statutory election process, in which case bylaws of association control.
- 24          Unless otherwise provided in the bylaws, a board member appointed or elected under
- 25          this subparagraph shall fill the vacancy for the unexpired term of the seat being filled.
- 26          ▪ Cooperative Collections:<sup>27</sup>
- 27          ♦ Permits association to include in lien any authorized administrative late fees, and any
- 28          reasonable costs for collection services for which the association has contracted.
- 29          ♦ Provides that lien may not be filed by association against member until 30 days after
- 30          the date on which a notice of intent to file a lien has been delivered to member. No-
- 31          tice must be sent to member at unit address by first-class United States mail and, if
- 32          most recent address of member is unit address, notice must be sent by registered or
- 33          certified mail, return receipt, to member at unit address. If most recent address of
- 34          member is in United States, but is not unit address, notice must be sent by registered
- 35          or certified mail, return receipt, to member at his most recent address. If most recent
- 36          address of member is not in the United States, notice must be sent by first-class
- 37          United States mail to member at his most recent address. Notice that is sent pur-
- 38          suant to statute is deemed delivered upon mailing.

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<sup>26</sup> F.S. 719.106(1)(d)6

<sup>27</sup> F.S. 719.108

- 1       ▪ Homeowners' Association Director Compensation:<sup>28</sup> A director, officer, or committee  
2 member of the association may not directly receive any salary or compensation from the  
3 association for the performance of duties as a director, officer, or committee member  
4 and may not in any other way benefit financially from service to the association. This  
5 subsection does not preclude:
- 6       ♦ Participation by such person in a financial benefit accruing to all or a significant  
7 number of members as a result of actions lawfully taken by the board or a committee  
8 of which he is member, including, but not limited to, routine maintenance, repair, or  
9 replacement of community assets.
  - 10       ♦ Reimbursement for out-of-pocket expenses incurred by such person on behalf of as-  
11 sociation, subject to approval in accordance with procedures established by associa-  
12 tion's governing documents or, in absence of such procedures, in accordance with  
13 an approval process established by the board.
  - 14       ♦ Any recovery of insurance proceeds derived from a policy of insurance maintained  
15 by the association for benefit of its members.
  - 16       ♦ Any fee or compensation authorized in the governing documents.
  - 17       ♦ Any fee or compensation authorized in advance by a vote of a majority of the voting  
18 interests voting in person or by proxy at a meeting of members.
  - 19       ♦ A developer or its representative from serving as a director, officer, or committee  
20 member of the association and benefitting financially from service to association.
- 21       ▪ Homeowners' Association Elections:<sup>29</sup> Homeowners' Associations elections must be  
22 conducted according to the procedures found in the governing documents. **NOTE:** Mini-  
23 mum 14 day notice to members before election.
- 24       ♦ Homeowners' associations are permitted to elect members to the board by voting in  
25 person or by proxy, unless otherwise stated in the documents.
  - 26       ♦ If governing documents permit, voting by secret ballot by members not in attendance  
27 at meeting must comply with these procedures:
    - 28           ▪ Requires 2 envelopes.
    - 29           ▪ Owner must place election ballot in inner envelope, with no identifying mark-  
30 ings, and place inner envelope in outer envelope, providing name, lot or unit  
31 number, and signature of owner.
    - 32           ▪ Outer envelope to be mailed to association.
    - 33           ▪ If eligibility of member to vote is confirmed & no other ballot submitted for that  
34 parcel or unit, association will remove inner envelope, place with ballots per-  
35 sonally cast.
    - 36           ▪ All ballots opened at same meeting during same session.
    - 37           ▪ If more than one ballot submitted for parcel or unit, all ballots for that par-  
38 cel/unit are disqualified.
    - 39           ▪ Any vote received after close of balloting is not considered.

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<sup>28</sup> F.S. 720.303(12)

<sup>29</sup> F.S. 720.306(8)(b)

- 1           ♦ Any member may serve as a director and may nominate himself as a candidate be-  
2           fore the meeting or from the floor at the meeting, unless otherwise stated in the doc-  
3           uments.
- 4           ♦ Member does not need to be present at the meeting to be nominated or elected.  
5           However, member cannot take office until he officially accepts directorship.
- 6           ♦ Unless otherwise provided in the documents, directors are elected by a plurality<sup>30</sup> of  
7           the votes cast.
- 8           ▪ Homeowners' Association Fines, Voting & Use Rights:<sup>31</sup>
- 9           ♦ Provides that a fine may exceed \$1,000 only if provided in governing documents.  
10          Fines of \$1,000 or more may become a lien against member's property.
- 11          ♦ If association imposes a fine of suspension of use rights or voting rights, association  
12          must provide written notice of such fine or suspension by mail or hand delivery to  
13          member, and, if applicable, to tenant, licensee or invitee.
- 14          ♦ Provides that, if member is delinquent for more than 90 days in payment of any  
15          monetary obligation, association may suspend right to use common elements, ex-  
16          cept for those that must be used to access property or utility service provided to  
17          member.
- 18          ▪ Homeowners' Association Records:<sup>32</sup>
- 19          ♦ Amends statute so that rebuttable presumption that association willingly failed to  
20          provide access to records only applies if request submitted by certified mail, return  
21          receipt requested.
- 22          ♦ Provides that association may charge members for cost of personnel at hourly rate to  
23          cover administrative time in providing copies of association records.
- 24          ▪ Homeowners' Association Meetings to Discuss Litigation:<sup>33</sup> Clarifies that meetings of  
25          board or committee to discuss pending or proposed litigation with association attorney  
26          not required to be opened to members other than directors.
- 27          ▪ Homeowners' Association Board Vacancies:<sup>34</sup> Provides that, unless otherwise provided  
28          in the bylaws, any vacancy occurring on the board before the expiration of a term may  
29          be filled by an affirmative vote of the majority of the remaining directors, even if the re-  
30          maining directors constitute less than a quorum, or by the sole remaining director. In the  
31          alternative, a board may hold an election to fill the vacancy, in which case the election  
32          procedures must conform to the requirements of the governing documents. Unless oth-  
33          erwise provided in the bylaws, a board member appointed or elected under this section  
34          is appointed for the unexpired term of the seat being filled. Filling vacancies created by  
35          recall is governed by statute and rules adopted by the division.

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<sup>30</sup> The number of votes that an election winner gets, or the number exceeding the nearest rival, when no one has more than 50 percent of the total votes cast

<sup>31</sup> F.S. 720.305

<sup>32</sup> F.S. 720.303(5)

<sup>33</sup> F.S. 720.303

<sup>34</sup> F.S. 720.306(9)

- 1       ▪ Homeowners' Association Flagpoles:<sup>35</sup> Provides that flagpoles and displays are subject  
2       to all building codes, zoning setbacks, and other applicable governmental regulations,  
3       including, but not limited to, noise and lighting ordinances in the county or municipality in  
4       which the flagpole is erected and all setback and locational criteria contained in the go-  
5       verning documents.
- 6       ▪ Homeowners' Association Reserves:<sup>36</sup> Distinguishes between statutory reserves and  
7       other types of reserves. Provides for termination of reserves accounts upon approval of  
8       majority of total voting interest. Revises statement required to be included in financial re-  
9       port if association does not provide for statutory reserves and is responsible for repair  
10      and maintenance of capital improvements that may result in special assessments.<sup>37</sup>
- 11      ▪ Homeowners' Association Special Assessments:<sup>38</sup> Before turnover, board controlled by  
12      the developer may not levy special assessment unless a majority of members other than  
13      developer have approved the special assessment by a majority vote at a duly called  
14      special meeting of membership at which a quorum is present.
- 15      ▪ Homeowners' Association Right to Enter into Agreements:<sup>39</sup> An association may enter  
16      into agreements to acquire leaseholds, memberships, and other possessory or use in-  
17      terests in lands or facilities, including, but not limited to, country clubs, golf courses, ma-  
18      rinas, submerged land, parking areas, conservation areas, and other recreational facili-  
19      ties.
- 20      ♦ An association may enter into such agreements regardless of whether lands or facili-  
21      ties are contiguous to lands of community or whether such lands or facilities are in-  
22      tended to provide enjoyment, recreation, or other use or benefit to members.
- 23      ♦ All leaseholds, memberships, and other possessory or use interests existing or  
24      created at time of recording declaration must be stated and fully described in decla-  
25      ration.
- 26      ♦ Subsequent to recording declaration, agreements acquiring leaseholds, member-  
27      ships, or other possessory or use interests not entered into within 12 months after  
28      recording declaration may be entered into only if authorized by declaration as a ma-  
29      terial alteration or substantial addition to common areas or association property. If  
30      declaration is silent, any such transaction requires approval of 75 percent of total vot-  
31      ing interests of association.
- 32      ♦ Declaration may provide that rental, membership fees, operations, replacements, or  
33      other expenses are common expenses; impose covenants and restrictions concern-  
34      ing their use; and contain other provisions not inconsistent with statute.
- 35      ♦ An association exercising its rights under statute may join with other associations  
36      that are part of same development or with a master association responsible for en-  
37      forcement of shared covenants, conditions, and restrictions in carrying out intent of  
38      statute.

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<sup>35</sup> F.S. 720.304(2)(b)

<sup>36</sup> F.S. 720.303(6)

<sup>37</sup> F.S. 720.303(6)(c)

<sup>38</sup> F.S. 720.315

<sup>39</sup> F.S. 720.31

- 1       ▪ Timeshare condominiums:<sup>40</sup> Exempts timeshare condominiums from requirement that  
2 terms of all board members expire at annual meeting unless otherwise provided in by-  
3 laws. Exempts timeshare condominiums from prohibition that co-owners serving on  
4 board at same time.
- 5       ▪ **HB 663 (Chapter 2010-176: Effective date 07/01/2010)**
- 6       ▪ Homestead Abandonment of Property:<sup>41</sup> Broadens abandonment of homestead proper-  
7 ty to include abandonment of property as homestead after a 3-year period, for expiration,  
8 lapse, nonrenewal, or revocation of building permit issued to property owner for such re-  
9 pairs or rebuilding.
- 10       ▪ DBPR Access for Elevators:<sup>42</sup> Amends Elevator Safety Act to grant DBPR Division of  
11 Hotels & Restaurants reasonable access to all buildings and rooms or spaces in which  
12 existing or newly installed conveyance and equipment located.
- 13       ▪ Variances for Undue Hardships:<sup>43</sup> DBPR Division of Hotels & Restaurants may grant va-  
14 riances for undue hardship pursuant to statutes and FAC as long as variance will not ad-  
15 versely affect the safety of the public.
- 16       ▪ Updates to Elevator Code:<sup>44</sup> Updates to the Safety Code for Existing Elevators and Es-  
17 calators, ASME A17.1 and A17.3, which require Phase II Firefighters' Service on eleva-  
18 tors may not be enforced until July 1, 2015, or until the elevator is replaced or requires  
19 major modification, whichever occurs first, on elevators in condominiums or multifamily  
20 residential buildings, including those that are part of a continuing care facility licensed  
21 under chapter 651, or similar retirement community with apartments, having a certificate  
22 of occupancy by the local building authority that was issued before July 1, 2008. This  
23 exception does not prevent an elevator owner from requesting a variance from the appli-  
24 cable codes before or after July 1, 2015.
- 25       ▪ Emergency Elevator Access:<sup>45</sup> Provides alternative for emergency access to elevators,  
26 by installation of uniform lock box that contains the keys to all elevators in building allow-  
27 ing public access, including service and freight elevators. Uniform lock box must be  
28 keyed to allow all uniform lock boxes in each of seven state emergency response re-  
29 gions to operate in fire emergency situations using one master key.
- 30       ▪ Professional Education:<sup>46</sup> Provides that board, or department where there is no board,  
31 shall approve distance learning courses as alternative to classroom courses to satisfy  
32 prelicensure or postlicensure education requirements provided for in part VIII of chapter  
33 468 or part I of chapter 475, and may not require centralized examinations for comple-  
34 tion of prelicensure or postlicensure education requirements for those professions li-  
35 censed under part VIII of chapter 468 or part I of chapter 475.

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<sup>40</sup> F.S. 718.112(2)(d)

<sup>41</sup> F.S. 196.031(6)

<sup>42</sup> F.S. 399.02(6)(b)

<sup>43</sup> F.S. 399.02(8)

<sup>44</sup> F.S. 399.02(9)

<sup>45</sup> F.S. 399.15(7)

<sup>46</sup> F.S. 455.2122

- 1       ▪ Continuing Education:<sup>47</sup> Provides that board, or department when there is no board, may  
2 provide by rule that distance learning may be used to satisfy continuing education re-  
3 quirements; shall approve distance learning courses as an alternative to classroom  
4 courses to satisfy continuing education requirements provided for in part VIII, part XV, or  
5 part XVI of chapter 468 or part I or part II of chapter 475, and may not require centralized  
6 examinations for completion of continuing education requirements for the professions li-  
7 censed under part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter  
8 475.
- 9       ▪ Home Inspection Services:<sup>48</sup> Creates home inspection program in DBPR. Provides ad-  
10 ditional licensure requirements. Modifies grandfathering clauses.
- 11       ▪ Mold-Inspection Services:<sup>49</sup> Creates mold inspection services program within DBPR.  
12 Provides additional licensure requirements. Modifies grandfathering clauses.
- 13       ▪ Fire Sprinklers in Single Family Homes:<sup>50</sup>
- 14           ♦ Prohibits local governments from requiring installation of fire sprinklers in single-  
15 family homes.
- 16           ♦ States that provisions of section R313 of the most current version of the Interna-  
17 tional Residential Code relating to mandated fire sprinklers may not be incorpo-  
18 rated into the Florida Building Code as adopted by the Florida Building Commis-  
19 sion and may not be adopted as a local amendment to the Florida Building Code.  
20 Does not apply to a local government that has a lawfully adopted ordinance relat-  
21 ing to fire sprinklers which has been in effect since January 1, 2010.
- 22           ♦ Describes how and what type of amendments can be made to Florida Building Code  
23 by local governments.
- 24       ▪ Condominium Fire Alarms:<sup>51</sup> Provides that condominium one or two stories in height  
25 with exterior corridor providing a means of egress is exempt from installing a manual fire  
26 alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code  
27 adopted in the Florida Fire Prevention Code.
- 28       ▪ Condominium 5-Year Building Inspections:<sup>52</sup> Repeals requirements for condominiums to  
29 contract for building report by architect or engineer every 5 years for buildings greater  
30 than 3 stories.
- 31       ▪ **HB 713 (Chapter 2010-106): Effective Date 1, 2010:**
- 32           ▪ Professional Education:<sup>53</sup> Provides that board, or department where there is no board,  
33 shall approve distance learning courses as alternative to classroom courses to satisfy  
34 prelicensure or postlicensure education requirements provided for in part VIII of chapter  
35 468 or part I of chapter 475, and may not require centralized examinations for comple-

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<sup>47</sup> F.S. 455.2123

<sup>48</sup> F.S. 468.83

<sup>49</sup> F.S. 468.83

<sup>50</sup> F.S. 553

<sup>51</sup> F.S. 633.0215(14)

<sup>52</sup> F.S. 718.113(6)

<sup>53</sup> F.S. 455.2122

- 1 tion of prelicensure or postlicensure education requirements for those professions li-  
2 censed under part VIII of chapter 468 or part I of chapter 475.
- 3     ▪ **Continuing Education:**<sup>54</sup> Provides that board, or department when there is no board, may  
4 provide by rule that distance learning may be used to satisfy continuing education re-  
5 quirements; shall approve distance learning courses as an alternative to classroom  
6 courses to satisfy continuing education requirements provided for in part VIII, part XV, or  
7 part XVI of chapter 468 or part I or part II of chapter 475, and may not require centralized  
8 examinations for completion of continuing education requirements for the professions li-  
9 censed under part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter  
10 475.
- 11     ▪ **HB 109 (Chapter 2010-32): Effective Date July 1, 2010:**<sup>55</sup> Provides that taxable consid-  
12 eration for short sale transfer does not include unpaid indebtedness that is forgiven or re-  
13 leased by mortgagee holding a mortgage on grantor's interest in property. Term "short sale"  
14 means a purchase and sale of real property in which all of following apply:
- 15         ▪ Grantor's interest is encumbered by mortgage or mortgages securing indebtedness in an  
16 aggregate amount greater than purchase price paid by grantee.
- 17         ▪ Mortgagee releases real property from mortgage in exchange for partial payment of less  
18 than total outstanding mortgage indebtedness owed to releasing mortgagee.
- 19         ▪ Releasing mortgagee does not receive, directly or indirectly, any interest in property  
20 transferred
- 21         ▪ Releasing mortgagee is not controlled by or related to grantor or grantee.
- 22     ▪ **HB 303 (Chapter 2010-84): Effective Date July 1, 2011:**<sup>56</sup>
- 23         ▪ Revises membership of Florida Real Estate Appraisal Board, whose 9 members are ap-  
24 pointed by Governor and confirmed by Senate.
- 25         ▪ Board decides questions of practice and sets fees associated with property appraisal;  
26 determines how appraiser's signature is to be affixed, and collects fees to continue  
27 board.
- 28         ▪ Takes disciplinary actions against appraisers and appraisal management companies.  
29 Included ability to deny applications for registration or certification of appraiser; repri-  
30 mands, fines not to exceed \$5,000; suspensions, probation and revocation.
- 31     ▪ **SB 1118 (Chapter 2010-208): Effective July 1, 2010:**<sup>57</sup>
- 32         ▪ Provides that private residential docks may be approved for reasonable ingress or  
33 egress of riparian owners, and that slips at private residential single-family docks which  
34 contain boat lifts or davits that do not float in the water when loaded may not, in whole or  
35 in part, be enclosed by walls, but may be roofed if the roof does not overhang more than  
36 1 foot beyond the footprint of the lift and the boat stored at the lift. Such roofs are not in-  
37 cluded in the square-footage calculation of a terminal platform.

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<sup>54</sup> F.S. 455.2123

<sup>55</sup> F.S. 201.02(11)

<sup>56</sup> F.S. 475

<sup>57</sup> F.S.258.42

- 1       ▪ Adopts special criteria to protect Class II and Class III shellfish harvesting waters, includ-  
2       ing special criteria for approving docking facilities that have 10 or fewer slips if the con-  
3       struction and operation of such facilities will not result in the closure of shellfish waters.
- 4       ▪ **HB 751 (Chapter 2010-58): Effective July 1, 2010:**
- 5       ▪ Defines "service contract" means a written contract for the performance of services over  
6       a fixed period of time or for a specified duration.
- 7       ▪ Defines "automatic renewal provision" as a provision under which a service contract is  
8       renewed for a specified period of more than 1 month if the renewal results in the service  
9       contract being in effect more than 6 months after the day of initiation of the service.
- 10       ▪ Provides that the renewal is effective unless the consumer gives notice to seller that  
11       consumer intends to terminate contract.
- 12       ▪ Obligates seller of service contract to disclose automatic renewal provision clearly and  
13       conspicuously in proposed contract.
- 14       ▪ Obligates seller to inform customer of specifics of renewal process if service renewal  
15       contract will run for 12 months or more and which automatically renews for a period of  
16       more than 1 month. Seller must also inform customer that contract automatically renews  
17       unless customer cancels it.
- 18       ▪ Provides that violation of this statute renders renewal null and unenforceable.
- 19       ▪ Provides customer remedies, so that if error caused failure to comply with statutes, un-  
20       earned portions of contract subject to automatic renewal refunded to customer as of date  
21       seller is notified of error.
- 22       ▪ Provides that statutes do not apply to certain entities, including financial institution, for-  
23       eign banks, health studios, electric utilities.
- 24       ▪ **HB 927 (Chapter 2010-109): Effective Date July 1, 2010.**<sup>58</sup>
- 25       ▪ Modifies criteria under which transfer of homestead property is not considered change of  
26       ownership, and provides that change of ownership of non-homestead residential proper-  
27       ty is considered not to have occurred due to certain transactions involving publicly traded  
28       companies. Provides that recorded deed or other recorded instruments serve as notice  
29       of change in ownership to property appraiser. Change of ownership means any sale, fo-  
30       reclosure, transfer or legal title or beneficial title in equity to any person. Specifically,  
31       there is no change in ownership if:
- 32       ♦ Transfer is to correct error;
- 33       ♦ Transfer is between legal and equitable title and no additional person applies for ho-  
34       mestead exemption.
- 35       ♦ Transfer is by means of instrument in which owner is listed as grantor and grantee of  
36       property and one or more other individuals as additionally named as grantee.
- 37       ♦ Transfer is between husband and wife, including surviving spouse or dissolution of  
38       marriage.
- 39       ♦ Transfer is to surviving spouse or minor child or children.

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<sup>58</sup> F.S. 193.155 – F.S. 193.1556

- 1           ♦ Upon death of owner, transfer is between owner and another who is permanent resi-  
2           dent and is legally or naturally dependent on owners.
- 3           ▪ Modifies assessment of non-homestead residential property. Provides that, except as  
4           stated below, property assessed as non-homesteaded property shall be assessed at just  
5           value as of January 1 of year following change in ownership or control. Change of own-  
6           ership or control means any sale, foreclosure, transfer or legal title or beneficial title in  
7           equity to any person, or cumulative transfer of control of more than 50% of ownership of  
8           legal entity that owner property when it was most recently assessed at just value. There  
9           is no change in ownership if:
- 10          ♦ Transfer is to correct error;
- 11          ♦ Transfer is between legal and equitable title.
- 12          ♦ Transfer is by means of instrument in which owner is listed as grantor and grantee of  
13          property and one or more other individuals as additionally named as grantee.
- 14          ♦ Cumulative transfer of more than 50% of ownership of entity that owns property oc-  
15          curs through the buying and selling of shares on a public exchange.
- 16          ♦ Exception does not apply to transfer made through merger with or acquisition by  
17          another company, including acquisition of outstanding shares of company.
- 18          ▪ Provides that certain residential or nonresidential real property shall be assessed at just  
19          value as of January 1 of the year following a qualifying improvement or change of own-  
20          ership or control
- 21          ♦ Qualifying improvement means any substantially completed improvement that in-  
22          crease just value by at least 25%
- 23          ♦ Control in ownership or control means any sale, foreclosure, transfer or legal title or  
24          beneficial title in equity to any person, or cumulative transfer of control of more than  
25          50% of ownership of legal entity that owner property when it was most recently as-  
26          sessed at just value.
- 27          ♦ No change in ownership if:
- 28               • Transfer is to correct error;
- 29               • Transfer is between legal and equitable title.
- 30               • Transfer is by means of instrument in which owner is listed as grantor and gran-  
31               tee of property and one or more other individuals as additionally named as gran-  
32               tee.
- 33               • Cumulative transfer of more than 50% of ownership of entity that owns property  
34               occurs through the buying and selling of shares on a public exchange.
- 35               • Exception does not apply to transfer made through merger with or acquisition by  
36               another company, including acquisition of outstanding shares of company.
- 37          ♦ Provides that persons and entities owning property must notify property appraiser  
38          promptly of any change in ownership or control. If property owner fails to notify  
39          property appraiser and property appraiser determines that, for any year within prior  
40          10 years, the owner's property was not entitled to assessment benefit pursuant to  
41          statute, owner of property may be subject to taxes avoided plus 15% interest per

1 year and a penalty of 50% of taxes avoided.

2 ▪ **HB 965 (Chapter 2010-170): Effective upon becoming law**.<sup>59</sup>

- 3 ▪ Provides for tax relief for properties affected by damaged or defective drywall, with re-  
4 peal date of July 1, 2017.
- 5 ▪ If single family residential property has been affected by imported or domestic drywall  
6 and requires remediation to satisfy current building standards, property appraiser must  
7 take presence of such drywall into account when assessing property's value. If due to  
8 drywall, building cannot be used for its intended purpose without repair or remediation, it  
9 must be assessed at minimal just value of \$0.00
- 10 ♦ Homestead property to which statute applies considered damaged by misfortune or  
11 calamity pursuant to F.S. 193.155(4)(b)<sup>60</sup>, except that 3 year deadline does not ap-  
12 ply.
- 13 ♦ Homestead property not considered abandoned when homeowner vacates for pur-  
14 pose of remediation and repair, provided owner does not establish new homestead.
- 15 ▪ Does not apply to property owners who were aware of presence of imported or domestic  
16 drywall at time of purchase
- 17 ▪ Defines "imposed" or "domestic" drywall as drywall that contains elevated levels of ele-  
18 mental sulfur resulting in corrosion of certain metals. Applies to:
- 19 ♦ Imported or domestic drywall used in construction of or improvements to property.
- 20 ♦ Imported or domestic drywall has significant negative impact on just value of property
- 21 ♦ Purchaser was unaware of imported or domestic drywall at time of purchase
- 22 ▪ Upon substantial completion or remediation or repairs, property shall be assessed as if  
23 such imported or domestic drywall had not been present.

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<sup>59</sup> F.S. 193.1552

<sup>60</sup> Changes, additions, or improvements that replace all or a portion of homestead property damaged or destroyed by misfortune or calamity shall not increase the homestead property's assessed value when the square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction. Additionally, the homestead property's assessed value shall not increase if the total square footage of the homestead property as changed or improved does not exceed 1,500 square feet. Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the homestead property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (1). The homestead property's assessed value shall be increased by the just value of that portion of the changed or improved homestead property which is in excess of 110 percent of the square footage of the homestead property before the damage or destruction or of that portion exceeding 1,500 square feet. Homestead property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the homestead property's total square footage before the damage or destruction shall be assessed pursuant to subsection (5). This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the homestead.

- 1   ▪ **HB 1035 (Chapter 2010-110): Effective July 1, 2010.**<sup>61</sup>
- 2       ▪ In order to perform its duties and responsibilities statute, DBPR may enter and have  
3       reasonable access to all buildings and rooms or spaces in which an existing or newly in-  
4       stalled conveyance and equipment (elevators) are located.
- 5       ▪ DBPR may grant variances for undue hardship pursuant to statute and rules adopted.  
6       Such rules must include a process for requests for variances. DBPR may not grant a re-  
7       quest for variance unless it finds that variance will not adversely affect safety of public.
- 8       ▪ Updates to code requiring modifications for Phase II Firefighters' Service on existing ele-  
9       vators, as amended into the Safety Code for Existing Elevators and Escalators, ASME  
10      A17.1 and A17.3, may not be enforced on elevators in condominiums or multi-family res-  
11      idential buildings, including those that are part a continuing care facility licensed under  
12      chapter 651 or similar retirement community with apartments, issued a certificate of oc-  
13      cupancy by the local building authority as of July 1, 2008, for 5 years or until the elevator  
14      is replaced or requires major modification, whichever occurs first. This exception does  
15      not apply to a building for which a certificate of occupancy was issued after July 1, 2008.  
16      This exception does not prevent an elevator owner from requesting a variance from the  
17      applicable codes before or after the expiration of the 5-year term.
- 18      ▪ DBPR may issue a citation for unlicensed activity upon finding of probable cause that ac-  
19      tivity requiring permit, certificate, or license is being performed without valid permit, cer-  
20      tificate, or license. The citation constitutes a stop work order that may be enforced by  
21      DBPR. DBPR shall issue a citation to the owner of unlicensed elevator, to unlicensed  
22      elevator personnel, or to owner of an unregistered elevator company. Activity for which  
23      citation is issued shall cease upon receipt of citation and person who receives citation  
24      must correct violation and respond to the civil penalty, which may not exceed \$1,000 per  
25      violation, or request administrative hearing pursuant to chapter 120. Each day that viola-  
26      tion continues constitutes separate violation. Remedies in statute are not exclusive and  
27      may be imposed in addition to other remedies in statutes.
- 28      ▪ A certified elevator inspector or registered elevator company shall, upon the written re-  
29      quest of DBPR, provide written response that explains inspection procedures and appli-  
30      cations used to prepare an inspection report that was found by DBPR to contain errors  
31      or omissions of code violations or tests.
- 32      ▪ Each certified elevator inspector must annually register with DBPR and provide proof of  
33      completion of 8 hours of continuing education, proof of good standing, and proof of gen-  
34      eral liability insurance coverage in the minimum amounts established by DBPR. The reg-  
35      istration must remain in good standing throughout the license year.
- 36   ▪ **HB 1279 (Chapter 2010-66): Effective July 1, 2010:**
- 37       ▪ Provides for exception to assessment of property for back taxes. Retroactive assess-  
38       ment and collection of ad valorem taxes shall not apply if owner of a building, structure,  
39       or other improvement to land that has not been previously assessed complied with all  
40       necessary permitting requirements when the improvement was completed; or owner of  
41       real property that has not been previously assessed voluntarily discloses to property ap-  
42       praiser the existence of such property before January 1 of the year property is first as-  
43       sessed. Disclosure must be made on a form provided by property appraiser.

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<sup>61</sup> F.S. 399

- 1   ▪ **HB 1411 (Chapter 2010-134): Effective upon becoming law:**<sup>62</sup>
- 2       ▪ Establishes “trustee foreclosure proceeding” as alternative to judicial foreclosure of time-
- 3       share interest. Managing entity may foreclosure lien by either filing judicial foreclosure
- 4       or, as an alternative, initiate a trustee procedure to assessment lien. Purchasers have
- 5       option to object to trustee foreclosure proceeding and require managing entity to file
- 6       judicial foreclosure action
- 7       ▪ Recognizes need to assist both owners’ associations and mortgagees by simplifying and
- 8       expediting process for judicial and trustee foreclosure actions; improve judicial economy
- 9       and reduce court congestion and cost to taxpayers by streamlining procedures for judi-
- 10      cial and trustee foreclosure actions.
- 11      ▪ Recognizes use of trustee foreclosure procedure will have same force & effect as judicial
- 12      foreclosure procedure.
- 13      ▪ Provides that managing entity may bring judicial action to foreclosure lien in manner a
- 14      mortgage is foreclosed and may bring action to recover money judgment for unpaid as-
- 15      sessments without waiving any claim of lien, and, as alternative, can initiate trustee pro-
- 16      cedure to foreclose.
- 17      ▪ Provides that trustee or substitute trustee may be appointed by lienholder by recording
- 18      notice of appointment of trustee or notice of substitution of trustee in official records of
- 19      county or counties in which timeshare interest located. Provides that lienholder may ap-
- 20      point multiple trustees in single appointment and any appointed trustee can be used re-
- 21      garding trustee foreclosure procedures.
- 22      ▪ Provides that trustee foreclosure procedure does not impair or otherwise affect lienhold-
- 23      er’s continuing right to bring judicial foreclosure action.
- 24      ▪ Provides that officer, director or agent of owners’ association shall discharge duties in
- 25      good faith, with care ordinary prudent person in like positions would exercise in similar
- 26      circumstances, and in manner he believes to be in interests of owners’ association. Of-
- 27      ficer, director or agent shall be exempt from liability for monetary damages in same
- 28      manner as provided in not-for-profit corporate act (F.S. 617.0834) unless such officer, di-
- 29      rector, or agent breached or failed to perform his or her duties and breach of or failure to
- 30      perform constitutes violation of criminal law as defined in F.S. 617.0834.

31

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<sup>62</sup> F.S. 721

## 1 Appendix A

### 2 Arbitration Decision Summary<sup>63</sup>

#### 3 Samuel M. Rosenfeld v. Cocanut Bayou Association, Inc.

4 Case No. 2007-03-7364 (Campbell / Summary Final Order / January 31, 2008)

- 5     ▪ In HOA election, if the number of candidates is less than the number of positions on  
6       the board each candidate becomes a board member without the need for an elec-  
7       tion. The word “plurality” in section 720.306, F.S., only applies when all candidates  
8       are seeking a smaller number of seats, so that an individual director may be elected  
9       without a majority of the votes cast.
- 10    ▪ Section 720.306, F.S., requires that members be able to nominate candidates from  
11      the floor at annual meeting, therefore HOA must schedule election every year to  
12      learn whether there are more candidates than vacancies.

#### 13 Lichter v. Timber Oaks Community Services Ass’n, Inc.

14 Case No. 2007-05-1323 (Earl / Summary Final Order / March 10, 2008)

- 15     ▪ Where the association informed the petitioner in writing that it thought he was under  
16      the misapprehension that he had to run for reelection of the neighborhood seat he  
17      occupied, but his term was not up at this election, the petitioner intended to run for  
18      an open at-large position, the association did not wrongfully exclude petitioner from  
19      the ballot since petitioner did not attempt to clarify the association’s misunderstand-  
20      ing of the position he was seeking.
- 21     ▪ Substantial, rather than strict, compliance with election procedures is required. As-  
22      sociation’s inclusion of an additional candidate on the ballot who submitted his notice  
23      of intent to be a candidate one day late is a minor procedural error. The owner’s ar-  
24      gument that that inclusion of the additional candidate might have influenced the  
25      chances of another candidate being elected was rejected. The standard is whether  
26      the integrity of the democratic process has been compromised and it cannot be ar-  
27      gued that inclusion of an additional candidate prevented a full, fair and free expres-  
28      sion of the membership’s will.
- 29     ▪ For the purpose of calculating term limits, service as a neighborhood director on the  
30      board applies towards service in an at-large position since the at-large position has  
31      all the authority of the neighborhood director.
- 32     ▪ By-law adopting term limitations may not be applied retroactively.
- 33     ▪ Provisions in governing documents limiting voting on matters affecting the senior  
34      residents to senior residents did not prohibit a member from another neighborhood  
35      from serving as an at-large member of the board of directors. Neither the statutes  
36      nor governing documents prohibit a person currently holding a neighborhood seat on  
37      the board from running for an open, at-large seat.
- 38     ▪ Term limitation in the governing documents was valid and not prohibited by statute.

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<sup>63</sup> Note: Summary information provided herein is extracted from the Arbitration Final Summaries, published periodically by the DBPR. The arbitrator bases his or her decision on facts specific to the particular association and owner circumstance. While a CAM or association may generally look to these decisions for guidance, they should seek the advice of an attorney with a specialty in community association law for their specific issues.

- 1 TSB Bayou Grande, LLC, v. Bayou Grande Villa Association, Inc.,  
2 Case No. 2008-00-4566 (Campbell / Summary Final Order / May 6, 2008)
- 3     ▪ Association documents which provided board with power to suspend voting rights for  
4       violation of a rule or regulation of the association could not stand up to Chapter 720,  
5       which provides that an association can suspend the voting rights of a member for  
6       only one cause, nonpayment of regular annual assessments. The power to suspend  
7       voting rights is, “expressly limited or restricted” by Chapter 720, so the homeowners’  
8       association does not have that power for violation of rules and regulations. New  
9       election required where association notified owners of 37 lots that they could not  
10      vote and the winners of the election received fewer than 30 votes.
- 11 Sweeny v. Golden Horn Assn, Inc.  
12 Case No. 2006-06-7026 (Bembry / Final Order / June 12, 2008)
- 13     ▪ Repairs to 36-year old building began after membership approval in 2005. Building  
14       sustained additional damage from hurricanes in 2006. Petitioners dispute certain re-  
15       pairs and improvements were within board’s authority to complete without 75% unit  
16       owner approval for material alterations as required by condominium documents.  
17       However, unit owner approval is not necessary where changes or alterations must  
18       be done to preserve common elements. Work done to elevator, sundeck, pool and  
19       pool railings, community room kitchen, lobby flooring due to uneven slab, boat dock,  
20       and community room and hallway flooring found to be necessary to preserve com-  
21       mon elements. However, alterations to lobby walls, and paint color changes to hall-  
22       way walls and exterior of building were material alterations.
- 23 Holiday Springs Village Condo., Inc. v. Ghering  
24 Case No. 2007-05-8880 (Earl / Final Order Dismissal / August 12, 2008)
- 25     ▪ Association alleged that the respondents had violated association’s governing doc-  
26       uments by permitting an unauthorized occupant to reside in their unit. During the  
27       proceeding it became apparent that the occupant was daughter of one the unit own-  
28       ers. Therefore, the governing documents did not require association’s approval of  
29       the occupant and the case was dismissed.
- 30 MacArthur Beach & Racquet Club, Inc. v. McGowe  
31 Case No. 2007-05-1445 (Golen / Summary Final Order / October 23, 2007)
- 32     ▪ Where association alleged it needed access to the unit to make plumbing repairs,  
33       the unit owner was required to provide association a key to her unit; however, asso-  
34       ciation was required to give respond 24 hours’ notice of its intention to access the  
35       unit so that the respondent may monitor access.

36

## 1 Appendix B

### 2 Declaratory Statements<sup>64</sup>

#### 3 The Pierre Association, Inc.

4 DS 2010-011 (April 28, 2010)

- 5     ▪ An owner sought an opinion on whether a unit owner whose civil rights have been res-
- 6         tored but not the right to bear arms is eligible to serve on the board under F.S.
- 7         718.112(2)(d).
- 8     ▪ In 2008, Legislature amended F.S. 718.112(2)(d)(1) to broaden eligibility requirements
- 9         for board, replacing “right to vote” with “civil rights.” That is, the legislature abandoned a
- 10        partial restoration of civil rights (i.e., the right to vote) in favor of a complete restoration of
- 11        civil rights, which includes the right to possess a firearm.
- 12     ▪ DBPR opined that the legislature’s intent to impose more stringent requirements for
- 13         board membership is consistent with the extensive list of qualifications already enume-
- 14         rated in F.S. 712.112(2)(d)(3). The right to possess a fire arm is among the civil rights
- 15         contemplated by F.S. 718.112(2)(d)(1). Therefore, the fact that the federal and Florida
- 16         partial restoration of civil rights failed to encompass his right to possess a firearm makes
- 17         him ineligible for board membership.

#### 18 Parliament Towers Condominium, Inc.

19 DS 2010-012 (May 21, 2010)

- 20     ▪ Parliament Towers Condominium requested an opinion as to whether it must get a ma-
- 21         jority approval of owners under F.S. 718.113(5)(a) to replace exterior windows on the
- 22         first three floors with hurricane resistant windows and whether it may use common sur-
- 23         plus funds to pay for the cost of replacement under F.S. 718.115.
- 24     ▪ Under F.S. 718.111(11) and its Declaration, the Association is required to procure insur-
- 25         ance for protect portions of the condominium property against casualty loss, such as
- 26         windstorm and hurricanes.
- 27     ▪ To qualify for a discount on its insurance, the Association’s carrier requires the Associa-
- 28         tion to replace the glass in the windows on the first three floors with hurricane resistant
- 29         glass to comply with state building codes regarding large missile impact tests only for the
- 30         first 30 feet in building height. Windows on the fourth floor and above already complied
- 31         with state building code for small missile impact tests.
- 32     ▪ If the Association fails to take this action, insurance premiums will be significantly higher.
- 33         Association initial studies suggest the potential savings in premiums to be realized and
- 34         the cost of window will pay for the cost of window replacement in less than 2 years.
- 35     ▪ Approximately half the owners have installed hurricane shutters. The owners have paid
- 36         for the installation of shutters, which has been treated as an owner expense by the As-
- 37         sociation.
- 38     ▪ The legislature declared that installing hurricane shutters was not a material alteration,
- 39         but did not include other hurricane protection, laminated glass or window film within the

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<sup>64</sup> Note: Summary information provided herein is extracted from Declaratory Statements, published by the DBPR. The attorney writing the opinion bases his or her decision on facts specific to the particular association and owner circumstance. While a CAM or association may generally look to these decisions for guidance, they should seek the advice of an attorney with a specialty in community association law for their specific issues.

1 exemption from material alterations. Under F.S. 718.113(5)(a), the Association is re-  
2 quired to get a majority vote of owners to install hurricane resistant glass.

- 3 ■ The DBPR concluded that the Association Declaration has not been amended to make  
4 the association responsible for installing and maintaining hurricane shutters or other hur-  
5 ricane protection. Therefore, the Association must have the majority vote of the owners  
6 to install hurricane resistant glass in the first 3 floors under F.S. 718.113(5)(a) and must  
7 assess the cost as a common expense, including the use of common surplus funds, un-  
8 der F.S. 718.115(1)9e) and F.S. 718.115(3).

9 Camden C Condominium Association, Inc.

10 DS 2010-025 (May 21, 2010)

- 11 ■ An owner sought an opinion on whether F.S. 718.110(13) applies to owners who do  
12 not consent to a 2004 amendment to the Declaration restricting rentals of units.
- 13 ■ The Association approved an amendment restricting leasing of units on September  
14 29, 2004, recorded in the official records of Broward County. The Association noted  
15 that the amendment was approved by over 2/3s of the members and that the  
16 amendment was adopted prior to the October 1, 2004 effective date of F.S.  
17 718.110(13),
- 18 ■ DBPR noted that F.S. 718.110(13) was enacted in response to Woodside Village  
19 Condominium Association, Inc. v. Jahren, 806 So. 2d 452 (Fla. 2002). The Supreme  
20 Court noted that condominiums were a unique form of living arrangements that was  
21 subject to greater restrictions on an owner's right to lease a unit. The Supreme  
22 Court held that the restrictive amendment to the declaration was valid because Ja-  
23 hren bought the unit knowing the declaration could be amended.
- 24 ■ The enactment of F.S. 718.110(13) changed the holding in Woodside for all amend-  
25 ments restricting an owner's right to lease from October 1, 2004 forward. Generally,  
26 laws are prospective in application from the effective date. After October 1, 2004,  
27 any amendments to declarations that change an owner's right to lease his unit may  
28 only be applied to those existing owners who consent or those owners who purchase  
29 after the amendment is recorded in the public records.
- 30 ■ Camden C adopted its amendment under the law interpreted and applied by the  
31 Florida Supreme Court in Woodside and before the adoption of F.S.  
32 718.110(13). Therefore; the DBPR opined that it applied to the owner who sought the  
33 opinion.

34 Fiddler's Green Condominium Association Inc.

35 DS 2010-029 (April 27, 2010)

- 36 ■ The Association requested an opinion as to whether its bylaws limiting a director to two  
37 consecutive terms was consistent with F.S. 718.112(2)(d).
- 38 ■ In 2005, Fiddler's Green amended its documents to provide that, at its annual meeting,  
39 directors shall be elected to 2-year terms to fill vacancies of those directors whose terms  
40 have expired. It limited terms on the board to two consecutive terms or until a qualified  
41 replacement is elected or appointed.
- 42 ■ Fiddler's Green held a membership meeting in which members voted in favor of continu-  
43 ing two-year staggered terms as required by F.S. 718.112(2)(d).

- 1       ▪ The legislative amendment changed to law to allow associations to limit the number of  
2 consecutive terms a board member may serve, so that a member whose term expires  
3 may not run for re-election. The phrase “unless otherwise permitted by the bylaws” qual-  
4 ifies which “board members may stand for reelection.” The phrase modified the reelec-  
5 tion of a board member who term has expired and who would be eligible to run for ree-  
6 lection unless the bylaws permit a different result. A bylaw limiting a board member’s  
7 eligibility to run for reelection by limiting the number of consecutive terms is permitted  
8 under F.S. 718.112(2)(d)(1).
- 9       ▪ Therefore, the DBPR opined that the Fiddler’s Green bylaw limiting directors to two con-  
10 secutive terms in consistent with F.S. 718.112(2)(d)(1).

11 Club Atlantis Condominium Association, Inc.  
12 DS 2010-054 (September 8, 2010)

- 13       ▪ The Association requested an opinion as to whether it must insurance a limited common  
14 element (cabanas) and whether it could pass along the cost of insurance to owners un-  
15 der F.S. 718.111(11),
- 16       ▪ Club Atlantis was created in 1982. The cabanas are original improvements to the con-  
17 dominium property installed by the developer. The Declaration allows the developer to  
18 assign the cabanas to various units for exclusive use.
- 19       ▪ The Association bylaws provide it with the power to specially charge and assess “one or  
20 more Unit Owners” for expenses incurred by the Association solely for the benefit of, or  
21 as a result of action or omissions of, such Owner or Owners. It further provides that  
22 such special assessment made be made with respect to expenses relating to the use of  
23 specific Owners of, among other limited common elements, the cabanas. The DBPR  
24 found that this provision related to the expense resulting from an owner’s use of the ca-  
25 bana, not the cost of insuring the property.
- 26       ▪ The Declaration of Condominium states that the Association must maintain replacement  
27 value insurance covering the Building and improvements. Unit owners may obtain in-  
28 surance for their personal property. The DBPR notes that the cabanas are limited com-  
29 mon elements, not owner personal property.
- 30       ▪ F.S. 718.111(11)(g)(1) (2008) provides that “All improvements or additions to the con-  
31 dominium property that benefit fewer than all unit owners shall be insured by the associ-  
32 ation at the cost and expense of owner(s) having the use thereof. In the 2010 legislative  
33 session, the legislature deleted this section.
- 34       ▪ Therefore, the DBPR opined that Club Atlantis must insure the limited common element  
35 cabanas and may not pass along the cost of insurance to owners who have the exclu-  
36 sive use of the cabanas under amendments to F.S. 718.111(11).
- 37  
38

1 **Appendix C**

2 **Supreme Court Decision**

3 No. SC10-430 \_\_\_\_\_

4 **SUSAN COHN**, Appellant,

5 vs.

6 **THE GRAND CONDOMINIUM ASSOCIATION, INC., et al**, Appellees.

7 [March 31, 2011]

8 PER CURIAM.

9 This case is before the Court on appeal from a decision of the Third District Court of Appeal,  
10 Cohn v. Grand Condominium Ass'n, 26 So. 3d 8 (Fla. 3d DCA 2009), which held a state statute  
11 unconstitutionally applied to impair the parties' contract in violation of article I, section 10 of the  
12 Florida Constitution.<sup>1</sup> We affirm.

13 1. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const.

14 Organized in 1986, The Grand Condominium is a mixed-use condominium comprising 810 resi-  
15 dential units, 259 commercial units, and 141 retail units. The Grand's articles of incorporation,  
16 declaration of condominium, and bylaws provide for a seven-member board of directors govern-  
17 ing the association, with two members each elected by the residential unit owners, the com-  
18 mercial unit owners, and the retail unit owners, and the seventh member elected at-large. In  
19 1995, the Legislature enacted section 718.404, Florida Statutes, regulating mixed-use condomi-  
20 niums. Ch. 95-274, § 38, Laws of Fla. Section 718.404(2) established that in mixed-use condo-  
21 miniums with fifty percent or greater residential composition, the residential unit owners must be  
22 entitled to vote for a majority of seats on the board of directors. In 2007, the Legislature  
23 amended section 718.404(2) to make it retroactive, adding, "This subsection shall apply retroac-  
24 tively as a remedial measure." Ch. 2007-173, § 5, Laws of Fla. Susan Cohn, a residential unit  
25 owner at The Grand, then requested that The Grand change its voting system accordingly. The  
26 Grand filed a declaratory judgment action, seeking a declaration that subsection 718.404(2)  
27 constituted an unconstitutional impairment of contract as applied to The Grand. The trial court  
28 granted summary judgment in The Grand's favor, holding that the retroactivity provision was un-  
29 constitutional under article I, section 10 of the Florida Constitution, and the Third District af-  
30 firmed.

31 In Florida, a condominium regime may be created only under chapter 718, the Condominium  
32 Act. § 718.104, Fla. Stat. (1985). A condominium is established by recording a declaration of  
33 condominium, which is the document that governs the condominium and is binding on all unit  
34 owners. See §§ 718.104(2)(7), Fla. Stat. (1985). A declaration of condominium possesses  
35 "attributes of a covenant running with the land" and operates as a contract among unit owners  
36 and the association, "spelling out mutual rights and obligations of the parties thereto." Woodside  
37 Vill. Condo. Ass'n v. Jahren, 806 So. 2d 452, 456 (Fla. 2002) (quoting Pepe v. Whispering  
38 Sands Condo. Ass'n, 351 So. 2d 755, 757 (Fla. 2d DCA 1977)).

39 Here, The Grand's declaration establishes that the retail and commercial unit owners, collective-  
40 ly, shall have majority vote control over the board of the directors. The Grand's declaration,  
41 which was filed in 1986, adopts the terms of "the Condominium Act of the State of Florida (Flori-  
42 da Statute 718, et seq.) in effect as of the date of recording this Declaration" and does not con-  
43 tain "as amended from time to time" language subjecting it to future statutory changes to the  
44 Condominium Act. See Angora Enters., Inc. v. Condo. Ass'n of Lakeside Vill., 796 F.2d 384,

1 386 (11th Cir. 1986) (noting that express agreement by parties in the declaration of condomini-  
2 nium regarding application of future statutes to the association may determine whether parties  
3 have a “constitutional protection against future amendments to the Florida Condominium Act  
4 which, absent such an agreement, might arguably impair a party’s contract obligation”); Sans  
5 Souci v. Div. of Fla. Land Sales & Condos., 421 So. 2d 623, 628 (Fla. 1st DCA 1982) (“[F]or  
6 purposes of considering whether there has been an unconstitutional impairment of a contractual  
7 obligation by statutes regulating condominiums, . . . there must be determined the date of filing  
8 of the superior declaration of condominium and its subordinate documents, such as the master  
9 sublease, since such date controls for purposes of fixing the parties’ rights and obligations.”).  
10 Therefore, by changing the distribution of voting power, the retroactive application of section  
11 718.404(2) would alter the rights of The Grand’s unit owners in contravention of their contractual  
12 agreement. Article I, section 10 of the Florida Constitution prohibits the enactment of any “law  
13 impairing the obligation of contracts.” Accordingly, because section 718.404(2) impairs the obli-  
14 gation of contract as applied to The Grand, we affirm the holding of the Third District below. See  
15 Pomponio v. Claridge of Pompano Condo., Inc., 378 So. 2d 774, 776 (Fla. 1979) (discussing  
16 “the principle that all laws impairing the obligations of contract are constitutionally prohibited”);  
17 Dewberry v. Auto-Owners Ins. Co., 363 So. 2d 1077, 1080 (Fla. 1978) (“It is axiomatic that sub-  
18 sequent legislation which diminishes the value of a contract is repugnant to our Constitution.”) It  
19 is so ordered. CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and  
20 PERRY, JJ., concur. NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND  
21 IF FILED, DETERMINED.

22 An Appeal from the District Court of Appeal – Statutory or Constitutional Invalidity Third District -  
23 Case No. 3D08-3051 (Dade County) Eric M. Glazer of Glazer & Associates, P.A., Hollywood,  
24 Florida for Appellant Daniel S. Rosenbaum, Joseph William Janssen, III, Richard Chambers Va-  
25 luntas, and Mark Gerald Keegan of Rosenbaum Mollengarden Janssen & Siracusa, PLLC, West  
26 Palm Beach, Florida; and H. Hugh McConnell of Siegfried, Rivera, Lerner, De La Torre & Sobel,  
27 P.A., Coral Gables, Florida, for Appellees

28

## 1 Appendix D

### 2 ADA Pool Requirements

#### 3 **Background and History of ADA**

4 The original Americans with Disabilities Act was signed into law on July 26, 1990. The law was  
5 divided into five subparts but for the swimming pool and spa industry the relevant sections are  
6 Public Entities and Public transportation (Title II) and Public Accommodations and Commercial  
7 Facilities (Title III).

8 The original enforcement guidelines did not provide accessibility standards for swimming pools  
9 and spas. However, in 2004, the Department of Justice issued enforcement guidelines that in-  
10 cluded pools and spas. At that point they were just that — guidelines — and not law.

11 In July 2010, the Department of Justice announced its final rule making. The revised regulations  
12 were then published in the Federal Register on September 16, 2010 and will take effect on  
13 March 15, 2011. Compliance with these regulations will be required no later than March 15,  
14 2012.

#### 15 **Swimming Pool, Wading Pool, and Spa Accessibility**

16 The swimming pool, wading pool, and spa guidelines that are now part of the ADA law are vir-  
17 tually the same for both Public Entities (Title II) and Public Accommodations (Title III) facilities.  
18 They stipulate that any swimming pool with under 300 linear feet of pool wall must provide one  
19 means of access, and that means must be either a pool lift or a sloped entry. In addition, any  
20 pool that has over 300 linear feet of pool wall must provide two means of access, which can be  
21 any of the five designated means of access: pool lifts, sloped entries, transfer walls, transfer  
22 systems, or accessible pool stairs. The criteria that each of these means of access must meet  
23 can be found in chapter 10, section 1009 of the revised ADA guidelines. Wading pools must  
24 have one means of entry and that must be a sloped entry. Spas, both in-ground and portable,  
25 also must have one means of entry, which can be either a lift, transfer wall, or transfer system.  
26 The specific requirements that swimming pools, wading pools and spas must meet can be found  
27 in chapter 2, section 242 of the revised ADA guidelines.

28 **What are the permitted means of access?** Pool lifts, sloped entries (ramps), transfer  
29 walls, transfer systems, or stairs. The criteria that each of these means of access must  
30 meet can be found in chapter 10, section 1009, of the revised ADA guidelines, a link can be  
31 found on the APSP website. What type of means of access that must be used and how  
32 many means of access required, depend on the structure.

33 **What are the swimming pool specific requirements?** Both Title II and III entities are re-  
34 quired to provide —accessible means of entry for pools. Larger pools (greater than 300 li-  
35 near feet of pool wall) require at least two means of access and smaller pools (less than  
36 300 linear feet of pool wall) require at least one means of access. When providing only one  
37 means of access, it must either be a pool lift or sloped entry (ramp). Wave action pools, lei-  
38 sure rivers, sand bottom pools, and other pools where user access is limited to one area are  
39 not required to have more than one means of access provided that means is either a pool  
40 lift, a sloped entry, or a transfer system. Catch pools that have a catch pool edge on an ac-  
41 cessible route are not required to provide a means of access.

42 *\*Note: 1) The ADA recommends that when using more than one means of access, the*  
43 *means be different, i.e., a lift and a transfer wall, and be provided in different locations in the*  
44 *pool. 2) Pool walls at diving areas and areas along pool walls where there is no pool entry*

1 *because of landscaping or adjacent structures are still to be counted when determining the*  
2 *linear feet of pool wall.*

3 **What are the wading pool specific requirements?** Both Title II and III entities are re-  
4 quired to provide —accessible means of entry for wading pools.|| Wading pools must have  
5 at least one means of access and that means must be a sloped entry (ramp). The sloped  
6 entry must extend to the deepest part of the wading pool, but it is not required to provide  
7 handrails.

8 **What are the spa specific requirements and how does the ADA apply to portable**  
9 **spas/hot tubs?** The ADA does not distinguish between in-ground and portable spas. Both  
10 Title II and III entities that have any type of spa, in-ground or portable, are required to pro-  
11 vide at least one —accessible means of entry.|| The means of access can either be a lift,  
12 transfer wall, or transfer system. When spas are provided in a cluster (adjacent to each oth-  
13 er) only one spa must provide a means of access.

14 **Do the new requirements apply to both existing and new swimming pools, wading**  
15 **pools and spas (in-ground and portable) that fall under the Title II or III categories?**  
16 Yes, the permitted means of access must be provided on all installations no later than  
17 March 15, 2012. However, it is highly recommended these means of access be added to  
18 both new and existing construction as soon as possible.

19 **Are there service requirements for ADA equipment?** Yes, mandated features must be  
20 maintained in working order. The regulations provide a —Maintenance of Accessible Fea-  
21 tures|| provision which states that —a public accommodation shall maintain in operable  
22 working condition those features of facilities and equipment that are required to be readily  
23 accessible to and usable by persons with disabilities.||

#### 24 **Exclusions**

25 There are some exceptions from the accessibility guidelines. Title II facilities can be ex-  
26 cluded if they can prove that modifications would significantly alter the historic nature of the  
27 building. They could also be excused if they could demonstrate that making such modifica-  
28 tions would create undue financial hardship for the facility. Title III facilities can be excluded  
29 if they can demonstrate that reasonable accommodations are not readily achievable. How-  
30 ever, the Department of Justice has made it very clear that, given the flexibility and cost of a  
31 pool lift, it would be very difficult for any entity to escape their responsibility to provide  
32 access to a swimming pool.

#### 33 **Enforcement**

34 ADA regulations are enforced directly and indirectly. Most direct enforcement is a result of civil  
35 lawsuits initiated by a plaintiff who sues for non-compliance. If the plaintiff prevails, the court  
36 usually issues a court order that requires the defendant to remedy the violation, and attorney's  
37 fees for the plaintiff. There are generally no monetary awards provided to the victorious plaintiff.  
38 The ADA is also enforced indirectly by requiring compliance prior to receiving licenses, certifica-  
39 tions, or grants from prevailing authorities. For example, prior to a local government receiving a  
40 federal grant, it must provide proof of compliance with a wide array of regulations ranging from  
41 environmental mandates to equal opportunity programs to ADA compliance. In addition, in most  
42 localities, any new construction or building modification will not receive a certificate of occupan-  
43 cy without meeting all relevant ADA requirements. Many states will adopt the latest guidelines  
44 into their state or local building codes.

## 1 Appendix E

## 2 Questions

- 3 1. A multifamily building that is less than 4 stories in height and has a corridor providing an ex-  
4 terior means of egress:
- 5 a) Must install fire sprinklers in every unit.
  - 6 b) Is exempt for installing a generator upon approval of 75% of the total voting interest.
  - 7 c) Is exempt from installing a manual fire alarm system
  - 8 d) Must install railing in common elements.
- 9 2. Jilly and Jack Gunborder own units 105 & 110 in the Purple Diamond Condominium, which  
10 as 250 units. Both want to be on the board.
- 11 a) The Condominium Act prohibits co-owners from serving on the board at the same time.
  - 12 b) Only the highest vote getter can serve on the board, assuming he or she receives suffi-  
13 cient votes.
  - 14 c) Can both be elected to the board but only one can serve as an officer.
  - 15 d) Can both run for the board and serve as directors if elected.
- 16 3. Liliam Garcia is unable to be in town for the annual election at the Green Tortuga Condomi-  
17 nium. She wants to vote. Which of the following is not true?:
- 18 a) She can give her blank ballot to her friend to complete and deliver at the meeting.
  - 19 b) She can give her completed ballot to a neighbor to turn in at the meeting.
  - 20 c) She can complete her ballot and mail it in to the management office in advance of the  
21 meeting.
  - 22 d) She can complete her ballot and deliver it at the meeting site prior to opening the outer  
23 envelopes.
- 24 4. Joaquin Hablana recently was elected to the Board of the Bisque Seas Condominium.
- 25 a) Jose must take a course approved by the DBPR within 60 days of the election, unless  
26 he chooses to certify in writing that he has read the association documents.
  - 27 b) Jose must take a course approved by the DBPR within 90 days of the election, unless  
28 he chooses to certify in writing that he has read the association documents.
  - 29 c) Jose must take a course approved by the DBPR within 30 days of the election, unless  
30 he chooses to certify in writing that he has read the association documents.
  - 31 d) Jose must take a course approved by the DBPR within 120 days of the election, unless  
32 he chooses to certify in writing that he has read the association documents.
- 33 5. HO6 (owner) policies issued on or after \_\_\_\_\_ must include at least \$\_\_\_\_\_ in  
34 property loss assessment coverage for all assessments made as a result of the same direct  
35 loss to the property, regardless of the number of assessments, to which a deductible of no  
36 more than \$\_\_\_\_\_ per direct loss applies.
- 37 a) July 1, 2010; \$2,500; \$250
  - 38 b) January 1, 2011; \$2,000; \$500
  - 39 c) July 1, 2010; \$2,000; \$250
  - 40 d) January 1, 2011; \$2,500; \$250

41

- 1 6. If a cooperative member is 90 days delinquent, and his unit is leased to a tenant:  
2 a) The Association can collect the rent from the tenant for the monies owed, upon publica-  
3 tion of its intent in the association newsletter,  
4 b) The Association can collect rent from the tenant, upon notification of the owner and te-  
5 nant.  
6 c) The Association may evict the tenant and lease the unit to pay the monies due from the  
7 owner.  
8 d) The Association may deny the tenant the right to use the common elements.
- 9 7. Delbert Halliburton has failed to pay his assessments for more than four months. Clearwa-  
10 ter Condominium may:  
11 a) Foreclose upon 45 days' notice.  
12 b) Suspend the right to use the elevators.  
13 c) Suspend the right to use the swimming pool.  
14 d) Foreclosure with 60 days' notice.
- 15 8. Clarice Meadowbrook received from Gilly Airs Condominium a list of owners including their  
16 addresses. She sends letters to all the owners, soliciting contributions to the Benji Health  
17 Association, which benefits her sick dog, Benji. A number of the owners complain to the  
18 board.  
19 a) The Association cannot be held liable for the misuse of this information.  
20 b) The Association had an affirmative duty to determine the purpose for which Clarice  
21 wanted the information.  
22 c) The Association should have held a special owner meeting, at which time Clarice could  
23 have solicited monies.  
24 d) Sharing owner information is a violation of F.S. 718 and F.S. 617. The Association may  
25 be fined by the DBPR for this breach of statutes.
- 26 9. Bluesky Cooperative held a vote to opt out of retrofitting its property with a fire sprinkler sys-  
27 tem in January 2008. It properly recorded the affirmative vote and is now exempt from the  
28 retrofit. In February 2011, however, the neighboring condominium, Hellsinki Hills, expe-  
29 rienced a fire in which several persons suffered from smoke inhalation and had to be hospi-  
30 talized. Some owners think Bluesky should move forward with retrofit, and, at the March 2,  
31 2011 board meeting, the board agreed to do so.  
32 a) Bluesky may proceed, as the board has the right to reverse its opt out once every three  
33 years.  
34 b) Bluesky may proceed, as safety is more important than the owners' votes.  
35 c) The owners must provide Bluesky with a petition of at least 10% of the owners, and the  
36 board must call a special owner meeting to consider reversing the vote to forgo the retro-  
37 fit.  
38 d) The owners must wait until 2012 to submit a petition, with at least 15% of the members,  
39 after which time the board may proceed with the retrofit.
- 40 10. Del Biscaya Condominium is negotiating with AT&T for bulk services. It may include tele-  
41 phone and high speed internet in these services:  
42 a) With a vote of the majority of the board.  
43 b) Upon a vote of the majority of members at a duly called and quorumed meeting  
44 c) Upon a vote of the majority of the total voting interest.  
45 d) It cannot contract for high speed internet or phone for its members.

46

- 1 11. Buyer assignee, in a condominium, means:  
2 a) A purchaser of condominium units who acquires at least 10 parcels prior to July 1, 2014  
3 b) A purchaser of condominium units who acquires at least 10 parcels prior to July 1, 2012  
4 c) A purchaser of condominium units who acquires at least 7 parcels prior to July 1, 2014  
5 d) A purchaser of condominium units who acquires at least 7 parcels prior to July 1, 2012
- 6 12. A bulk assignee:  
7 a) Must provide an audit for the period that he elects the majority of the board.  
8 b) Receives none of the rights of developers and does not need to make any guarantees to  
9 individual purchasers.  
10 c) Has no liability for developer duties & responsibilities.  
11 d) May not require an escrow agreement from potential purchasers.
- 12 13. In a cooperative, the association may place a lien on a property:  
13 a) After sending a letter providing 45 days' notice of its intention.  
14 b) After sending a letter providing 60 days' notice of its intent.  
15 c) By return receipt or certified mail, at least 30 days in advance of the lien.  
16 d) By first class mail only, at least 45 days prior to filing the lien.
- 17 14. A director, officer, or committee member of an HOA:  
18 a) May receive as salary for fulfilling his responsibilities on the board.  
19 b) May not receive compensation above \$1,000 a year.  
20 c) May receive reimbursements for out of pocket expenses incurred on behalf of the asso-  
21 ciation.  
22 d) May lunch with a vendor, where the vendor pays.
- 23 15. Members not in attendance at an HOA member meeting to elect new directors:  
24 a) May not vote in the election.  
25 b) Must vote by secret ballot, regardless of any provisions in the Declaration or Bylaws to  
26 the contrary.  
27 c) May vote by secret ballot, if permitted by the bylaws, witnessed by two other residents.  
28 d) May vote by secret ballot, if permitted by the bylaws, and presented at the member  
29 meeting in a sealed envelope, similar to condominium elections.
- 30 16. In an HOA:  
31 a) A fine may exceed \$2,000 if permitted in the documents.  
32 b) A fine may become a lien against the member's property.  
33 c) A fine may be provided after 90 days where the member has failed to take corrective ac-  
34 tion.  
35 d) A fine may be delivered only by first class mail or hand delivery
- 36 17. An individual wishing to take his CAM preclicensure test:  
37 a) May take an 18 hour course through a distance learning module.  
38 b) May substitute a property manager license for a CAM.  
39 c) May be exempted from the course if speaking English is a hardship.  
40 d) Must schedule preclicensure test for times convenient to all study,

41

- 1 18. The Florida Real Estate Appraisal board:  
2 a) Has 9 members appointed by the Senate.  
3 b) Has 7 members appointed by the Governor.  
4 c) Has 7 members elected by all appraisers within the state.  
5 d) Decides questions of practice and sets fees associated with property appraisal and how  
6 an appraiser's signature is to be affixed on the appraisal.
- 7 19. A contract is required to have the following information in a contract for automatic renewal:  
8 a) Clause notifying the purchaser of the automatic renewal terms.  
9 b) If it will last more than 3 months.  
10 c) Nothing. Contracts cannot have automatic renewals.  
11 d) An automatic renewal incentive.
- 12 20. Damaged or defective drywall, such as "Chinese drywall, would be covered under:  
13 a) F.S. 720  
14 b) F.S. 617  
15 c) F.S. 399  
16 d) F.S. 193

## INSTRUCTIONS

### READ CAREFULLY PRIOR TO COMPLETING ANY COURSES.

- Step 1** Select the course(s) you need to take. Be sure that you select the appropriate course(s) for your specific needs. No credit is given for taking the same course more than once. (CE requirements are listed in the front of this book or you can contact the CAM Council's office.)
- Step 2** Read the course materials for each course you take.
- Step 3** Find the "**CAM CONTINUING EDUCATION ANSWER SHEET**", located at the back of this book. *There is space to complete all courses on the one answer sheet.* Fill in the "**Student Information**" section and the "**Payment Information**" section. (**Courses will not be processed until complete payment has been made.**)
- Step 4** Complete your answers for each course by completely filling in one "bubble" per question. Note: A specific type of pen or pencil is not required.
- Step 5** We suggest that you make a photocopy of your answer sheet for your own records.
- Step 6** For "**Standard Grading**", mail your Answer Sheet to Gold Coast Professional Schools, Inc., 5600 Hiatus Road, Tamarac, FL 33321. Your Answer Sheet is graded and your course completion certificate(s) will be mailed as soon as possible, usually within 5 business days.

We also offer an optional "**NEXT DAY**" fax service. This optional service is provided for an additional \$10. Fax your completed Answer Sheet to us by 5 p.m. and we will fax your completion certificate(s) to you by 5 p.m. on the following business day. Your original completion certificate(s) will be mailed to you.

To use this service, fax your Answer Sheet to us at: **(954) 485-9865**

**Note:**

- To use the optional fax service, payment must be made by credit card.
- The optional fax service is available in the continental United States only.
- We will attempt to fax your completion certificate(s) to the number you provide up to a maximum of three times. If the third transmission does not go through, your certificate(s) will be mailed to you.

**Step 7** When you receive your certificates, **verify that you have received certificates for each of the courses you took.** If there are any errors or omissions, call our office at: 1-800-732-9140 as soon as possible.

**Step 8** Under the new reporting procedures, Gold Coast will report your results directly to the DBPR. You should still retain your course completion certificates in case of audit.

**Note:** Students who do not achieve a score of at least 75% will be required to redo their examination, and pay a \$5 handling fee for the re-examination. If a student does not successfully pass the second time, they will be given a different exam. If a student is not successful on the re-examination they will have one final chance to redo the second examination. Any student who is not successful after two attempts, at two different examinations will not be allowed to attempt another through our school. The tuition paid (excluding handling fees) for the correspondence course will be credited towards the same course, offered in any of our classroom locations.



**The answer sheet is  
located on the back  
of this page.**

**PLEASE CAREFULLY  
DETACH THE ANSWER  
SHEET AND MAIL OR FAX IT  
TO US.**

**IF YOU HAVE ANY QUESTIONS  
CONCERNING THESE COURSES, PLEASE  
CALL US AT 1-800-732-9140**