

United States: Florida Amends Homeowners' Associations Laws

Provisions Become Effective July 1, 2007

On June 19, 2007, Florida Governor Crist signed Senate Bill 902 (the "Bill"). The Bill changes many provisions of existing law that affect homeowners' associations. The new provisions become effective July 1, 2007. In particular, changes to Chapter 720 of the Florida Statutes include the following:

- Section 720.303(2) - **Board Meetings** This Section was amended to provide that the requirements relating to board of director meetings also apply to (a) meetings of any committee or other similar body when a final decision will be made regarding expenditure of association funds and (b) meetings of architectural review committees. As revised, meetings of such committees require a quorum and must be open to all members of the association.
- Section 720.303(6) - **Budgets** This Section was amended to provide that if the developer establishes reserve accounts or the membership of the association affirmatively elects to provide reserve accounts, then the reserve accounts shall be noted on the association's budget and the amount to be reserved must be computed using a formula that is based on the estimated remaining useful life and estimated replacement costs of each reserve item. If reserve accounts are not initially provided by a developer, they can be established upon approval of not less than a majority of all voting interests of the association, and once established, reserve accounts must be maintained and waived as provided in the statute. If reserve accounts are not established, then the annual financial reports of the association must provide the following disclosure in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

A developer-controlled association may not use reserve funds for any other purpose unless approved by a majority of all non-developer voting interests.

- Section 720.303(7) - **Financial Reporting** This Section was amended to require that within ninety (90) days after the end of the fiscal year, or annually as provided in the bylaws, the association must prepare and complete a financial report for the preceding fiscal year. This changes the current requirement that such a report be completed within sixty (60) days after the close of the fiscal year. Within twenty-one (21) days after the final financial report is completed by the association or received from the third party who prepared the report, but no later than one hundred twenty (120) days after the end of the fiscal year, or other date provided by the bylaws, the association must provide each member of the association with a copy of such financial report or a written notice that a copy of the financial report is available upon request at no charge.
- Section 720.3035 - **Architectural Control Covenants; Parcel Owner Improvements; Rights and Privileges** This is a new Section created by the Bill. This Section provides specific guidelines relating to architectural review and oversight of a homeowners' association. The authority of a homeowners' association or architectural review committee of a homeowners' association to review and approve plans for the location, size, type or appearance of any improvement and to enforce standards for external appearance of any structure or improvement must be specifically provided for in the declaration or other published standards authorized by the declaration. If the declaration or other published standards provide options relating to the use of material, size, design or location of any improvement, a homeowner's right to select from such options cannot be restricted. No policy or restriction that is inconsistent with published architectural standards may be enforced.
- Section 720.305 - **Obligations of Members; Remedies at Law or in Equity; Levy of Fines and Suspension of Use Rights; Failure to Fill Sufficient Number of Vacancies on Board of Directors to Constitute a Quorum; Appointment of Receiver upon Petition of Any Member** This section was amended to provide that not only may a member of the association prevailing in an action against the association recover reasonable attorneys fees and costs, but also such

member may recover additional amounts as determined by the court necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation; this relief does not exclude other remedies provided by law.

- Section 720.307 - **Transition of Association Control in a Community** This Section was amended to require that within ninety (90) days of the turnover of an association from the developer to the homeowners, the developer must provide the association with audited financial statements. Specifically, the financial records of the association and source documents from the date of incorporation through the turnover date must be audited by an independent CPA and delivered to the homeowners as part of the turnover documents. The cost of the audit, along with all other turnover documentation, is borne by the developer. This requirement does **NOT** apply to associations with a date of incorporation prior to December 31, 2007.
- Section 720.308 - **Assessments and Charges** This Section was amended to include provisions regarding a developer's guarantee of assessments. Such provisions are similar to those governing condominiums. If the developer guarantees assessments, such guarantee, including the specific dollar amount of the guarantee and the time period for the guarantee, must be included in the declaration or purchase and sale agreement. If a guarantee is provided for, the guarantor is responsible for paying any deficits that exceed the guaranteed amount less the total regular assessment paid the members other than the guarantor during the guarantee period.
- Section 720.311 - **Dispute Resolution** This Section was amended to include several new provisions regarding pre-suit mediation in actions involving a homeowners' association and statutory notices regarding pre-suit mediation. Since the Bill's effective date is July 1, 2007, all homeowners' association documents that have not been recorded should be amended as a result of the Bill. If a declaration has been recorded, then determining whether to amend a recorded declaration should be determined on a case-by-case basis.

For the full text of Senate Bill 902, see <http://www.flsenate.gov/data/session/2007/Senate/bills/billtext/pdf/s0902er.pdf>