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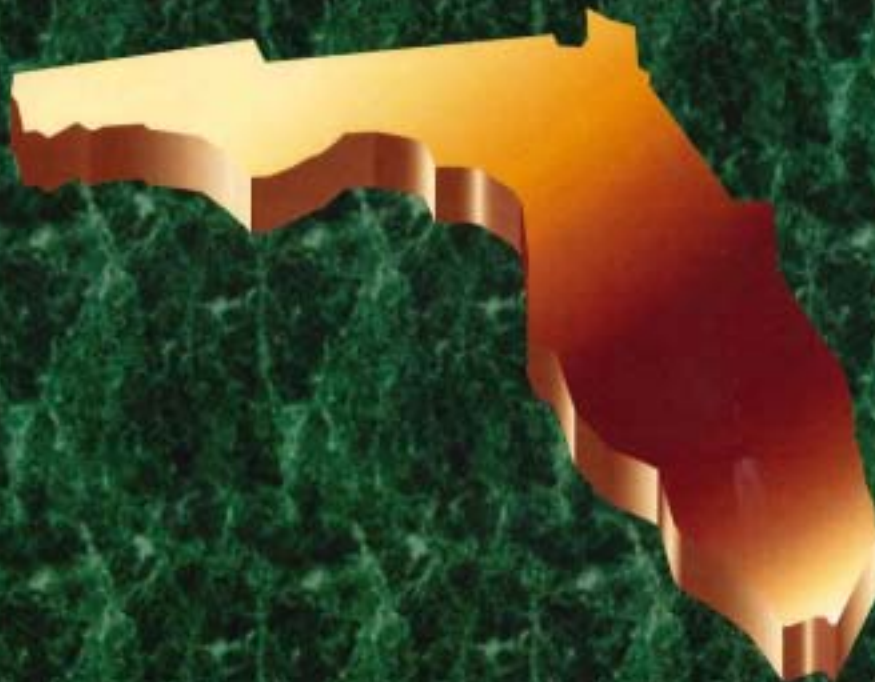
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2013 Legislative Update for Co-Operatives

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 Co-Operative Associations

Official Records/Member Directory

- **Amends §719.104(2)(b)** to provide requirements for the maintenance of the official records of the association.
 - The official records of the association must be maintained within the state for at least 7 years.
 - Records shall be made available within 45 miles of the cooperative property or within the county in which the cooperative property is located.
- **Amends §719.104(2)(b)** to authorize records to be made available to unit owners in an electronic format.
 - Association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request.
- **Amends §719.104(2)(c)** to provide a civil penalty for the denial of a request to view records.
 - Failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to records.
 - This may include management.
- **Amends §719.104(2)(c)** to require an association to allow a member or the member's authorized representative to use certain portable devices to make electronic copies of association records.

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- Including smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs.
- **Amends §719.104(2)(c)** to prohibit the association from charging the member or authorized representative for using the portable device.
- **Amends §719.104(2)(c)** to authorize a cooperative association to print and distribute a member directory under certain conditions.
 - May include name, parcel address, and telephone number of each parcel.
 - An owner may exclude his or her telephone number from the directory by so requesting in writing to the association.
- **Amends §719.104(2)(c)** to specify additional records that are not accessible to unit owners.
 - Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege.
 - Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records (does not including written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.
 - Social security numbers, driver license number, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements.
 - Electronic security measures that are used by the association to safeguard data, including passwords.

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- The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Amendments/Mortgage Consent

- **Amends §719.1055(7)** to revise provisions relating to the amendment of cooperative documents (see below).
- **Amends §719.1055(7)** to provide legislative findings and a finding of compelling state interest.
 - The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of an association to approve amendments to the association's cooperative documents through legal means.
 - For mortgages recorded on or after July 1, 2013, any provision in the association's co-op documents that requires the consent and joinder of some or all mortgagees to amend the documents is enforceable only as to amendments to the association's cooperative documents that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclosure its lien or that otherwise materially affect the rights and interests of the mortgagees.
 - For mortgages recorded before July 1, 2013, any existing provisions in the association's documents requiring mortgagee consent are enforceable.
- **Amends §719.1055(7)(c)** to provide criteria for mortgagee consent or joinder to an amendment.
 - Association may rely upon public records to identify holders of outstanding mortgages.
 - Association may use address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage.
- **Amends §719.1055(7)(d)** addressing notice regarding proposed amendments to mortgagees (where documents require consent).

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- Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing is deemed to have consented to the amendment (negative approval).
 - There is risk that this does not have retroactive applicability.
- **Amends §719.1055(7)(e)** to provide criteria for notification to mortgagees.
 - For those amendments requiring mortgagee consent on or after July 1, 2013, in the event mortgagee consent shall be evidenced by affidavit of the association recorded in the public records of the county in which the declaration is recorded.
- **Amends §719.1055(7)(f)** to provide for mortgagee voiding of certain amendments.
 - Any amendment adopted without the required consent of a mortgagee is voidable only by a mortgagee who was entitled to notice and an opportunity to consent.
 - Action to void is subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in paragraph (a) and 5 years after the date of recordation of the certificate of amendment for all other amendments.
 - Applies to all mortgages, regardless of the date of recordation of the mortgage.

Board Meetings

- **Amends §719.106(1)(c)** to provide that board or committee meetings where personnel matters will be discussed are not required to be open to the unit owners.

Shareholder Meetings

- **Amends §719.106(1)(d)(1)(a)** to require challenges to an election be commenced within 60 days after the election results are announced.
- **Amends §719.106(1)(d)(1)(b)** to specify certification or educational requirements for a newly elected or appointed cooperative board director.

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- Within 90 days after being elected or appointed to the board, each new director shall certify in writing to the secretary of the association that he or she has read the association's bylaws, articles of incorporation, proprietary lease, and current written policies that he or she will work to uphold such documents and policies to the best of his or her ability, and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members.
- Within 90 days, in lieu of written certification, may submit a certificate of having satisfactorily completed the educational curriculum administered by an education provider as approved by the division pursuant to the requirements established in chapter 718 within 1 year before or 90 days after the date of election or appointment. **Note: This may require 719 Association (Co-Op) Board members to attend 718 (condominium) classes.**
- Educational certificate is valid and does not have to be resubmitted as long as director serves on the board without interruption (similar to current condominium requirements).

Recall

- **Amends §719.106(1)(f)(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.
 - Petition for arbitration must be filed within 60 days after the expiration of the applicable 5-full-business-day-period.
 - Review of petition is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.
- **Amends §719.106(1)(f)(7)** to provide requirements for recalled board members to challenge the recall.
 - Petition for arbitration must be filed within 60 days after the recall is deemed certified.
- **Amends §719.106(1)(f)(8)** to prohibit the division from accepting recall petitions for filing under certain circumstances.

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- 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 not elapsed since the election of the board member sought to be recalled.

Suspension of Common Elements

- **Amends §719.303(3)** to revise provisions relating to imposing remedies against a noncompliant or delinquent cooperative unit owner or member.
 - Suspensions not apply to limited common elements intended to be used only by one unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

Cooperative Education

- **Amends §719.501(1)(k)** to authorize the division to provide training and educational programs for cooperative association board members and unit owners.
 - May include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

Clerks of the Court

- **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.

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- **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 §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.
- **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 §938.30** to provide that the state is not required to pay fees to enforce judgment for costs and fines.

Eminent Domain Proceedings

- **Amends §74.051** to revise the distribution of interest on certain deposits held by clerks of court in eminent domain proceedings.

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- 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.
- **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.

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- **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.
- **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.

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

Expert Testimony

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- 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.

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

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- 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.
 - 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;

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- 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:
 - 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.

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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.

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.

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 s. 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.

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- **Creates §558.0035** to:
 - 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 Property Liens and 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.
- **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.

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- **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.
- **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 attorney's fees;
 - provide duties of the custodian of the official record; and
 - provide applicability.

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- **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 s. 817.535.
- **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.

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About Clayton & McCulloh P. A.

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.

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

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