

Client Alert

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2017 Legislative Changes to the Florida Condominium Act

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On June 26, 2017, Governor Scott approved House Bill 1237, changing or amending a number of statutes regulating condominium associations.

These statutes address, among other topics, conflicts of interest and access to official records, changes substantially based on a final report by a Miami-Dade County grand jury, titled *Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action*. The Miami grand jury found that existing statutes do not sufficiently restrict self-dealing by members of the boards of condominiums or sufficiently deter other forms of misconduct, such as election fraud. Additionally, the Miami grand jury found that the existing statutes are insufficient to force condominium associations to make their official records available to unit owners in a timely manner.

The following is a summary of House Bill 1237 by topic:

Conflicts of Interest

- An association may not hire an attorney who represents the management company.
 - Members of the board, the manager, and the management company are prohibited from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or from taking title to the unit pursuant to a deed in lieu of foreclosure (this provision does not apply to timeshare condominiums).
 - Associations are prohibited from employing or contracting with service providers that are owned or operated by a board member or any person who has a financial relationship with a board member, or a close relative of a board member or officer (this provision does not apply to timeshare condominiums). (Note: Ownership is defined as owning more than 1% of equity shares.)
- A party contracting to provide maintenance or management services to an association, or a board member of such party, is prohibited from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or from taking title to the unit pursuant to a deed in lieu of foreclosure (this provision does not apply to timeshare condominiums).
 - If a party contracting to provide maintenance or management services to an association, or an officer or board member of such party, owns 50 percent or more of the units in the condominium, the contract with the party providing maintenance or management services may be cancelled by a majority vote of the other unit owners (this provision does not apply to timeshare condominiums).
 - An officer or director of an association, and their relatives, must disclose to the board any activity that may be construed as a conflict of interest (this provision does not apply to timeshare condominiums). A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:
 - a director, officer, or relative of a director or officer, enters into a contract for goods or services with the association; or
 - a director, officer, or relative of a director or officer, holds an interest in a business entity that conducts business with the association or proposes to enter into a contract with the association.
 - Any proposed activity that is a conflict of interest must be properly noticed and put to a board vote.
 - The proposed activity must be listed on the meeting agenda and all contracts and transactional documents related to the proposed activity must be attached to the meeting agenda.

- If the board votes against the proposed activity, the director, officer, or relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this provision, the officer or director is deemed removed from office.
- A contract entered into between a director, officer, or relative of the director or officer, that is not properly disclosed as a conflict of interest or potential conflict of interest as required, is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association. This provision does not apply to timeshare condominiums.

Official Records

- An association must maintain bids for materials, equipment, or services as part of its official records.
- A renter of a unit has a right to inspect and copy the association's bylaws and rules.
- By July 1, 2018, an association with 150 or more units that does not manage timeshare units must post copies of specifically identified official records on its website, but the records must be inaccessible to the general public.

Financial Reports

- Condominiums with less than 50 units must now comply with financial reporting requirements previously applicable only to larger condominiums.
- An association must provide a unit owner with the most recent financial report within 5 business days after the receipt of a written request for the report.
- A unit owner may give notice to the Division of Condominiums, Timeshares, and Mobile Homes (the "Division") of the Department of Business and Professional Regulation (the "DBPR") that an association has failed to mail or hand deliver to the unit owner a copy of the most recent financial statement after a request.
 - The Division must then give the association notice that it must comply with the request within 5 business days.
 - An association that fails to comply with the division's request may not waive the financial reporting requirement provided in the statute.
- A financial report received by the Division must be maintained and a copy provided to an association member upon request.

- An association must provide an annual report to the DBPR listing the financial institutions at which it maintains accounts, and a copy of the report may be obtained by a member upon request.

Term Limits and Recalls

- A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancies. This provision does not apply to timeshare or non-residential condominiums.
- Boards are no longer required to certify a recall, but they are still required to hold a meeting within 5 full business days after receipt of a written recall agreement or within 5 full business days after adjournment of a recall meeting.
- Boards are no longer required to initiate arbitration proceedings with the DBPR where the Board does not certify a recall.
- After an effective recall, the recalled board member shall turn over to the board any and all records and property of the association in the board member's possession within 10 business days after the recall vote.

Criminal Penalties

- An officer, director, or manager may not solicit, offer to accept, or accept a kickback from any person providing or proposing to provide goods or services to the association. If this provision is violated, it could result in criminal penalties.
- Forgery of a ballot envelope or voting certificate used in an election is punishable as provided in § 831.01, Florida Statutes.
- Theft or embezzlement of funds of an association is punishable as provided in § 812.014, Florida Statutes.
- The destruction of or refusal to allow inspection or copying of an official record in furtherance of any crime is punishable as tampering with physical evidence as provided in § 918.13, Florida Statutes, or as obstruction of justice as provided in Chapter 843, Florida Statutes.
- An officer or director charged by information or indictment with a crime referenced above must be removed from office and the vacancy filled until the end of the officer's or director's period of suspension, or the end of his or her term of office, whichever occurs first.

- If a criminal charge is pending against an officer or director, he or she may not be appointed or elected to a position as an officer or a director and may not have access to the official records of any association, except pursuant to a court order. If the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

Arbitration of Disputes

- The Division may certify attorneys as arbitrators if the attorney has:
 - been a member in good standing of The Florida Bar for at least 5 years; and
 - mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application; or
 - mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application; or
 - attained board certification in real estate law or condominium and planned development law from The Florida Bar.
- Arbitrator certification is valid for 1 year.
- An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed.
- The DBPR may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute.
- Upon determination by the Division that a dispute exists and that the petition substantially meets the requirements of the arbitration statutes, and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition upon all respondents.
 - The arbitrator must conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.
 - The arbitration decision must be rendered within 30 days of the hearing.
 - The arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

Voting Rights

- Voting rights may only be suspended if the monetary obligation is more than 90 days delinquent and totals more than \$1,000. The association must provide proof of such monetary obligation to the unit owner or member 30 days before such suspension takes effect.
- A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association.

Debit Cards

- An association and its officers, directors, employees, and agents are prohibited from using a debit card issued in the name of the association, or which is billed directly to the association, for the payment of any association expense.
- The use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud pursuant to § 817.61, Florida Statutes.

Ombudsman

- The Ombudsman has the authority to review secret ballots cast at a vote of the association when reviewing election misconduct.

The new law will be effective July 1, 2017. If you have any questions, please feel free to contact us.

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