

A Review of the 2021 Legislation Affecting Community Associations



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2021-99 Condominiums

- If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner may not provide rights of subrogation against the condominium association. This will help prevent the rash of unfounded negligence claims against associations we've seen filed by at least one insurance company operating in Florida but may unfortunately result in increased premiums if subrogation against the culpable party in a loss is no longer possible.
- Bids for work to be performed must be maintained for at least 1 year after receipt of the bid. Previously bids had to be maintained from the inception of the association.

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- A renter would have the right to inspect and copy only the declaration of condominium and the association's bylaws and rules. Previously, a renter was only allowed to inspect and copy the Bylaws and rules.
- An association may not adopt rules requiring a member to demonstrate any purpose or state any reason for a record inspection.
- For condominiums with 150 or more units, an association, in lieu of posting copies of certain required documents to a website, may make those documents available through an application that can be downloaded on a mobile device.
- Condominium associations may extinguish a discriminatory restriction in the governing documents (e.g., a provision which restricts ownership, occupancy or use of real property on the basis of race, color, national origin, religion, gender or disability) by board vote alone.

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- Confirms that board term limits are intended to be prospective with the service start date being on or after July 1, 2018.
- Transfer fees will be increased to not exceed \$150.00 (from the current \$100.00 cap) and may be adjusted every 5 years in accordance with the Consumer Price Index (CPI).
- Petitioners in recall disputes may now choose to either go directly to court with the dispute or to arbitration.
- Contracts with a service provider that is owned or operated by a board member (or certain relatives with a financial relationship) are no longer prohibited.
- The board may not prohibit the installation of a natural gas fuel station, and unit owners installing such stations must comply with all federal, state, and local laws.

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- A board may make available, install, or operate an electric vehicle charging station or a natural gas fuel station on the common elements or association property and establish the charges or the manner of payments by the unit owners, residents, or guests who use such stations. The station installation, repair, or maintenance will not constitute a material alteration or substantial addition to the common elements or association property.
- Labor performed on or materials furnished for the installation of a natural gas fuel station or electric vehicle charging station may not be the basis for filing a lien against the association.

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- A challenge to a plan of termination may be handled via arbitration or mediation of the dispute.
- This new law would allow the parties in a condominium dispute to now choose either presuit mediation (which has been used in HOA disputes) or arbitration through the Division of Condominiums, Timeshares and Mobile Homes (“Division”).
- For election and recall disputes, mediation will not be an option, and such disputes must be arbitrated by the Division or filed in court.

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- The board can use emergency powers in response to damage or injury caused by or anticipated in connection with any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. This language was expanded to include emergencies caused by contagion.
- The board may exercise its emergency powers to conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable.
- Such notice may be given in any practicable manner, including publication, radio, US mail, the internet, electronic transmission, public service announcements, and conspicuous posting on the condominium property or association property or any other means the board deems reasonable under the circumstances.

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- Based upon advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine any portion of the condominium property or association property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety or welfare of such persons.
- The board may mitigate further damage, injury or contagion, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus or contagion. This section may be used to justify heightened sanitation protocols.
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- he board can contract, on behalf of any unit owner or owners, for items or services which are necessary to prevent further injury, contagion, or damage, including, without limitation, sanitizing the condominium property or association property.

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- Under the emergency powers provisions in 718.1265, F.S., an association may NOT prohibit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and common elements and limited common elements appurtenant thereto for if such access is needed to facilitate the sale, lease or other transfer of title to the unit.

2021-99

- Specifies that fines are due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee or invitee of the unit owner. Previously, fines were due 5 days after the date of the Fining Committee meeting at which the fine was approved.
- Multicondominium associations may adopt consolidated or combined declaration of condominium but cannot merge the condominiums or change the legal descriptions of the condominium parcels, unless accomplished in accordance with law. This change applies to associations existing on July 1, 2021.
- Expands the Division's jurisdiction to now investigate complaints related to the maintenance of association records.

2021-99 Cooperatives

- The definition of “Unit” is amended to state that “an interest in a unit is an interest in real property”.
- The association may not require a member to demonstrate any purpose or state any reason in order to inspect the official records.
- A board or committee member participating in a meeting via telephone, real-time video conferencing, or similar real-time electronic or video communication counts towards a quorum and such member may vote as if physically present.

2021-99

- Cooperative associations may extinguish a discriminatory restriction in their governing documents by Board vote alone. See the definition of a discriminatory restriction in the Condominium section above.
- The same changes to the emergency powers language discussed above in Chapter 718 are also set forth in Chapter 719, F.S.

2021-99 Homeowners' Association

- The definition of Governing Documents will no longer include Rules and Regulations.
- In addition to the authorized means of providing notice of a board meeting, the association may also adopt a rule for posting the meeting notice and agenda on the association's website or an application and must send an electronic notice including the hyperlink to the website or application to members whose e-mail addresses are included in the association's official records.
- The association must maintain for at least 1 year after the date of the election, vote, or meeting the ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to the parcel owners' voting.

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- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents are records not accessible to members or parcel owners.
- Reserves will only be considered mandatory if they are approved by a majority of the total voting interests or if the declaration, articles or bylaws obligate the developer to create reserves.
- If the budget does not provide for reserve accounts under Section 720.303(6)(d), or the declaration, articles or bylaws do not obligate the developer to create reserves, and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided or are not fully funded, each financial report for the preceding year must contain certain disclosure language in conspicuous type.
- The Petitioner in a recall dispute may choose to go directly to court or pursue arbitration with the Division.

2021-99

- Specifies that fines are due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any tenant, licensee or invitee of the parcel owner.
- Removes the requirement that notices required by Section 720.306, Florida Statutes, be sent to the address on property appraiser's website-notices only have to be sent to the mailing addresses found in the official records of the association.

2021-99

- Transports over the grandfathering of rental rights which has been in the Condominium Act for many years to the HOA Act. Any governing documents or amendments that prohibit or regulate rental agreements will apply only to owners who acquire title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing document or amendment. Existing owners who vote “no” or don’t vote on the rental restriction will not be governed by same. This restriction, however, does NOT apply to amendments or governing documents which seek to prohibit or regulate rentals for terms of less than six (6) months or to limit parcel rentals to no more than three (3) times per year. The grandfathering of rental rights does not apply to associations with 15 or fewer parcels.

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For purposes of determining the applicability of a rental amendment or rental restriction, a change in ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes the parcel owner.

- The Petitioner in an election or recall dispute now has the option to file for arbitration or file in court. These disputes are not eligible for presuit mediation.
- Clarifies that turnover of control of an HOA will be triggered three months after 90 percent of the parcels in all phase of the community that will ultimately be operated by the homeowners' association have been conveyed to members other than the developer.
- HOA boards may extinguish a discriminatory restriction in their governing documents by board vote alone. See the definition of a discriminatory restriction in the Condominium section above.
- The same changes to the emergency powers language discussed above in Chapters 718 and 719 are also being added to Chapter 720, F.S.

2021-91

The Florida Legislature has revised the procedures for collecting delinquent assessments. [Senate Bill 56](#) has revised Sections 718.116 and 718.121 for condominiums; 719.108 for cooperatives; and, Section 720.3085 for homeowners' associations. With these changes, the collection procedures for all of these types of communities will be substantially the same. The new laws are effective July 1, 2021.

2021-91

The new provisions have revised the time for the notices sent by the association attorney for condominiums and cooperatives to 45 days for both the pre-lien first letter and the post-lien notice of intent to foreclose. (Homeowners' associations were already at 45 days.)

The new language provides the addition of a new 30 day notice requirement by associations before they may refer a matter to the association attorney for collection and recover the attorney's fees involved. This written notice is required to be mailed by first class mail to the address of the owner on file with the association. If the address on file is not the unit or parcel address, a copy must be sent there as well. The association is also required to keep in its records a sworn affidavit attesting to the mailing. The new statute contains a form for that notice which is required to be substantially followed.

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If the association wishes to change the method of delivery of an invoice, a written notice must be delivered to the owner not less than 30 days before the change of delivery method will be implemented.

The notice must be sent by first class mail to the address on file with the association. If the address on file is not the unit or parcel address, a copy must be sent there as well. In addition to the notice requirement, the owner must “affirmatively acknowledge” his or her understanding of the new delivery method. The written acknowledgment can be sent electronically or by mail, and must be maintained in the Official Records (although it is not available for inspection by other owners). Without this acknowledgment, the association may not change the method of delivery.

The language in the statute does not include a time frame for the owner to provide that acknowledgment or offer any remedy to the association if none is forthcoming.

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The End 

Thank you for being here.

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