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2018 Legislative Update
Community Association Legislation

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Legislative Session Summary

- The Condominium Association Act – Chapter 718
- The Cooperative Association Act – Chapter 719
- The Homeowners Association Act – Chapter 720
- The Vacation Plan and Timesharing Act – Chapter 721
- The Fictitious Name Act – Chapter 865.09
- Insurance Rates and Contracts – Chapter 627



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HB 653 (6/14/17)

Condominium Associations – Chapter 718

- **Fire Sprinkler Retro-Fit** (*clarifies existing law*):
 - Buildings under 75' **DO NOT** need to retro-fit with a sprinkler systems or an ELSS.
 - Buildings over 75' can opt-out with a 2/3 membership vote.
 - Condos that do not retro fit any common area buildings over 3 stories must mark the building with a sign approved by the State Fire Marshall.
 - Sign must warn fire personnel.



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HB 653 (cont...)

- **Bulk Buyers (Distressed Condominium Relief Act):**
 - Removes the time limitation to identify “bulk buyers” under the Act.
- **Official Records Requests:**
 - Increases the response time period from 5 working days to 10 working days.
 - Bids for materials, equipment or services are official records.
 - Electronic voting records must be maintained as official records of the association.
 - A tenant has the right to inspect and copy the bylaws and rules.
- **Material Alterations:**
 - If docs are silent, 75% vote must be obtained **PRIOR TO** alteration.



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HB 653 (cont...)

- **E-Notice of Board Meetings:**

- Website notice is in addition to traditional notice requirements.
- Email notice to members so authorizing must provide a hyperlink to notice posted to website.
 - Such email notice must be provided under the same time requirements as notice for a meeting of the membership.



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HB 653 (cont...)

- **Director Conduct Resulting in Criminal Penalties:**

- No “kickbacks”!
- Don’t forge a ballot or voting certificate!
- Don’t embezzle association funds!
- Don’t destroy official records!
- During any criminal investigation on the above:
 - Officer or director is removed from office.
 - Officer or director may not be appointed to any board position.
 - If no finding of guilt, officer or director is reinstated to position.



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HB 653 (cont...)

- **Conflict of Interest:**

- Association may not hire the attorney who represents the management company.
- A board member, manager, or management company may not purchase a unit at an association's foreclosure or take title by deed in lieu of foreclosure.



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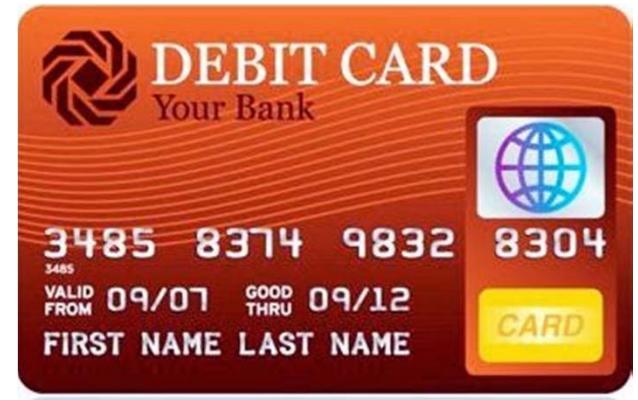
HB 653 (cont...)

- **Debt Cards:**

- Can't use them.

- **Financial Reporting:**

- Must provide a copy within 5-days of receipt of written request.
 - Removes "50 units or fewer" provision.
 - Removes 3-year waiver prohibition.
 - Association may not waive reporting requirements where it fails to comply with Division order to provide a financial report.



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HB 653 (cont...)

- **Mandatory Websites:**

- By July 1, 2018, all condominiums operating more than 150 units **MUST** have websites on which certain official documents **MUST** be posted.
- Documents that must be posted to association website:
 - Governing documents and any amendments;
 - Rules & Regulations;
 - Any contracts between the association and any 3rd party;
 - Summaries of bids for materials, equipment or services (**1 year**);
 - Annual and proposed budgets and financial reports;
 - Director certification;
 - Any contract or document regarding any conflict of interest;
 - Any **NOTICES** that must be posted 14-days before any scheduled meeting;
 - Any documents to be considered at a noticed meeting.



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HB 653 (cont...)

- Website must be wholly owned and operated by the association or operated by a 3rd party from whom the association leases, rents or otherwise obtains the website from.
- Website must be secure and not be accessible by the general public.
- Do not post protected materials...if you do post protected materials, make sure they are appropriately redacted.



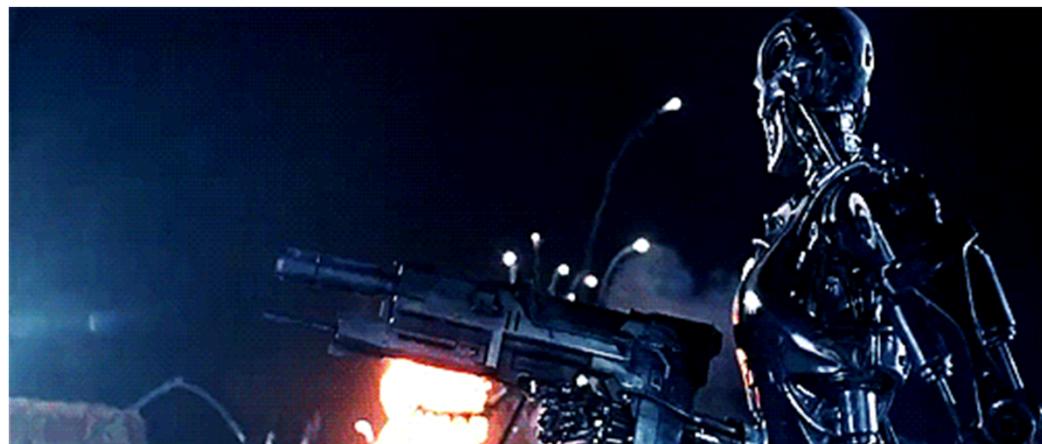
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HB 653 (cont...)

- **Termination:**

- Reduces disapproval percentage from 10% to 5% of the total voting interests.
- Reduces “*bulk owner*” identification from 50% to 25%.
- Division has 45-days to notify termination applicant of any deficiencies in plan.
- Provides additional reasons for termination.
- If 5% reject the plan, another plan may not be proposed for 24 months.



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HB 653 (cont...)

Cooperative Associations – Chapter 719

- **Fire Sprinkler Retro-Fit** (*clarifies existing law*):
 - Buildings under 75' **DO NOT** need to retro-fit with a sprinkler systems or an ELSS.
 - Buildings over 75' can opt-out with a 2/3 membership vote.
 - Co-ops that do not retro fit any common area buildings over 3 stories must mark the building with a sign approved by the State Fire Marshall.
 - Sign must warn fire personnel.



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HB 653 (cont...)

- **Bulk Buyers (Distressed Condominium Relief Act):**

- Removes the time limitation to identify “bulk buyers” under the Act.

- **Official Records Requests:**

- Increases the response time period from 5 working days to 10 working days.
 - Electronic voting records must be maintained as official records of the Association.

- **Director Communications:**

- Board members may communicate, but may not vote, via. email.



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HB 653 (cont...)

- **E-Notice of Board Meetings:**

- Website notice is in addition to traditional notice requirements.
- Email notice to members so authorizing must provide a hyperlink to notice posted to website.
 - Such email notice must be provided under the same time requirements as notice for a meeting of the membership.

- **Board Members:**

- Co-owners may not serve on board at the same time.
- Can communicate, but not vote, by email.
- If a director is 90-days delinquent he/she abandons their seat.

- **Bulk Cable Contracts:**

- If provided in the bylaws, association may enter into such contracts.



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HB 653 (cont...)

Homeowners Associations – Chapter 720

- **Email and Fax Notice of Board Meetings:**

➤ Board may provide notice through email or fax to those members so authorizing through written consent to Association.

- **Director Communications:**

➤ Board members may communicate, but may not vote, via. email.



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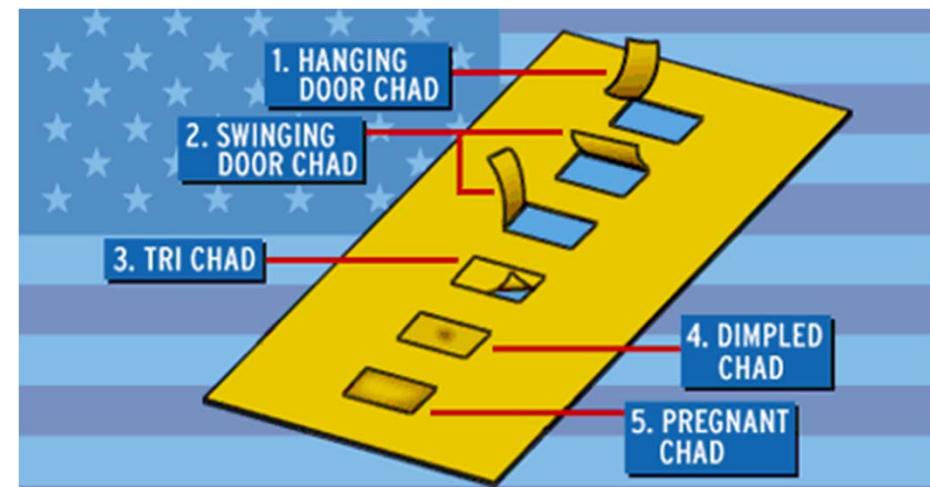
HB 653 (cont...)

- **Elections:**

- Write-in nominations are not permitted where there are equal or less candidates than seats and nominations from the floor are not a requirement. Appointment occur regardless of quorum.

- **Partial Payments:**

- Acceptance of partial payments does not act as an accord and satisfaction regardless of any written restrictive covenant.



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HB 1237 (6/14/17)

Condominium Associations – Chapter 718

- Conduct Resulting in Criminal Penalties:**

- No “kickbacks”!
- Don’t forge a ballot or voting certificate!
- Don’t embezzle association funds!
- Don’t destroy official records!
- During any criminal investigation on the above:
 - Officer or director is removed from office.
 - Officer or director may not be appointed to any board position.
 - If no finding of guilt, officer or director is reinstated to position.



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HB 1237 (cont...)

- **Conflict of Interest:**

- Officer, Director and their relatives must disclose anything that may be construed as a conflict of interest.
- “Relative” means up to 3rd degree of relation through blood or marriage.
- Without prior notice, there is a presumption of conflict if:
 - An officer, director or relative enters into a contract for the purchase of goods or services.
 - An officer or director holds any interest in any business entity that conducts business with the association or would like to enter into a contract with the association.
- Timeshares are exempt.
- Association may not hire the attorney who represents the management company.



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HB 1237 (cont...)

- **Conflict of Interest (cont...):**

- Where conflict is present:

- Transaction must be specifically listed on meeting agenda.
 - All documents must be attached to meeting agenda.
 - All documents must be provided to unit owners.
 - Conflicted director may make presentation to the Board, but may not participate in vote and must leave the room while vote is being considered.
 - If contract is not approved, conflicted director must provide written notice of intent to not pursue matter further or be removed from office.

- Failure to so notify results in automatic removal from office.

- Failure to properly notice renders any contract void.



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HB 1237 (cont...)

- **Debit Cards:**

- Can't use them!

- **Official Records:**

- Bids for materials, equipment or services.
 - A tenant has the right to inspect and copy the bylaws and rules.
 - By 7/1/18 association must post digital copies of some of its official records on its website.

- **Voting Rights:**

- Court appointed receiver may not exercise the voting right of any unit owner.



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HB 1237 (cont...)

- **Suspension of Voting Rights:**

- May only suspend an owners rights where they are more than 90-days delinquent and the debt is more than \$1000.
- Proof of the delinquency must be provided to the owner 30-days before the suspension can take effect.

- **Arbitration and Arbitrators:**

- Division may certify non-employee attorneys to serve as arbitrators.
- Non-employee arbitrator certification is good for 1 year.
- Provide minimum requirements for certification.
- Provides time frame requirements for rendering arbitration decisions.



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HB 1237 (cont...)

- **Recalls:**

- Recalled director must turn over all association documents within 10 business days after the recall vote.
- Removes the “certify” or “not certify” requirement.

- **Term Limits:**

- A board member may not serve for more than 4 consecutive 2-year terms...*unless*,
 - Approved by a vote of 2/3 of the membership, or
 - Where there are not enough eligible candidates to fill the seats at the time of the election.



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HB 1237 (cont...)

- **Financial Reporting:**

- Must provide a copy within 5-days of receipt of written request.
- Removes “50 units or fewer” provision.
- Removes 3-year waiver prohibition.
- Association may not waive reporting requirements where it fails to comply with Division order to provide a financial report.
- Association must provide a report to the Division which lists all of the association's financial institutions at which it maintains an account.



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HB 1237 (*cont...*)

- **Mandatory Websites:**

- By July 1, 2018, all condominiums operating more than 150 units **MUST** have websites on which certain official documents **MUST** be posted.
- Documents that must be posted to association website:
 - Governing documents and any amendments;
 - Rules & Regulations;
 - Any contracts between the association and any 3rd party;
 - Summaries of bids for materials, equipment or services (**1 year**);
 - Annual and proposed budgets and financial reports;
 - Director certification;
 - Any contract or document regarding any conflict of interest;
 - Any **NOTICES**, which must be posted 14-days before any scheduled meeting;
 - Any documents to be considered at a noticed meeting.



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HB 1237 (cont...)

- Website must be wholly owned and operated by the association or operated by a 3rd party from whom the association leases, rents or otherwise obtains the website from.
- Website must be secured and not be accessible by the general public.
- Do not post protected materials...if you do post protected materials, make sure they are appropriately redacted.



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SB 398

Condominium Associations – Chapter 718

Cooperative Associations – Chapter 719

Homeowners Associations – Chapter 720

- **Estoppel Certificates:**

- Must be issued within 10 business days as opposed to “15 days” of request.
- Association may request payment when estoppel is prepared.
 - *“Pay at Closing” wording was stricken!*
- Estoppel request info must be on Association’s Website.
- Estoppels are good for 30-days if hand delivered or emailed.



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SB 398 (cont...)

- Estoppels are good for 35-days if mailed.
- Fee may not be charged for an amended certificate.
 - “Amended certificate” is identified as one where additional information becomes available or to correct a mistake in prior estoppel.
 - Amended estoppel restarts the effective period.
- \$250 MAX fee if there is no delinquency.
- \$350 MAX fee if there is no delinquency and estoppel is provided within 3 days.
- Additional fee of up to \$150 may be added if there is a delinquency.
- If it is not delivered within 10 business days, fee may not be charged.
- These fees are to be updated based upon CPI every 5 years.



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SB 398 (*cont...*)

➤ Estoppel must provide the following information (*statutory form*):

- Date of issuance.
- Name of Owner.
- Unit or Parcel address.
- Parking space identified (if applicable).
- Attorney's name and contact info if account is delinquent.
- Amount of fee for prep and delivery.
- Name of party requesting estoppel.
- Assessment amount, frequency, date through which paid, date on which next installment is due.
- Itemization of additional assessments, special assessments or other monies due.
- Capital contribution, resale, transfer, or application fees due.
- Any open violation related to the owner, unit, or parcel.
- Statement of whether governing docs require association approval of sale.
- List of contact info for other associations owner belongs to (*master, sub, CDD, etc.*).
- Contact info for insurance maintained.
- Signature of officer or agent.



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HB 6027 (6/14/17)

Condominium Associations – Chapter 718

Cooperative Associations – Chapter 719

Homeowners Associations – Chapter 720

- **Financial Reporting:**

- Removes the 50 unit "exemption" relative to financial reporting.
- Strikes 3 year waiver restriction (Condo & Coop).



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SB 1520 (6/5/17)

Condominium Associations – Chapter 718

- **Termination:**

- Reduces disapproval percentage from 10% to 5% of the total voting interests.
- Reduces “*bulk owner*” identification from 50% to 25%.
- Division has 45-days to notify termination applicant of any deficiencies in plan.
- Provides additional reasons for termination.
- Additional DBPR position and salary is authorized.



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SB 818

Timeshares – Chapter 721

- **Termination**

- Where plan is managed by a separate owners association, termination of plan does not affect corp. status of underlying not for profit association.
 - Underlying association serves as “termination trustee”.

- **Plans**

- Provides a method through which older timeshare plans may be continued.



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HB 169

Fictitious Names – Chapter 865.09

- Requires those doing business in Florida under a name other than their legal name to register with the Division of Corporations of the Department of State.
 - Must be in “active” status to obtain a fictitious name
 - Registration is good for 5 years



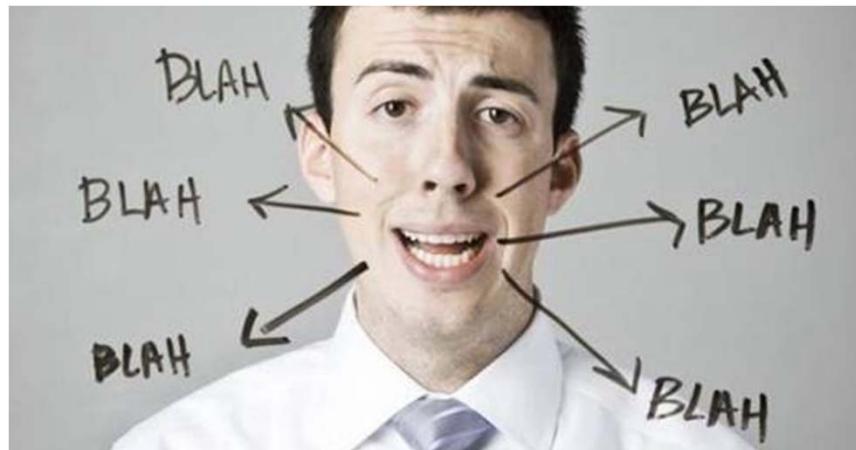
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HB 805

Insurance Policy Transfers – Chapter 627.4133

- Provides that personal and commercial residential lines may be transferred to another authorized insurer upon expiration.
- Provides qualifications for which policies the section does not apply to.



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CASE LAW UPDATE

- **Santa Monica Beach POA v. Acord**, --- So.3d ---, 2017 WL 1534769 (Fla. 1st DCA 2017)
 - VRBO Issue – Short term rental is NOT a “commercial use”.
- **City of Pensacola v. Seville Harbour, Inc.**, --- So.3d ---, 2017 WL 2374399 (Fla. 1st DCA 2017)
 - An assignment of lease where assignee retains an easement interest in leased property is a “sublease” not an assignment of the entire interest in such land.
- **MDTR, LLC v. Deutsche Bank National Trust Company, et al.**, --- So.3d ---, 2017 WL 2491627 (Fla. 5th DCA 2017)
 - Plaintiff’s filing of affidavit in response to show cause motion in foreclosure matter was sufficient to stop entry of accelerated final judgment.



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CASE LAW (cont...)

- **Villages of Avignon Comm. Dev. Dist. V. Burton**, 215 So.3d 127 (Fla. 2nd DCA 2017)
 - CDD assessment liens share the same priority as County Tax Liens.
- **City of Riviera Beach v. J&B Motel Corp.**, 213 So.3d 1102 (Fla. 4th DCA 2017)
 - Code Enforcement Liens have a 20-year statute of limitations.
- **Evergreen Communities, Inc. v. Palafox Preserve HOA**, 213 So.3d 1127 (Fla. 1st DCA 2017)
 - Affidavit filed by Developer created material issue of fact related to whether language in declaration restricted use of property to only commercial uses.



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CASE LAW (cont...)

- **Gonzalez v. Int. Park Condo. I Assoc., Inc.**, --- So. 3d ---, 2017 WL 1494004 (Fla. 3rd DCA 2017)
 - Award of “prevailing party fees” for Association was not proper as the relief obtained by the owner was more substantial.
- **Bona Vista Condo. Assoc., Inc. v. FNS6, LLC**, 194 So.3d 490 (Fla. 3rd DCA 2016)
 - Association cannot go after purchaser in bank foreclosure for assessments that came due while association possessed unit.
- **Dwork v. Executive Estates of Boynton Beach HOA**, --- So.3d ---, 2017 WL 2264635 (Fla. 4th DCA 2017)
 - Strict compliance with the 14-day hearing notice requirement is necessary for HOA to issue fine for a covenant violation.



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THANK YOU

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