

CONTINUING EDUCATION FOR FLORIDA CAM LICENSEES

2019 Legal Update

Legal Update Topic

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Topics:

2019 Legal Update

Upon completion of this course, students should be able to:

- explain HB 841 Relating to Community Associations
- understand requirements for Community Associations to keep and maintain official records
- understand detailed requirements for a Condominium to post certain information on a website that is accessible to unit owners and employees.
- describe a condominiums financial reporting responsibilities
- understand requirements to complete alterations or additions to condominium property
- understand condominium, cooperative and HOA fines and suspension
- explain notice requirements of meetings and communication by members for condominiums, cooperatives and HOAs
- explain amendments to HB 841 pertaining to cooperative board of directors and condominium board members
- understand condominium board member recall
- explain HOA elections
- describe HOA amendment and rental restrictions
- explain CS/HB 631 as it pertains to "customary use"
- describe HB 617 relating to covenants and restrictions
- understand HB 29 relating to military and veterans affairs
- understand paperless licensing

2019 Legal Update

New Laws Effective 2018

CS/CS/CS/HB 841: Community Associations

Official Records

1. Unit owners are able to inspect the official records. The deadline to make records available to unit owners and their agents was **extended from 5 working days to 10 working days** from receipt of written request.
2. Prior law required each condominium and cooperative association to maintain official records for at least seven years. A condominium association now must **permanently maintain** the following documents:
 - A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
 - Meeting minutes; and
 - A copy of the plans, permits, warranties, and other items required by the developer.
3. The following official records must be **maintained for 7 years**:
 - A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
 - A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
 - Accounting records for the association;
 - All contracts for work, including bids;
 - All other written records which are related to the operation of the association; and
 - All ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.
4. **Electronic records relating to voting** must be kept by condominium and cooperative associations for 1 year from the date of the election, vote or meeting to which the document relates.

Condominium Websites

1. Each condominium association with 150 or more units (that does not manage timeshare units) is required to post certain documents on a website that is only accessible to unit owners and employees of the condominium association. The deadline for condominium associations to post documents was **extended from July 1, 2018 to January 1, 2019**.
2. The requirement to post any proposed financial reports was replaced with a requirement to **post any monthly income or expense statements to be considered at a meeting**.
3. A condominium association's website must include:
 - **A summary of bids** for materials, equipment, or services which exceed \$500 was added to the list of items that **must be posted and maintained on the website for 1 year**. (Note that the association may post the complete copies of the bids in lieu of those summaries);
 - The recorded **declaration** of each condominium operated by the condominium association and each amendment to a declaration;
 - The recorded **bylaws** of the condominium association, including amendments to the bylaws;
 - The **articles of incorporation** of the condominium association, or other documents creating the condominium association and each amendment thereto. The copy posted must be the articles of incorporation filed with the Department of State;
 - The **rules** of the condominium association;
 - **Any management agreement**, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility.
 - The **annual budget** and any proposed budget to be considered at the annual meeting;
 - The **certification** of each director;
 - **All contracts** or transactions between the condominium association and any director, firm, corporation, or condominium association that is not an affiliated condominium association or any other entity in which an condominium association director is also a financially interested director or officer;
 - **Any contract or document regarding a conflict of interest** or potential conflict of interest by a community association manager or a board member;

- The ***notice of any unit owner meeting and the agenda*** for the meeting, posted at least 14 days before the meeting. The notice must be posted in plain view on the front page of the website or on a separate subpage of the website labeled “Notices” which is conspicuously visible and linked from the front page; and
- ***Any documents to be considered during a meeting*** or listed on the agenda for a meeting. These ***must be posted at least 7 days before*** the meeting where the document will be considered.
- ***A condominium may not post the following protected documents*** or restricted information to its website unless the information or documents are redacted:
 - Any record ***protected by the lawyer-client privilege*** or the work-product privilege;
 - Information obtained by the condominium association in connection with the ***approval of the lease, sale, or other transfer of a unit;***
 - ***Personnel records*** of condominium association or management company employees;
 - ***Medical records*** of the unit owners;
 - ***Social security numbers***, driver’s license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, and addresses of a unit owner other than those provided to fulfill notice requirements;
 - Electronic security measures that are used to safeguard data, ***including passwords;*** and
 - The software and ***operating system*** used by the condominium association, which allows the manipulation of the data.

Condominium Financial Reporting

1. Condominium associations are required to complete an **annual financial report** of the previous year's financial activities and provide the report to unit owners. To comply with financial reporting requirements, associations must:
 - **Complete an annual financial report for the previous fiscal year within 90 days** after the end of the fiscal year, calendar year, or annually on a date provided in the bylaws;
 - **Provide unit or parcel owners the financial report** or notice that the report is available upon request without charge **within 21 days** after the final financial report is completed by the condominium or received from the third party, **but not later than 120 days after the end** of the fiscal year or calendar year, or other date as provided in the bylaws; and
 - Prepare financial statements according to generally accepted accounting principles and in a manner dictated by the total revenue of the association, specifically:
 - An association with total annual revenue of less than \$150,000 must prepare a report of **cash receipts and expenditures**.
 - An association having total annual revenues between \$150,000 and \$300,000 must prepare **compiled** financial statements;
 - An association having total annual revenues between \$300,000 and \$500,000 must prepare **reviewed** financial statements;
 - An association having total revenues more than \$500,000 must prepare **audited** financial statements.
2. If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:
 - **A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;**
 - A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
 - A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.
3. Such meeting and approval must occur before the end of the fiscal year and is **effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year.**
4. **A unit owner who does not receive the financial report may contact the Division** to report an association's failure to provide a copy of the financial report within the required time.

5. If the Division determines that the association failed to provide the financial report in a timely manner, the ***Division may require the association to provide the financial report to the unit owner and the Division within five business days.***
6. ***If the association fails to comply with the Division's request, the association is prohibited from waiving the financial annual financial reporting requirements.***

Alterations or Additions to Condominium Property

1. CS/CS/CS/HB 841 requires ***approval by 75 percent of voting interests prior to work beginning on any material alterations or additions of condominium property.***
2. An association is prohibited from restricting a unit owner from installing an electric vehicle charging station within the boundaries of their common element parking area:

"A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area."

This provision goes on to clarify how the installation of an electric vehicle charging station must be governed. The owner must:

- Comply with bona fide ***safety*** requirements;
- Comply with reasonable ***architectural*** standards;
- Use a licensed and registered ***electrical contractor*** or engineer;
- Provide a ***certificate of insurance*** naming the association as an additional insured on the owner's insurance policy;
- ***Reimburse*** the association for the ***cost of any increased insurance premium;***
- Assure that the electricity charges are ***separately metered;*** and
- ***Pay all costs.***

The association may use its assessment powers to enforce the payment.

3. The association will grant an ***implied easement*** across the common elements to the unit owner ***for the installation*** of the electric vehicle charging station and any necessary equipment for the furnishing of electrical power to the electric vehicle charging station.
4. ***A lien may not be filed against the association*** for any labor performed or materials furnished during the installation of a charging station. However, a lien may be filed against the unit.

Condominium, Cooperative, HOA Fines and Suspension

1. All associations ***may levy fines and suspend*** a unit or parcel owner or guest for violating any provision in the governing documents.
2. A board must give at least ***14 days written notice and the opportunity for a hearing*** before imposing a fine or suspension.
3. CS/CS/CS/HB 841 requires a condominium or cooperative to hold the hearing in front of a group of ***association members who are not on the board***.
4. The action must be approved by ***majority vote***.
5. A fine approved by the committee is ***due five days*** after the date of the committee meeting.
6. The condominium or cooperative must provide ***written notice*** of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant or guest of the unit owner.

Notice of Meetings and Communication by Members for Condominiums, Cooperatives, and HOAs

1. Associations must post notice of all board meetings in a conspicuous place on the association's property at least 48 hours in advance.
2. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding unit use is considered. If a parcel owner in a HOA provides written consent, the notice may be provided by electronic transmission for board meetings, committee meetings, annual meetings, and special meetings.
3. Condominium and cooperative associations are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice at least 14 days before the meeting. They must also post notice in a conspicuous place at least 14 days before the meeting. If a condominium or cooperative association opts to broadcast notice in lieu of posting notice, it must do so at least four times every broadcast hour of each day for 14 days.

4. CS/CS/CS/HB 841 allows **condominium and cooperative associations to adopt rules for noticing all board and unit owner meetings on a website** where the time requirements for physically posting the board meetings are met.
5. Any rule adopted for website notice must **require the association to send an electronic notice providing a hyperlink to the posting to all unit owners whose email addresses are part of the official records** in the same manner as notice for a meeting of the members.
6. **Notice by website is in addition to the other notice requirements.** Any owner who consents to receiving notice for a meeting by electronic transmission is responsible for removing or bypassing any filters that block receipt of mass emails sent to members by an association for the purpose of giving notice.
7. An **HOA is permitted to give notice by electronic transmission** to any parcel owner who provided written consent and a fax number or email address to the HOA.
8. Board members for **condominium associations may use email as a form of communication.**
9. The bill permits members of the board of directors for cooperative associations and HOAs to use email as a form of communication but **a board member may not cast a vote via email.**

Cooperative Common Expenses and Bulk Contracts

1. Common expenses are paid by the unit owners of a cooperative association and are included in the association's annual budget to its members.
2. CS/CS/CS/HB 841 amended **cooperative association** law to mirror condominium association law by providing that **bulk contracts for communication services, internet services, and information services may be considered a common expense.**

Cooperative Board of Directors and Condominium Board Members

1. CS/CS/CS/HB 841 amends cooperative association law to mirror condominium association law by providing that:
 - A director or officer is deemed to have ***abandoned their office if the officer or director is more than 90 days delinquent*** in the payment of any monetary obligation to the association; and
 - In residential cooperatives that are more than 10 units, ***co-owners of a unit are prohibited from serving as members on the board at the same time*** unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.
2. The new condominium term limit provision limits time in office to eight consecutive years ***unless approved by affirmative vote of two-thirds of all votes cast in the election.***

Condominium Board Member Recall

1. A member of a condominium association board ***may be recalled and removed from office by a majority of all the voting interests of the association at a special meeting or by an agreement in writing by a majority of all voting interests.***
2. If a recall is approved by a majority of all voting interests, the ***board must notice and hold a board meeting within 5 business days*** of the special meeting to recall the board member or members.
3. The ***recall is effective immediately*** and the recalled member or members must turn over any records and association property in their possession to the board within 10 days of the vote.
4. A ***recalled board member may file a petition to the Division for arbitration*** challenging the validity of the recall.

Bulk Assignees and Bulk Buyer

1. In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain liabilities to enable economic opportunities for successor purchasers of distressed condominiums.
2. Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it contained termination dates that have been extended from 2012 to 2015 to 2016 and 2018.
3. CS/CS/CS/HB 841 ***removes the time limit on acquisition for classification as a bulk buyer, extending the applicability of the bulk buyer provisions indefinitely.***

HOA Elections

1. HOAs are required to hold elections at its annual meeting or as provided in its governing documents.
2. An election is not required unless more candidates are nominated than vacancies exist.
3. CS/CS/CS/HB 841 provides that ***if an election is not required because there are fewer or equal candidates than vacancies, and nominations from the floor are not required, then write-in nominations are not permitted.***

HOA Amendments and Rental Restrictions

1. CS/CS/CS/HB 841 revised the process for amending HOA governing documents to require ***an amendment to the governing documents contain the full text of the provision to be amended, with the new language underlined and proposed deleted language stricken with hyphens.***
2. However, ***an association may reference the governing documents in the event an amendment is too extensive*** and the inclusion of the full text with stricken and underlined text would hinder understanding of the proposed amendment.
3. ***An amendment to a governing document enacted after July 1, 2018, prohibiting a parcel owner from renting the home or otherwise altering or limiting an owner's ability to rent only applies to a parcel owner who acquires title to the home after the effective date of the amendment*** or to a parcel owner who consents to the amendment.
4. For purposes of this provision, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when the beneficial ownership of the parcel does not change.
5. Meeting notices are to be mailed or delivered to the ***parcel owner's mailing address on the property appraiser's website*** in the county where the parcel is located, ***or with the owner's consent, electronically transmitted*** in a manner authorized by the association.

Condominium Conflicts of Interest

1. Previous law had provided that a condominium may not hire an attorney who represents the condominium's management company.
2. CS/CS/CS/HB 841 ***repeals the provision that a condominium may not hire an attorney who represents the condominium's management company.***

CS/HB 631: Possession of Real Property

Effective July 1, 2018

HB 631, which Gov. Rick Scott signed into law in March, "blocks local governments from adopting ordinances to allow continued public entry to privately owned beaches even when property owners may want to block off their land" and restrict public use.

The state generally owns the property under navigable waters up to the mean high water mark and upland landowners own the land down to that mark. ***The general right of the public at large to possess and use certain dry sand areas for recreational purposes is an example of "customary use."*** Where a customary use of a dry sand area is shown, the property owner may not use traditional causes of action like ejectment, forcible entry, or trespass to stop such public use of the private land.

The Florida Supreme Court has ruled that ***if a private property owner tries to put up a fence or calls police to eject beachgoers who have been using the beach for years, the local government can cite "customary use" to allow the public to remain*** — but only if such use has been "ancient, reasonable, without interruption and free from dispute."

It has been a constant battle in some parts of Florida, with property owners in some cases going so far as to try to rope off parts of the beachfront to keep people away. Three counties — St. Johns, Volusia and Walton — have passed local ordinances barring property owners from taking such action.

The new law restricts any such ordinances enacted after Jan. 1, 2016. St. John's and Volusia were passed before that date and are left standing. The only beach access ordinance being abolished is the one passed last year in the Panhandle's Walton County.

A governmental entity seeking to establish the customary use of privately-owned lands is required to:

- ***adopt, at a public hearing, a formal notice of intent,***
- ***provide notice to affected parcel owners, and***
- ***file a complaint with the circuit court to determine whether the land is subject to the customary use doctrine.***

The law won't automatically cut off public access to the Florida beaches that front private property, but it will make it much more difficult for local governments to regulate access the way they see fit. Now cities and counties will have to get a judge's approval before enacting such an ordinance, and to do that, they'll have to sue private landowners.

HB 617, Relating to Covenants and Restrictions

Effective Date: October 1, 2018

HB 617 created Chapter 712, the "Marketable Record Title Act." It expands the types of covenants and restrictions that may be preserved by residential and nonresidential property owners' associations. It includes a new "summary process" for property owners' associations to preserve covenants and restrictions and also allows communities without a mandatory homeowners' association to revitalize covenants and restrictions that have expired

HB 29, Relating to Military and Veterans Affairs

Effective July 1, 2018

Upon request within six months after release from active duty, a board regulated under general law may accept periods of training, study, apprenticeship, or practical experience in the Florida National Guard or the United States Armed Forces Reserves for those members whose training or study were interrupted when they were ordered into active duty. The board must determine if the training, study, or practical experience is substantially the same as the standard and type required under the laws of this state.

Also, a military member who engages in his/her profession in the private sector for profit during active duty and for a period of two years after discharge from active duty, must comply with all renewal provisions ***except remitting a fee for the license renewal.*** The bill also provides for the waiver of the license renewal fee for the spouse when present in the state because of a members' active duty and for a surviving spouse of a member who at the time of death was serving on active duty and died within two years preceding the date of the renewal.

Announcement from the DBPR: Paperless Licensing, effective 06/07/2018

The Department of Business and Professional Regulation is excited to announce an advancement in how we license community association managers and community association management firms in the State of Florida.

The Department has implemented an innovative way to expedite the licensing process for community association managers and community association management firms. The Department will no longer be mailing licenses upon issuance, as licensees can now print their licenses by logging into their secure online account with the Department. This will allow new licensees to enter the work force at least 7 to 10 business days early, whereas, in the past, they would have to wait for the license to arrive in the mail. In addition to new licenses, this process will allow licensees to renew online and print the license at their convenience, as well as print duplicate licenses as needed without paying a fee.

