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CLIENT ALERT: CONDOMINIUM ASSOCIATION AND HOMEOWNERS ASSOCIATION LEGISLATIVE UPDATE

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Governor Ron DeSantis signed Senate Bill 56 and Senate Bill 630, into law on June 16, 2021. The legislation, which is effective July 1, 2021, affects the operation of homeowners associations and condominium associations, including collection practices, notices of meetings, transfer fees, electronic vehicle charging stations, dispute resolution, emergency powers, official records, reserves, and leasing. Below are highlights of SB 56 and SB 630 and the legislation changes to the laws governing homeowners associations and condominium associations.

Condominiums

- If a condominium association's insurance policy does not provide a right of subrogation against unit owners, then an insurance policy issued to a unit owner may not provide rights of subrogation against the condominium association.
- The notice requirement of a lien foreclosure action in condominium increases from 30 days to 45 days.
- Bids received by a condominium association for materials, equipment, services and work to be performed to be maintained as part of the official records of the association for at least one (1) year after receipt of the bid.
- Tenants, as opposed to a unit owners who are entitled to inspect the official records of the association, are only entitled to inspect and copy the declaration of condominium, by-laws and rules and regulations.
- Although a condominium association my adopt rules regarding the frequency, time, location, and manner of inspection and copying of official records, an association may not require a unit owner to provide any purpose or reason for the inspection.
- In lieu of the requirement for a condominium association managing a condominium of 150 or more units having a website meeting the requirements set for in the Condominium Act, a condominium association may maintain an application accessible on a mobile device.
- As with a notice of annual meeting of a condominium association, notice of all other association meetings must include an agenda and be mailed, hand-delivered or electronically transmitted to all unit owners and posted on the condominium property for the time period set forth in the by-laws or, if no timeframe is provided in the by-laws, at least 14 days.
- The limitation on condominium association transfer fees was increased from $100 to $150, which fee may be adjusted every five (5) years based on the Consumer Price Index.
- The provisions in the Condominium Act relating to electric vehicles and electric vehicle charging stations have been expanded to include natural gas fuel vehicles and natural gas fuel stations. In addition to installation within limited common elements, owners may install electric vehicle charging stations and natural gas fuel stations within an assigned parking space. Installation of electric vehicle charging stations and/or natural gas fuel stations by the association within the common elements or association property is not a material alteration or substantial addition to the common elements or association property.

- Other than election and recall disputes which are required to be submitted to arbitration or court action, disputes involving condominiums that previously were subject to mandatory arbitration before the Division of Florida Condominiums, Timeshares and Mobile Homes (the "Division") may now either submitted to presuit mediation in lieu of arbitration. If all parties to an arbitration agree in writing, the arbitration decision is binding.
- Developers are specifically authorized to use funds in excess of 10% of the purchase price of a condominium unit for actual costs incurred by the developer in construction and development of the condominium property including costs for demolition, site clearing, permit fees, impact fees, and utility reservation fees as well as architectural, engineering, and surveying fees that directly relate to construction and development. Such funds are expressly prohibited to be used for loan fees and costs, principal and interest on loans, attorneys fees, accounting fees and insurance costs.
- Fines imposed on unit owners after hearing are due five (5) days after notice of the fine is provided to the unit owner as opposed to five (5) days after the committee meeting at which the fine is approved.
- The authority of the Division to investigate complaints is expanded to include complaints regarding the maintenance of official records in addition to access to official records.

Homeowners Associations

- Homeowners association rules and regulations are no longer included in the term "governing documents."
- In addition to other methods of providing notice of board and member meetings, a homeowners association may adopt a rule providing a procedure for posting of meeting notices and associated agendas on the association's website or application that can be downloaded on a mobile device. Such notice must be for at least the minimum period of time for which notice of a meeting is also required to be physically posted on the association property. In addition to such notice, the association must send an electronic notice to members whose e-mail addresses are included in the association's official records.
- Ballots, sign-in sheets, voting proxies and all other papers and electronic records relating to voting by parcel owners are to be maintained as part of the official records of the association for at least one (1) year after the date of the election, vote or meeting.
- Information obtained in a gated community in connection with guests' visits to owners or residents are a new category of records which are not open for inspection by owners.
- A developer may, but is not required, to include reserves in a homeowners association budget. Partial funding of reserves by the developer is specifically authorized.
- If a developer does establish reserves, the developer has the right to determine the amount of reserves and the developer is NOT obligated to pay for (a) contributions to reserve accounts for capital expenditures and deferred maintenance, (b) reserves that are required to be funded pursuant to state, municipal, county or other governmental statutes or ordinance, (c) operating expenses, or (d) assessments relating to the developer's parcels during the time that the developer is deficit funding, i.e. paying the deficit in any fiscal year between the total amount of assessments receivable from other members plus any other association income and the lesser of budgeted or actual expenses incurred by the association during the fiscal year.
- Homeowners association election disputes and recalls may be submitted to arbitration before the Division or filed in court.
- Fines imposed on unit owners after hearing are due five (5) days after notice of the fine is provided to the unit owner as opposed to five (5) days after the committee meeting at which the fine is approved.
- Notice of homeowners association meetings must be mailed to the address identified as an owner's mailing address in the official records of the association as opposed to the mailing address indicated on the property appraiser's website.
- Other than amendments to governing documents that prohibit or regulate rentals for a term of less than six (6) months or prohibit rentals of more than three (3) times in a calendar year which apply to all owners, governing documents and amendments to governing documents enacted after July 1, 2021which prohibit or regulate rental agreements apply only to owners who either acquire a parcel after the effective date of the

governing document or amendment or who consent to the governing document or amendment.

Condominium Associations and Homeowners Associations

- Invoices and statements of account sent out by a condominium or homeowners association must be sent by mail or e-mail to the address maintained in the official records of the association. The association must provide 30 days written notice to an owner before changing the method of delivery of invoices and statements of account for assessments, and the owner must affirmatively acknowledge, either in writing or electronically, the change in delivery method, which acknowledgment must be maintained as an official record of the association.
- In order for a condominium association or homeowners association to recover attorneys' fees relating to past due to assessments, the association is required to provide a mandatory "courtesy notice" 30 days before any collection action specifying the amount owed and providing the unit owner an opportunity to pay the amount owed without the assessment of attorneys' fees. Such notice must be in the form set forth in the statute. An affidavit of compliance is required to establish a rebuttable presumption that the courtesy notice was sent. In the event such notice is not provided, the association may only recover past due assessments, late fees and interest.
- The exercise of emergency powers by condominium and homeowners associations are expanded to include response to not only damage but also "injury" caused by or "anticipated" in connection with an emergency as defined in the Emergency Management Act. In addition to the current emergency powers, additional authorized emergency powers include conducting board and committee meetings, elections and member meetings by phone, real-time video conferencing or similar electronic or video communication. Notice of such meetings can be provided by electronic transmission.
- Decisions to restrict access to common areas and other facilities may be based not only on the advice of emergency management officials but also public health officials. In addition, emergency powers specifically include the authority to sanitize condominium and association property. Notwithstanding a declared state of emergency, an association may not prohibit owners, tenants, guests, agents, or invitees from accessing a unit and common elements for purposes of ingress and egress to and from a unit when access is necessary for connection with (a) the sale, lease or transfer of a unit, (b) the habitability of a unit, or (c) the health and safety of a person.

The full text of SB 56 can be found HERE. The full text of SB 630 can be found HERE.

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