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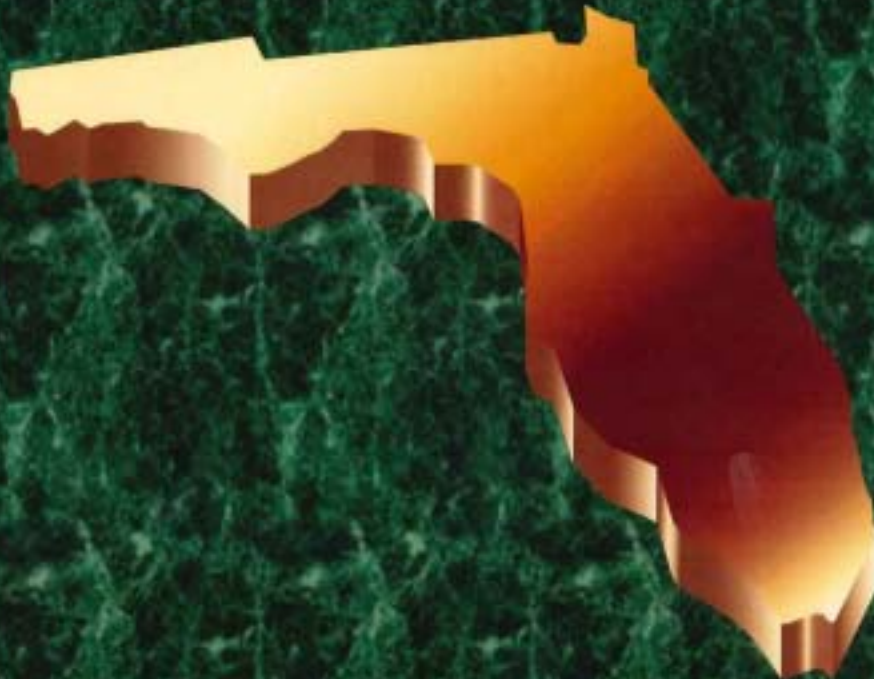
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## **2013 Legislative Update for Timeshare Associations**

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 Timeshare Associations

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### Elections

- **Amends §718.112(2)(d)** to specify that certain provisions relating to condominium board elections do not apply to timeshare condominiums.
  - The following does not apply to an association governing a timeshare condominium: The members of the board shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general election(s) to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter.

### Definitions

- **Amends §721.05** to provide definitions for “resale transfer agreement” and “timeshare interest transfer services.”
  - “Resale transfer agreement” means a contract or other agreement between a person offering timeshare interest transfer services and a consumer timeshare reseller, in which the person offering timeshare interest transfer services agrees to provide such services as described in §721.17(3).
  - “Timeshare interest transfer services” means any good or service relating to an offer or agreement to transfer ownership of a consumer resale timeshare interest, or assistance with or a promise of assistance in connection with the transfer of ownership of a consumer resale timeshare interest, as described in §721.17(3). The term does not include resale advertising services as provided in this chapter.

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**Public Offering Statement**

- **Amends §721.07** to revise the formula requirements for calculating reserves for accommodations and facilities of real property timeshare plans. (Now relates to total deferred maintenance expense or total estimated life and replacement cost. Based on separate or pool analysis.)

**Assessments for Common Elements**

- **Amends §721.15(7)(a)** to require the successor in interest to be listed as the owner of the timeshare interest under certain conditions.
- **Amends §721.15(7)(b)** to require an estoppel certificate in certain timeshare resale transfer transactions.

**Transfer of Interest**

- **Amends §721.17(3)(a)** to prohibit certain activities related to offering timeshare interest transfer services (no transfer agreement not compliant with Statute).
- **Amends §721.17(3)(b)** to require resale transfer agreements to contain specified information.
- **Amends §721.17(3)(c)** to require the establishment of an escrow account for certain purposes pursuant to timeshare resale transfer service.
- **Amends §721.17(3)(c)(1)** to provide requirements and duties of the escrow agent.
- **Amends §721.17(3)(d)** to provide penalties for failure to comply with provisions concerning the establishment of an escrow account, deposits funds into escrow, withdrawal therefrom, and maintenance of records.
- **Amends §721.17(3)(h)-(i)** to provide for applicability.
  - Do not apply to resale brokers, attorneys.

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**Foreclosures**

- **Amends §721.82** to revise definitions applicable to the Timeshare Lien Foreclosure Act.
- **Amends §721.855** to revise procedure for the trustee foreclosure of assessment liens (no longer requires a title search).
- **Amends §721.855(2)** to revise conditions under which a trustee may sell a foreclosed encumbered timeshare interest (must not include a title search).
- **Amends §721.855(5)(c)** to revise and provide notice requirements for foreclosure.
- **Amends §721.855(5)(d)-(g)** to provide for perfection of notice for foreclosure.
- **Amends §721.855(5)(h)** to provide requirements for a notice of lis pendens.
- **Amends §721.855(7)** to provide sale requirements.
- **Amends §721.855(14)(b)** to provide exceptions to actions for failure to follow the trustee foreclosure procedure (good faith efforts).
- **Amends §721.856** to revise procedure for the trustee foreclosure of mortgage liens.
- **Amends §721.856(4)** to revise conditions under which a trustee may sell a foreclosed encumbered timeshare interest (need title search).
- **Amends §721.856(5)(c)** to revise and provide notice requirements
- **Amends §721.856(5)(d)-(g)** to provide for perfection of notice.
- **Amends §721.856(5)(h)** to provide requirements for a notice of lis pendens.
- **Amends §721.856(7)(b)** to provide sale requirements.
- **Amends §721.856(13)** to provide exceptions for actions for failure to follow the trustee foreclosure procedure.

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**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.
- **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.
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- **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.
  - 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.

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**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.
- **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.

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- 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.
- **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.

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- **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**

- 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.

**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.

**Design Professionals**

- **Amends §558.002** to redefine the term “design professional” so as to include geologists.
- **Creates §558.0035** to:

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- 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.
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**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.
    - Expedited Order to Show Cause procedure – applicable immediately.
  - To request the Florida Supreme Court to adopt rules and forms to expedite foreclosure proceedings.

**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.**

**Our offices and the respective numbers are on the cover.**

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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.*