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**2017 Legislative Update Seminar**  
Vesta Property Services  
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Following an uneventful 2016 legislative session, community associations received significant attention this year, perhaps precipitated by a condemning report issued by a Miami-Dade grand jury entitled “Addressing Condo Owners’ Pleas for Help: Recommendations for Legislative Action.” The following is a summary of the laws passed during the 2017 legislative session which affect Florida condominium and homeowners’ associations.

**1. House Bill 1237 – Effective Date: July 1, 2017 (Website Requirement: July 1, 2018)**

Approved by Governor on 6/26/2017

Applicability: Condominium Associations

**a. Criminal Penalties**

One effect of HB 1237 is the potential for imposition of criminal penalties for directors, officers, or managers who receive anything of value, or “kickbacks,” from any person providing goods or services to the association. Similarly, HB 1237 also imposes criminal penalties for: forgery of a ballot envelope or voting certificate used in a condominium association election; theft or embezzlement of association funds; and destruction of, or refusal to allow the inspection or copy of, an official record that is accessible to unit owners within the time periods required by law if the destruction or refusal to permit access was in furtherance of a crime.

**b. Joint Representation of Association & Management**

In addition, as of July 1, 2017, a condominium association may not hire an attorney who represents the association’s management company, presumably because the legislature has perceived co-representation of the association and management as a conflict of interest. It is unclear is whether the legislature has the constitutional authority to preclude attorneys from representing certain parties, and therefore whether the statute will be upheld if challenged, because the regulation of the legal profession has traditionally been the exclusive province of the Judicial Branch of government.

### **c. Official Records**

HB 1237 also amended statutory provisions pertaining to condominium association official records. Bids for materials, equipment, or services will be considered official records that must be maintained by the association. Also, the amendment clarified that association members' authorized representatives have the right to inspect and copy official records. Further, renters of units will have the right to inspect the association's "bylaws and rules."

### **d. Website & Electronic Records Requirement**

By **July 1, 2018**, a condominium association with 150 or more units that does not manage timeshare units must post digital copies of various official records on a website. The website must be internet accessible and the association must ensure the records are only accessible by unit owners and association employees. The documents that must be accessible via the website include: all the association's governing documents and amendments; all management agreements, leases, and other contracts to which the association is a party; "summaries of bids" for materials, equipment, or services; the annual budget and any proposed budget; the financial report; and director certifications. Also, the association must post meeting notices and agendas for membership and board meetings either on the front page of the website or on a separate subpage labeled "Notices." Furthermore, the association must upload a copy of any document to be considered or voted on by the members during any membership meeting. **Note that while the records requirement part of the statute provides until July 1, 2018 for compliance, the obligation to designate a person or entity with a street or e-mail address on the association's website for estoppel certificate requests commences July 1, 2017.**

### **e. Financial Reports.**

First, condominium associations that operate fewer than 50 units are no longer permitted (without a membership vote) to prepare a report of cash receipts and expenditures in lieu of financial statements based on the association's annual revenue. In addition, unit owners may complain to the Division of Florida Condominiums, Timeshares, and Mobile Homes ("Division") if the association does not furnish a copy of the most recent financial report within 5 business days after receipt of a written request. If the Division finds that the association failed to deliver the financial report as required, it may require the association to provide a copy of the report to the owner within 5 business days. If the association fails to comply with the Division's notice, it may not waive the financial reporting requirement (presumably for the following year). In addition, the amendment added a requirement that an association provide an annual report to the Division containing the names of all financial institutions with which it maintains accounts and allows an association member to request that information from the Division.

### **f. Prohibition on Use of Debit Cards.**

HB 1237 also prohibits the use of a debit card issued in the condominium association's name, or billed directly to the association, for the payment of any association expense. If a person uses a debit card issued in the association's name or billed directly to the association for payment of an expense that is not the association's lawful obligation, he or she may be prosecuted for credit card fraud.

**g. Director Term Limits.**

A provision has been added to Section 718.112 of the Condominium Act to implement a term limit for association directors. The new legislation provides that a board member may not serve more than four consecutive 2-year terms (so a total of 8 consecutive years), unless approved by an affirmative vote of two-thirds of the total voting interest of the association, or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

**h. Recall of Directors.**

Prior to the amendment, the condominium association's board of directors were required to hold a meeting within 5 business days of receipt of a written recall petition or the meeting at which the members voted to recall the director to determine whether to certify the recall. If the board voted to not certify the recall (i.e., deem the recall effort invalid), the association was required to file a petition for recall arbitration with the Division. A Division arbitrator would then determine whether the board's decision to not certify the recall was proper.

The amendment deleted the portion of the statute which provided for the board's determination to certify a recall. Now, it is unclear what the association must do if it deems a recall effort to be invalid because the law no longer prescribes a procedure. One possible interpretation is that recall efforts are presumed valid, and if a recalled director wishes to challenge the recall, he or she must file a petition for arbitration with the Division. However, the amendment creates substantial uncertainty as to what the board must do if it considers the recall effort to be invalid (for example, for failure to obtain a majority vote of the membership). Condominium associations are strongly encouraged to immediately seek the advice of legal counsel if presented with a recall petition.

**i. Conflicts of Interest.**

As of the effective date, condominium associations will be prohibited from employing or contracting with a service provider that is owned or operated by a board member or officer, any person who has a "financial relationship" with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. Relatives within the third degree of consanguinity include: children – great grandchildren; parents – great grandparents; siblings; aunts, uncles, nieces and nephews. First cousins are not within the third degree of consanguinity. The amendment includes an exception which states that it does not apply to any service provider for which the board member or officer owns less than 1 percent of the equity shares.

In addition, directors and officers of a condominium association must disclose to the board any activity that may reasonably be construed to be a conflict of interest. Further, the amendment establishes a procedure for a director or officer's proposal of an activity in which the director or officer may have a conflict of interest, which provides that the director or officer may make a presentation on the issue but must excuse himself or herself from the board's discussion on the issue and must abstain from voting. If the director or officer fails to follow the required disclosure procedure, he or she is deemed removed from office and the contract (if any) may be terminated with the consent of 20 percent of the voting interests in the association.

**j. Arbitration.**

Presently, the Division is obligated to hire full-time attorneys to act as arbitrators to conduct the arbitration hearings required by the Condominium Act. The amendment eliminates the requirement for the Division to employ full-time attorney arbitrators and establishes a procedure for independent attorneys to be certified to preside over arbitration proceedings. In addition, the assigned arbitrator is now required to conduct a hearing within 30 days of being assigned a petition unless the petition is withdrawn or a continuance is granted for good cause. Further, the arbitrator is required to render a written decision within 30 days after the hearing and the arbitrator's failure to do so may result in cancellation of the arbitrator's certification.

**k. Acquisition of Units in Foreclosure.**

The amendment prohibits any party contracting to provide maintenance or management services to an association managing a residential condominium after transition of control of the association, and any officer or board member of such party, from purchasing a condominium unit or taking a deed-in-lieu of foreclosure of a lien for nonpayment of assessments.

**l. Cancellation of Management & Maintenance Contract.**

If 50 percent or more of the units in a residential condominium are owned by a party contracting to provide maintenance or management services to an association, or by an officer or board member of any such party, after transition of association control (turnover), the contract may be cancelled by majority vote of the unit owners other than the contracting party.

**m. Voting Rights.**

Prior to the amendment, a condominium association could suspend a member's voting rights if he or she were 90 days' delinquent in the payment of any monetary obligation due to the association. The amendment requires the monetary delinquency to *exceed* \$1,000.00 and *be more than* 90 days' delinquent. In addition, the amendment requires the association to provide proof of the obligation 30 days before the suspension takes effect. Further, the amendment provides that a receiver may not exercise voting rights of any unit owner whose unit is placed in receivership.

**2. Senate Bill 398 – Estoppel Certificates – Effective Date: July 1, 2017**

Approved by Governor on 6/14/2017

Applicability: Homeowners' Associations, Condominium Associations, Cooperatives

**a. Estoppel Response Time & Designation of Address on Website.**

The amendment requires the association to respond to an estoppel request within 10 business days after receiving a written or electronic request from a unit owner or mortgagee, or their representative. Formerly, the estoppel certificate request had to be made in writing, the association had 15 days to respond, and the statute did not specify whether the days were business days or calendar days. The amendment also requires the association to designate on its website a person or entity with a street or email address for receipt of estoppel certificate requests. If the association fails to deliver an estoppel certificate within 10 business days after receipt of a request, it may not charge a fee for the preparation and delivery of the certificate.

**b. Content of Estoppel Certificate.**

Prior to the amendments, only limited information regarding the assessments and other charges due to the association was required to be included in the estoppel certificate. The amendment established a form and prescribes the content that must be included in all estoppel certificates. The form specifically requires the following information to be included within the estoppel certificate:

1. The date of issuance of the certificate.
2. The names of the unit owner(s) as reflected in the books and records of the association.
3. Unit designation and address (designation likely means the unit number).
4. Parking or garage space number, as reflected in the association's records.
5. Attorney's name and contact information if the account is delinquent and has been given to an attorney for collection. The amendment further states that no fee may be charged for this information.
6. Fee for preparation and delivery of the estoppel certificate.
7. Name of the estoppel requester.
8. Assessment information and other information:

**Assessment Information**

- a. The amount and frequency of the regular periodic assessment (e.g., \$100 monthly).
- b. The date the regular periodic assessment is paid through.
- c. The date and amount of the next installment of the regular periodic assessment.
- d. An itemized list of all assessments, special assessments, and "other moneys owed" on the date of issuance to the association by the unit owner for a specific unit.
- e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate. In calculating the amounts scheduled to become due, the association may assume that any delinquent accounts will remain delinquent during the effective period of the estoppel certificate.

**Other Information**

- f. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? (Yes/No). If yes, specify the type and amount of the fee.
- g. Is there any open violation of rule or regulation noticed to the owner in the association official records? (Yes/No).
- h. Do the rules and regulation of the association applicable to the unit require the approval by the board of directors of the association to transfer the unit? (Yes/No). If yes, has the board approved the transfer of the unit? (Yes/No).
- i. Is there a right of first refusal provided to the members or the association? (Yes/No). If yes, have the members or the association exercised that right of first refusal?
- j. Provide a list of, and contact information for, all other associations of which the unit is a member.
- k. Provide contact information for all insurance maintained by the association.

1. Provide the signature of an officer or authorized agent of the association.

The association may include additional information in the estoppel if desired. Also, the amendment provides that an association waives the right to collect any monies owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate (and his or her successors and assigns).

**c. Effective Period.**

An estoppel certificate that is hand delivered or sent via electronic means has a **30-day** effective period. An estoppel certificate that is sent by regular mail has a **35-day** effective period. If the association makes a mistake in the estoppel certificate, it can provide an amended estoppel certificate and it will be effective if the sale or refinancing of the unit has not been completed during the effective period. If an amended estoppel certificate is provided, it will have a new effective date period from the date of transmission.

**d. Fees Permitted to be Charged for Estoppel Certificate.**

The amendment establishes a schedule of fees that may be charged for the “preparation and delivery” of an estoppel certificate, as follows:

<b>Circumstances</b>	<b>Maximum Amount Chargeable</b>
If no delinquent amounts are owed to the association for the unit on the date the certificate is issued.	\$250.00
If a delinquent amount is owed to the association for the unit.	\$150.00 (in addition to \$250.00 fee)
If <b>expedited</b> estoppel certificate is requested and <b>delivered within 3 business days</b> after the request.	\$100.00 <b>In addition to the amounts charged depending on delinquency.</b> (e.g., Unit delinquent & expedited request = \$500.00)
<b>Multiple Unit Estoppel Certificate Request</b> <i>Only if not delinquent</i>	
25 or fewer units	\$750.00
26 to 50 units	\$1,000.00
51 to 100 units	\$1,500.00
More than 100 units	\$2,500.00

In addition, and although already required by law prior to the amendments, the authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or in the management, bookkeeping, or maintenance contract. Further, the fees prescribed by statute will be adjusted every 5 years based on the total of the annual increases in the Consumer Price Index and the Division is obligated to calculate the fees and publish them on its website. Moreover, the amendments provide that the estoppel

certificate fee is “payable upon the preparation of the certificate,” which does not appear to clearly specify whether payment may be required before delivery of the certificate.

**e. Reimbursement of Estoppel Certificate if Closing Does Not Occur.**

Although there was an existing obligation to reimburse the fee charged for the estoppel certificate prior to the amendments, it was not often requested by title companies and other parties requesting estoppel certificates. We foresee requests for reimbursement increasing as title companies and other parties become aware of the right to reimbursement. Also, the amendments added that the right to reimbursement may not be waived or modified in any agreement (e.g., association governing documents) and a party may file a lawsuit and recover attorney’s fees and costs to enforce a right to reimbursement. The association may recover the estoppel certificate fee from the unit owner in the same manner as an assessment; however, there are situations where that might not be a helpful remedy (e.g., estoppel certificates requested prior to a short sale).

To become entitled to reimbursement, the estoppel certificate preparer must receive a written request for reimbursement accompanied by “reasonable documentation” that the sale did not occur from a payor that is not the parcel owner within 30 days after the closing date for which the certificate was sought. The fee must be refunded to the party who paid for the estoppel certificate within 30 days after receipt of the request.

**3. House Bill 6027 – Financial Reporting – Effective Date: July 1, 2017**

Presented to Governor on 6/14/2017

Applicability: Homeowners’ Associations, Condominium Associations, Cooperatives

The amendment eliminates the ability of associations that operate fewer than 50 units to prepare a report of cash receipts and expenditures in lieu of financial statements based on the annual revenues of the Association. The amendment also eliminates a provision of current law prohibiting condominium and cooperative associations from waiving the financial reporting requirements for more than 3 consecutive years.

**4. Senate Bill 1520 – Condominium Terminations – Effective Date: July 1, 2017**

Presented to Governor on 6/5/2017; Approved on 6/16/2017

Applicability: Condominium Associations

**a. Preface.**

The amendments concerning condominium terminations are probably in direct response to a recent lawsuit, *Tropicana Condominium Association, Inc. v. Tropical Condominium, LLC*, 208 Si. 3d 755 (Fla. 3d DCA 2016) in which the court ruled that the provisions of the declaration of condominium (in that case) controlled over the conflicting statutory provisions regarding termination, which were adopted after the declaration of condominium was recorded in the public records. Statutory amendments which impair existing contracts, such as declarations of condominium, implicate United States and Florida constitution provisions which prohibit the retroactive impairment of contracts under most circumstances. Accordingly, the amendments appear to be the Florida legislature’s response to the court’s opinion in attempt to supersede termination provisions in existing declarations of condominium. Whether the amendments will withstand constitutional challenge is uncertain.

**b. Division Approval Required.**

The amendments now give the Division authority to approve the plan of termination in residential condominium associations. Before a plan of termination is submitted to the Division, it must be approved by at least 80 percent of the total voting interests in the condominium. However, if 5 percent (previously 10 percent) or more of the total voting interests reject the plan of termination, the plan of termination may not proceed. Once received, the Division has 45 days to notify the association of any procedural deficiencies or that the filing has been accepted.

**c. Successive Termination Plans.**

Prior to the amendment, if a plan of termination failed because the requisite number of voting interests rejected it, a subsequent plan of termination could not be proposed for 18 months after the date of the rejection. The amendment provides that a subsequent plan of termination may not be proposed for 24 months after the date of rejection.

**d. Bulk Owner Termination.**

If a bulk owner is proposing a termination, the other unit owners must be paid at least 100% of the fair market value for their units. A “bulk owner” in this context is an owner of at least 80 percent of the total voting interests in the condominium. The amendment provides that if a person whose unit was granted homestead status by the applicable County appraiser is proposed to be terminated, the fair market value of the unit must be at least the purchase price the person paid for the unit (so long as the person is current in payment of monetary obligations due to the association). Prior to the amendment, only the original purchaser from the developer was potentially entitled to have the fair market value established at the original purchase price for the unit.

**e. Miscellaneous Disclosures.**

The amendment also requires miscellaneous factual disclosures to be made by the party proposing the termination, such as the identity of any party that owns or controls more than 25 percent of the units in the condominium and any party that owns or controls 10 percent or more of the “artificial entity or entities” (i.e., business entities) that constitute the bulk buyer.

**5. HB 653 – Criminal Penalties & Fire Safety Retrofitting – VETOED by Governor.**

Presented to Governor on 6/14/2017; Vetoed by Governor on 6/26/2017.

Despite receiving only 1 “nay” in the Senate (and only 4 members of congress not voting), HB 653 was vetoed by the governor. Although HB 653 contained some duplicative criminal punishments already included in HB 1237, many supported the bill because it attempted to clarify the fire safety retrofitting requirements and opt out procedures. One point of clarification was that owners in condominium (and cooperative) buildings 75 feet or less in height would be exempt from fire sprinkler *and* engineered life safety retrofitting requirements, which the amendment stated was to clarify existing law. It also attempted to clarify that by opting out of fire sprinklers, the association is not thereby opting into installing an engineered life safety system. Moreover, it extended the opt-out deadline for associations that would otherwise be required to retrofit or opt out to January 1, 2022. Again, however, the bill was vetoed so none of the clarifications have been made law.

This has certainly been an interesting legislative session for community associations. Thank you for your attention and we hope you have found this memorandum informative.

Sincerely,  
JACKSON LAW GROUP

A handwritten signature in blue ink, appearing to read 'J. Roche', with a long horizontal flourish extending to the right.

James J. Roche, Esq.

A handwritten signature in blue ink, appearing to read 'Edward Ronsman', with a long horizontal flourish extending to the right.

Edward Ronsman, Esq.

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