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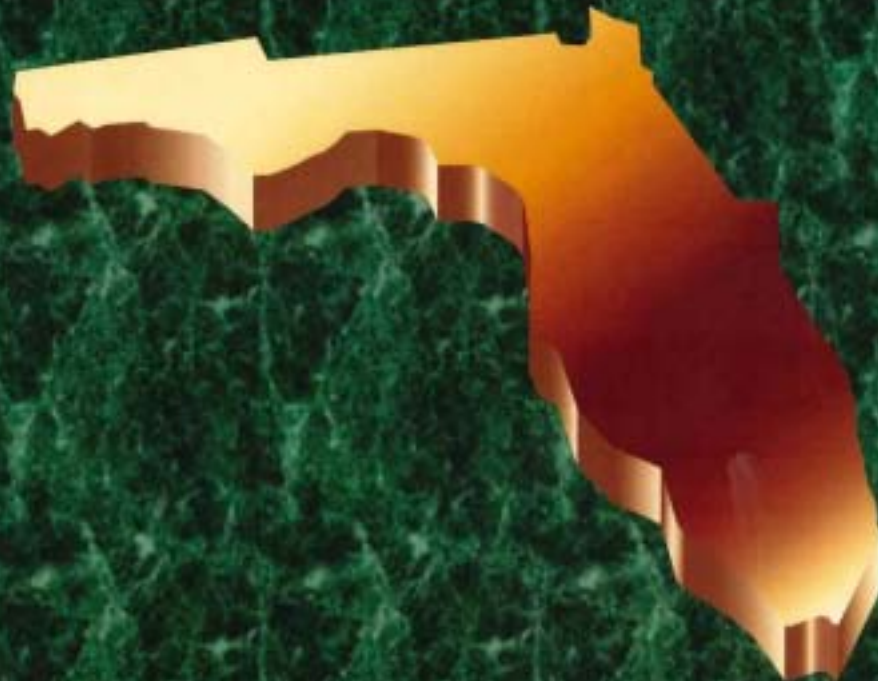
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## **2013 Legislative Update for Condominium Associations**

What You Need to Know About the Changes to the Statutes



***Working with Community Associations***





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## Summary of Statutory Amendments Relating to Condominium Associations

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### Formation of Condominiums

- **Amends §718.104(2)** to allow condominium units to come into existence regardless of other requirements or restrictions in a declaration, as long as units are described in Declaration or phase amendment.
- **Amends §718.105(4)(c)** to extend the amount of time that a clerk may hold a sum of money before notifying the registered agent of a condominium association that the sum is still available and the purpose for which it was deposited from 3 years to 5 years (relates to recording of Declaration).
- **Amends §718.110(10)** to change the requirements relating to the circumstances under which a declaration of condominium or other documents are effective to create a condominium.
  - If an action to determine whether the declaration or another condominium document **complies with the mandatory requirements for the formation of a condominium is not brought within 3 years of the recording of the certificate of a surveyor and mapper pursuant to §718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, the declaration and other documents will effectively create a condominium**, as of the date the declaration was recorded, regardless of whether the documents substantially comply with the mandatory requirements of law.

### Land/Recreation Leases

- **Amends §718.111(8)** to remove the requirement that purchase of any land or recreation lease be approved by the voting interest as is required by the declaration.

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- Instead, such purchase is subject to the same approval as in §718.114 for the acquisition of leaseholds (e.g., majority of total voting interest or as authorized by Declaration).
- **Amends §718.111(11)** to revise reconstruction costs for which a unit owner is responsible (note: to now also include any portions of the condominium property for which the unit owner is responsible under subsection j) and authorize the costs to be collected as assessments [per §718.111(6)].
- **Amends §718.111(11)(j)** to require an association to repair or replace as a common expense certain condominium property damaged by an insurable event.
- Seems more relevant in boat dock/marina condominiums.

### **Official Records**

- **Amends §718.111(12)(c)** to require an association to allow a member or the member's representative to use certain portable devices to make electronic copies of association records.
  - Including smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs.
- **Amends §718.111(12)(c)** to prohibit the association from charging the member or representative for using the portable device.
- Consider how to track documents scanned by owners.
- Implication is that it may increase costs; consider use of attorneys for production.

### **Member Directory**

- **Amends §718.111(12)(c)(5)** to authorize a condominium association to print and distribute a member directory under certain conditions.
  - Containing the name, parcel address, and telephone number of each parcel owner.

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- An owner may exclude his or her telephone number from the directory by so requesting in writing to the association.
  - Used to have to opt-in; now opt-out.

### **Financial Statements**

- **Amends §718.111(13)** to revise requirements for the preparation of an association's annual financial statement.
  - An association with total annual revenues of \$150,000 (note: previously \$100,000) or more, but less than \$300,000 (note: previously \$200,000), shall prepare compiled financial statements.
  - An association with total annual revenues of at least \$300,000 (note: previously \$200,000), but less than \$500,000 (note: previously \$400,000), shall prepare reviewed financial statements.
  - An association with total annual revenues of \$500,000 (note: previously \$400,000) or more shall prepare audited financial statements.
  - An association with total annual revenues of less than \$150,000 (note: previously \$100,000) shall prepare a report of cash receipts and expenditures.
  - An association that operates fewer than 50 units (note: previously 75), regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

### **Pre-Turnover Financial Reporting**

- **Amends §718.111(13)(d)** to revise the conditions under which unit owners may vote on issues related to the preparation of financial reports.
  - If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year

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after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to §718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first.

### **Board Terms**

- **Amends §718.112(2)(d)(2)** to revise terms of members of an association's board of administrators and revising eligibility criteria for candidates.
  - If the bylaws or articles of incorporation permit terms of no more than 2 years, the association board members may serve 2-year terms.
    - Removes that terms must be staggered.
    - Removes the requirement that this be approved by a majority of the total voting interests.
    - Previously not required to be staggered, now may be staggered.
    - Could conceivably have condominium documents allow skipping of election for one year.
  - A person who is delinquent in the payment of any monetary obligation due to the association (note: previously only fees, fines, or special or regular assessments) is not eligible to be a candidate for board membership and may not be listed on the ballot.
    - Law used to let owners run for Board even if they couldn't serve on the Board; now precluded from running for Board.

### **Unit Owner Meetings**

- **Amends §718.112(2)(d)(3)** to revise condominium unit owner meeting notice requirements (closed circuit TV may be used in lieu of posted notice).
  - An alternate notice method can be provided. However, significant requirements are involved.

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### **Elections**

- **Amends §718.112(2)(d)(4)** to be consistent with timeshare act to provide for nonapplicability to associations governing timeshare condominiums of certain provisions relating to elections of board members (proxies and written ballots/voting machines).
- **Amends §718.112(2)(d)(4)(b)** to revise recordkeeping requirements of a condominium association board.
  - The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer.
    - Now requires if Board member serves longer than 5 years, have to keep it for that term.
- **Amends §718.112(2)(d)(4)(c)** to require that any challenge to the election process must be commenced within 60 days after the election results are announced.
  - Anyone contesting election needs to raise issue within 60 days.

### **Pre-Turnover Reserves**

- **Amends §718.112(2)(f)(2)** to revise the conditions under which a developer may vote to waive or reduce the funding of reserves.
  - Prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to §718.30, the developer may vote to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to §718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

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### **Recall**

- **Amends §718.112(2)(j)(5)** to provide requirements for challenging the failure of a board to duly notice and hold the required board meeting or to file the required petition for a recall.
  - If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to §718.1255 challenging the board's failure to act (allows recall to go through other form of arbitration).
    - There is now a right to petition division regarding effectiveness of recall. We are uncertain whether it must be filed to ensure recall is effective.
  - If filed, the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period.
  - The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.
- **Amends §718.112(2)(j)(7)** to provide requirements for recalled board members to challenge the recall.
  - A board member who has been recalled may file a petition pursuant to §718.1255 challenging the validity of the recall (also allows recall to go through other form of arbitration).
  - The petition must be filed within 60 days after the recall is deemed certified.
    - Sets up a statutory procedure for an individual Board member to challenge recall, even where the Board opts not to.
- **Amends §718.112(2)(j)(8)** to prohibit the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation from accepting recall petitions for filing under certain circumstances.
  - When there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled; or
  - When 60 or fewer days have elapsed since the election of the board member sought to be recalled (certain dates when a recall cannot be filed).

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- In effect, no recall can be served within 60 days before or after election.

### **Hurricane Protection**

- **Amends §718.113(5)** to provide requirements for a condominium association board relating to the installation of hurricane shutters, impact glass, code-compliant windows or doors, and other types of code-compliant hurricane protection under certain circumstances (doors and other types is new language).
  - Expands type of protection.
- **Amends §718.115** to conform provisions to changes made by the act regarding installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection (see above – new language).

### **Developer Use Interests**

- **Amends §718.114** to revise the conditions under which a developer may acquire leaseholds, memberships, or other possessory or use interests.
  - Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months of the date of the recording of the certificate of a surveyor and mapper pursuant to §718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, are a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into such agreements except upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in §718.113.

### **Turnover**

- **Amends §718.301(1)** to revise the conditions under which unit owners other than the developer are entitled to elect at least a majority of the members of a board of administration.

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- Including seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to §718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; (if operating more than one condominium); (if operating a phase condominium) including seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to §718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.
- **Amends §718.301(1)** to revise the requirements related to the documents that the developer must deliver to the Association.
- Adds a copy of the certificate of a surveyor and mapper recorded pursuant to §718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurred first.

### **Limitations – Suspension of Common Element Use**

- **Amends §718.303(3)(a)** to revise provisions relating to imposing remedies against a noncompliant or delinquent condominium unit owner or member.
- Expands areas where Association cannot suspend use rights.
  - The association may not suspend use of common elements intended to be used only by one unit, common elements needed to access a unit, utility services provided to the unit, parking spaces, or elevators.

### **Developer Amendments – Phase Condominium**

- **Amends §718.403** to revise the conditions under which a developer may amend a declaration of condominium governing a phase condominium.
  - All phases must be added to the condominium within 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to §718.104(4)(e) or the recording of an

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instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, unless the unit owners vote to approve an amendment extending the 7-year period pursuant to paragraph (b) of this section.

- An amendment to extend the 7-year period shall require the approval of the owners necessary to amend the declaration of condominium pursuant to §718.110(1)(a).
- An extension of the 7-year period may be submitted for approval only during the last 3 years of the 7-year period.
- An amendment must describe the time period within which all phases must be added to the condominium and such time period may not exceed 10 years from the date of the recording of the certificate of a surveyor and mapper pursuant to §78.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

### **Phase Condominiums**

- **Amends §718.403(1)** to provide requirements for the completion of phase condominiums.

All phases must be added within 7 years after the date of recording of the original declaration of condominium submitting the initial phase to condominium ownership unless an amendment extending the 7-year period is approved by the unit owners within last 3 years prior.

- An amendment to extend the 7-year period requires the approval of the owners necessary to amend the declaration of condominium consistent with § 718.110(1)(a). [Note: 2/3 of all units or as Declaration provides.] An extension of the 7-year period may be submitted for approval only during the last 3 years of the 7-year period.
- An amendment must describe the period within which all phases must be added to the condominium and such period may not exceed 10 years after the date of recording the original declaration of condominium submitting the initial phase to condominium ownership.

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- Such an amendment is not considered a material alteration or change in proportionate share in common expenses or common surplus.

### **Secondary Condominiums**

Provides a statutory mechanism for the “condominium within a condominium” and how.

- **Creates §718.406(1)** to provide for definitions regarding condominiums created within condominium parcels.
  - “Primary condominium” means any condominium that is not a secondary condominium and contains one or more subdivided parcels.
  - “Primary condominium association” means any entity that operates a primary condominium.
  - “Primary condominium declaration” means the instrument or instruments by which a primary condominium is created, as they are from time to time amended.
  - “Secondary condominium” means one or more condominium parcels that have been submitted to condominium ownership pursuant to a secondary condominium declaration.
  - “Secondary condominium association” means any entity responsible for the operation of a secondary condominium.
  - “Secondary condominium declaration” means the instrument or instruments by which a secondary condominium is created, as they are from time to time amended.
  - “Secondary unit” means a unit that is part of a secondary condominium.
  - “Subdivided parcel” means a condominium parcel in a primary condominium that has been submitted to condominium ownership pursuant to a secondary condominium declaration.
- **Creates §718.406(2)** to provide requirements for condominiums created within condominium parcels (related to relationship between primary and secondary condominium associations).

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- **Creates §718.406(3)** to provide for the establishment of primary condominium and secondary condominium units upon written consent of majority of condominium parcels (assumed by in primary condominium).
- **Creates §718.406(4)** to provide requirements for association declarations in both primary and secondary condominiums.
- **Creates §718.406(5)** to provide that an owner of a secondary unit is subject to both the primary condominium declaration and the secondary condominium declaration.
- **Creates §718.406(6)** to authorize a primary condominium association to provide insurance for common elements and other improvements within the secondary condominium if the primary condominium declaration permits the primary condominium association to provide such insurance, in lieu of such insurance being provided by the secondary condominium association.
- **Creates §718.406(7)** to authorize a primary condominium association to adopt hurricane shutter and hurricane protection specifications.
- **Creates §718.406(8)** to provide requirements relating to assessments and foreclosure actions between primary and secondary condominium associations.
- **Creates §718.406(9)** to provide for resolution of conflicts between primary condominium declarations and secondary condominium declarations.
  - Primary condominium declaration controls.
- **Creates §718.406(10)** to provide requirements relating to common expenses due to primary condominium association.
  - All common expenses due to the primary condominium association with respect to a subdivided parcel are a common expense of the secondary condominium association and shall be collected by the secondary condominium association from its members and paid to the primary condominium association.

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### **Eminent Domain Proceedings**

- **Amends §74.051** to revise the distribution of interest on certain deposits held by clerks of court in eminent domain proceedings.
  - Ninety percent of the interest earned shall be allocated in accordance with the ultimate ownership in the deposit (rather than to the petitioner).

### **Garnishment**

- **Amends §77.04** to authorize an employee or agent of a business entity to answer a writ of garnishment on behalf of the entity.
- **Amends §77.041(1)** to revise “Notice to Defendant” provided by the clerk of court in a garnishment proceeding:
  - to provide that a defendant in a garnishment proceeding may provide notice of a garnishment exemption and request for hearing to the plaintiff’s or the garnishee’s attorney.
  - to extend the time allowed for the plaintiff or the plaintiff’s attorney to respond to the defendant’s claim of exemption and request for hearing.
  - to provide response procedures of the clerk of court and the plaintiff’s attorney when the plaintiff’s attorney is served with a notice of garnishment exemption and request for hearing.
  - to require the defendant to certify under oath and penalty of perjury that he or she provided notice of the garnishment exemption claim and request for hearing to the plaintiff, the garnishee, or their respective attorneys in order to obtain a hearing.

### **Landlords and Tenants**

- **Amends §83.48** to provide that the right to attorney fees may not be waived in a lease agreement.

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- **Amends §83.49(2)** to revise and provide landlord disclosure requirements with respect to security deposits and advance rent.
- **Amends §83.49(3)** to provide requirements for the disbursement of advance rents.
- **Amends §83.49(7)** to provide a limited rebuttable presumption of receipt of security deposits.
  - Presumption is limited to one month's rent.
- **Amends §83.49** to provide for applicability of changes made by the act to certain disclosure requirements.
  - For leases entered into on or before December 31, 2013, a landlord may give notice that contained the disclosure required in the changes made by this act.
  - The disclosure required by this act is only required for all leases entered into under this part on or after January 1, 2014.
- **Amends §83.50** to remove certain landlord disclosure requirements relating to fire protection.
- **Amends §83.51** to revise a landlord's obligation to maintain a premises with respect to screens.
  - The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement.
- **Amends §83.54** to provide that enforcement of a right or duty under the Florida Residential Landlord and Tenant Act by civil action does not preclude prosecution of a criminal offense.
- **Amends §83.56(2)(b)** to revise procedures for the termination of a rental agreement by a landlord.
  - If a noncompliance recurs within 12 months after initial notice, an eviction action may commence without delivering a subsequent notice.
- **Amends §83.56(4)** to revise notice procedures.
  - Notice requirements may not be waived in lease.

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- **Amends §83.56(5)(a)** to provide that a landlord does not waive the right to terminate the rental agreement or to bring a civil action for noncompliance by accepting partial rent, subject to certain notice.
- **Amends §83.56(5)(a)** to require a landlord to follow specified procedures if the landlord accepts partial rent after posting the notice of nonpayment.
  - Provide tenant with receipt stating date and amount received and agreed upon date and balance of rent due before filing an action for possession.
  - Place amount of partial rent accepted from tenant in registry of the court upon filing action for possession.
  - Post a new 3-day notice reflecting new amount due.
- **Amends §83.56(5)(c)** to provide that the period to institute an action before an exemption involving rent subsidies is waived begins upon actual knowledge.
- **Amends §83.575(1)** to revise requirements for the termination of a tenancy having a specified duration to provide for reciprocal notice provisions in rental agreements.
- **Amends §83.58 and §83.59** to conform cross references.
- **Amends §83.60** to provide that a landlord must be given an opportunity to cure a deficiency in any notice or pleadings before dismissal of an eviction action.
- **Amends §83.62(1)** to revise procedures for the restoration of possession to a landlord to provide that weekends and holidays do not stay the 24-hour notice period.
- **Amends §83.63** to conform a cross-reference.
- **Amends §83.64** to provide examples of conduct for which the landlord may not retaliate.
  - Including the tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

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- The tenant has exercised his or her rights under local, state, or federal fair housing laws.

**Expert Testimony**

- To require the courts of this state to interpret and apply the principles of expert testimony in conformity with specified US Supreme Court decisions.
  - Daubert v Merrell Dow Pharmaceuticals, Inc., 209 U.S. 579 (1993)
  - General Electric Co. v Joiner, 522 U.S. 136 (1997)
  - Kumho Tire Co. v Carmichael, 526 U.S. 137 (1999)
- To subject pure opinion testimony to such requirement.
  - Marsh v. Valyou, 977 So.2d 543 (Fla. 2007)
- **Amends §90.702** to provide that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances.
  - If the testimony is based upon sufficient facts or data;
  - If the testimony is the product of reliable principles and methods; and
  - If the witness has applied the principles and methods reliably to the facts of the case.
- **Amends §90.704** to provide that facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data.

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**Mortgage Foreclosures**

- **Amends §95.11** to:
  - revise the limitations period for commencing an action to enforce a claim of a deficiency judgment after a foreclosure action (one year after certificate is issued or mortgagee accepts a deed in lieu);
  - provide for applicability to actions commenced on or actions after July 1, 2013; and
  - provide a time limitation for commencing any action that would not have been barred by five year statute pre-existing (must be commenced within 5 years of action accrual or by July 1, 2014, whichever occurs first).
- **Creates §702.015** to:
  - specify required contents of a complaint seeking to foreclosure on certain types of residential properties with respect to the authority of the plaintiff to foreclosure on the notice and the location of the note (note, variety of new requirements);
  - authorize sanctions against plaintiffs who fail to comply with complaint requirements; and
  - provide for non-applicability to proceedings involving timeshare interests.
- **Creates §702.036** to:
  - require a court to treat a collateral attack on a final judgment of foreclosure on a mortgage as a claim for monetary damages under certain circumstances (e.g., cannot “undo” foreclosure);
  - prohibit such court from granting certain relief affecting title to the foreclosed property; and
  - provide for non-limitations to the rights of certain persons to seek specified types of relief or pursue claims against the foreclosed property under certain circumstances.
- **Amends §702.06** to limit the amount of a deficiency judgment.
  - Short sale – difference between outstanding debt and fair market value.

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- Otherwise, judgment amount and fair market value.
- **Amends §702.10** to:
  - revise the class of persons authorized to move for expedited foreclosure to include lienholders;
  - define the term “lienholder” – includes Condominium, Cooperative, and Homeowners Association;
  - provide requirements and procedures with respect to an order directed to defendants to show cause why a final judgment of foreclosure should not be entered;
  - provide that certain failures by a defendant to make certain filings or to make certain appearances may have specified legal consequences (e.g., entry of final judgment);
  - require the court to enter a final judgment of foreclosure and order a foreclosure sale under certain circumstances (e.g., failure to file affidavits and papers);
  - revise a restriction on a mortgagee to request a court to order a mortgagor defendant to make payments or to vacate the premises during an action to foreclose on residential property; and
  - provide a presumption regarding owner-occupied residential property.
- **Creates §702.11** to:
  - provide requirements for reasonable means of providing adequate protection for lost, destroyed, or stolen notes under §673.3091, F.S., in mortgage foreclosures of certain residential properties; and
  - provide for liability of persons who wrongly claim to be holders of or entitled to enforce a lost, stolen, or destroyed note and cause the mortgage secured thereby to be foreclosed in certain circumstances.
  - To provide legislative findings – applies to all mortgages.
  - To provide for applicability:

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- New complaint requirements – applicable after July 1, 2013.
- Expedited Order to Show Cause procedure – applicable immediately.
- To request the Florida Supreme Court to adopt rules and forms to expedite foreclosure proceedings.

**Limitations Relating to Deeds and Wills**

- **Amends §95.231** to provide:
  - for limitations of actions when a deed or will is on record (5 years);
  - that a person claiming an interest in real property affected by amendments made in the act (above) has until October 1, 2014 to file a claim or defense in court to determine the validity of the instrument; and
  - that if a claim or defense is filed by October 1, 2014, the validity of the instrument is determined without regard to these amendments.

**Clerks of the Court**

- **Amends §101.151** to clarify when the office title “Clerk of the Circuit Court and Comptroller” may be used.
- **Amends §119.0714(2)(f)** to require that certain requests for maintenance of a public record exemption specify certain information, including the document type, name, identification number, and page number of the court record that contains the exempt information.
- **Amends §119.0714(3)(f)** to require that certain requests for maintenance of a public record exemption specify certain information, including the document type, name, identification number, and page number of the official record that contains the exempt information.

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- **Amends §194.032** to require that the property appraiser, rather than the clerk, provide the property record card to a petitioner regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser.
- **Amends §28.13** to provide requirements for the storage of papers and electronic filings and requiring that they be stamped with the date and time of submission.
- **Amends §28.222** to provide that the county recorder shall remove recorded court documents from the Official Records pursuant to a sealing or expunction order.
- **Amends §28.24** to delete provisions exempting specified persons from service fees.
- **Amends §28.244** to increase the threshold amount for automatic repayment of overpayments from \$5 to \$10.
- **Amends §28.345** to require that the clerk provide access to public records without charge to certain persons, including state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, and private court appointed counsel paid by the state, and authorized staff working on their behalf, subject to a limitation and an exception.
- **Amends §28.345** to authorize the clerk to provide public records in an electronic format under certain circumstances.
- **Amends §938.30** to provide that the state is not required to pay fees to enforce judgment for costs and fines.

### **Rental of Homestead Property**

- **Amends §196.061** to revise the criteria under which rental of such property is allowed for tax exemption purposes and not considered abandoned.
  - Unless the property is rented for more than 30 days per calendar year.

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### **Managers**

- **Amends §468.436** to provide for grounds for disciplinary actions against community association managers who violate any provision of Chapter 718, 719, or 720, during the course of performing community association management services pursuant to a contract with a community association as defined in §468.431(1).
- Managers may not be able to raise defenses of manager that they were following Board orders.

### **Design Professionals**

- **Amends §558.002** to redefine the term “design professional” so as to include geologists.
- **Creates §558.0035** to:
  - **Amends §718.115** to conform provisions to changes made by the act regarding installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection (see above – new language).
  - specify conditions under which a design professional (architect, interior designer, landscape architect, engineer, geologist or surveyor) employed by a business entity or an agent of the business entity may not be held individually liable for damages resulting from negligence occurring within the course and scope of a professional services contract; and
  - define the term “business entity” so as to mean any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in Florida.

### **Real and Property Lien Conveyances**

- **Amends §689.02(2)** to delete a requirement that blank spaces be included on a warranty deed to allow for entry of social security numbers of grantees on the deed.

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- **Amends §695.01(3)** to provide that certain types of governmental or quasi-governmental liens on real property (improvement, service, fine, or penalty, other than lien for taxes, non-ad valorem, or special assessments, or utilities) are valid and effectual against certain creditors or purchasers only if recorded in a specified manner (see below).
  - Only if lien is recorded in the official records of the county in which the property is located.
  - Recorded notice must contain the name of the owner of record, a description or address of the property, and the tax or parcel identification number applicable to the property as of the date of recording.

### **Powers of Attorney**

- **Amends §709.2105** to authorize a notary public to sign a principal's name on a power of attorney under certain circumstances.
- **Amends §709.2106** to provide that an original power of attorney may be required under certain circumstances and provide that an original power of attorney may be recorded in the official records for a fee.
- **Amends §709.2120** to require a third person who rejects a power of attorney for certain reasons to state the reason for the rejection in writing.
- **Amends §709.2202** to authorize a notary to sign the principal's name to documents, other than the power of attorney, under certain circumstances.

### **Filing False Documents Against Real or Personal Property**

- **Creates §817.535(1)** to define the terms "file," "filer," "instrument," "official record," and "public officer or employee," as they relate to the filing of false documents against real or personal property.

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- **Creates §817.535(2)** to prohibit a person from filing or causing to be filed, with intent to defraud or harass another, a document relating to the ownership, transfer, or encumbrance of, or claim against, real or personal property, or any interest in real or personal property.
- **Creates §817.535(3)** to provide for criminal penalties – felony for varying degrees.
- **Creates §817.535(4) and (5)** to establish reclassified penalties for persons who commit the specified offenses while incarcerated in a jail or participating in a community correctional program and when the victim of the offense is a public officer or employee or incurs financial losses under certain circumstances (raises the degree by one level).
- **Creates §817.535(7)** to authorize the court to issue an injunction.
- **Creates §817.535(8)** to:
  - authorize the court to seal specified public or private records under certain circumstances (e.g., if fraudulent);
  - provide for actual and punitive damages;
  - provide that the prevailing party is entitled to costs and reasonable attorneys' fees;
  - provide duties of the custodian of the official record; and
  - provide applicability.
- **Creates §817.535(9)** to require that attorney fees be paid to the government agency that provides legal representation under certain circumstances.
- **Amends §843.0855(1)(a)** to revise the definition of “legal process” to mean a document or order issued by a court or filed or recorded with an official court of this state or the United States or with any official governmental entity of this state or the United States for the purpose of directing a person to appear before a court or tribunal, or to perform or refrain from performing a specified act. “Legal process” includes, but is not limited to, a summons, lien, complaint, warrant, injunction, writ, notice, pleading, subpoena, or order.
- **Amends §843.0855(1)(c)** to provide that the term “public officer or employee” has the same meaning as provided in §817.535.

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- **Amends §843.0855(2)** to revise the criminal penalties for criminal actions under color of law or through the use of simulated legal process.
- **Amends §921.0022** to revise provisions of the offense severity chart of the Criminal Punishment Code to conform to changes made by the act and to provide severability.

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**If you should have any questions regarding the laws that were passed in 2013 or any other issue, please feel free to call us at the office nearest to you.**

**Orlando Office: Maitland (407) 875-2655**

**Melbourne Office: Suntree/Viera (321) 751-3449**

**For all other areas: (888) 793-1486**

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# About Clayton & McCulloh P. A.

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Clayton & McCulloh has represented hundreds of community associations (and currently represents over 650+ associations) in the Central Florida area since the firm was established in 1987. Our 10,000 square foot main office is in the Maitland Center in Maitland (Greater Orlando area) and houses our ever increasing staff of attorneys, paralegals, legal assistants, and staff members with an extension office in Winter Park. We also have a Melbourne Branch Office in the Suntree/Viera area.

The firm is a full-service community association law firm handling all types of matters for community associations including, but not limited to: covenant enforcement, condemnation/eminent domain, collection of assessments, lien and mortgage foreclosures, turnover or transition from developer control, construction defects, drafting and negotiating contracts, real estate closings, drafting and interpreting Association documents, enforcing Association documents, civil litigation, purchasing and financing of existing and proposed projects, drainage/retention pond matters, legal opinion letters, auditor response letters, and a variety of administrative matters before the Department of Business & Professional Regulations, Department of Administrative Hearings, and local governments.

There is no mandatory retainer! You can hire us on an "as needed" basis paying for only the services you request or you can select one of our Annual Legal Packages that have been designed to save your Association additional legal fees. We feature over twenty fixed fee services for such items as our Document Organization Service, Covenant Enforcement, Collections and Foreclosures, Annual Meeting Packages, and Annual Legal Packages (some include costs and some do not). Additionally, we have a wide variety of complimentary services to offer our clients including (but not limited to) two different newsletters, assistance with practical issues facing directors, and complimentary management company, insurance, accountant, and other vendor referral services.

We have an unwavering commitment to quality, cost effectiveness, and innovation for our clients. We endeavor to treat each client as if he or she were the only one. Whether you are an Association client, individual client, a corporation or partnership, or a Developer client listed on the New York Stock Exchange, we have the ability and are willing to create special services and/or customize our existing services for you. At Clayton & McCulloh, we strive to be on the forefront of the law and its emerging trends.

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## UPCOMING LEGAL UPDATE SEMINARS

2:00 - 4:00 p.m. for Orlando & Vero Beach Seminars

### **Orlando**

Thursday, October 17  
Sheraton at Maitland

### **Vero Beach**

Thursday, October 24  
America's Best Value Inn

### **Melbourne**

**As Guest Speakers at BCAM's Legal Update Program**

Thursday, October 10  
Holiday Inn Conference Center  
Time to be Announced

*For more information, please visit our web-site or call our Director of Public Relations at any of our offices.*