

**2018 LEGISLATIVE CHANGES**  
in  
**HB 617: Ch. 2018-55 Laws of Florida**  
and  
**CS/CS/CS/HB 841: Ch. 2018-96 Laws of Florida**

**INCLUDING PROVISIONS PROPOSED BY**  
**COMMUNITY ASSOCIATION INSTITUTE - FLORIDA LEGISLATIVE ALLIANCE (CAI-FLA)**

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**OVERVIEW:**

There were two Bills passed during the 2018 Legislative Session that are of interest to Community Associations. HB617 codified as Ch 2018-55 Laws of Florida made changes in Ch. 712, the Marketable Record Title Act (MRTA) to Ch. 720 that will be of interest to Ch 720 Homeowners Associations. HB841 codified as Ch 2018-96 Laws of Florida was sponsored by CAI-FLA and includes amendments to Ch. 718, 719, and 720.

HB617 becomes effective on October 1, 2018. All changes below for HB841 become effective on July 1, 2018.

**HB617 codified as Ch 2018-55 Laws of Florida**

This Bill amends portions of both Ch 712, the MRTA statute, and Ch. 720 in ways that are of interest to Ch. 720 Associations with regard to simplifying the process by when a “Community covenant or restriction” may be preserved by a “property owners’ association” under MRTA. It also includes a new Sec. 712.12 providing a mechanism for covenant or restriction revitalization by parcel owners not subject to a homeowners’ association. The amendments to Ch. 712 and 720 that are of interest to residents of Ch. 720 Homeowners’ Association are summarized as follows:

**A. Sec. 712.01 Definitions**

This section now includes a definition of “Community covenant or restriction” that is subject to preservation under MRTA.

The term “homeowners’ association” is replaced with the term “Property owners’ association which includes Ch 720 Associations and now includes other types of corporate entities that are responsible for the operation of property in which owners of the property control the voting interests and in which membership is a mandatory condition of property ownership. These Non- 720 entities will primarily control commercial properties.

**B. Sec. 712.05 – Effect of filing notice –**

A new subsection (2) is added to provide that a property owners’ association may preserve community covenants or restrictions from extinguishment under MRTA by filing one of

several documents, including: (1) a notice under Sec. 712.06 which, until the passage of HB617 had been the sole method for preservation, (2) a notice under the newly created Sec. 720.3032(2) discussed further below, or (3) “an amendment to a community covenant or restriction that is indexed under the legal name of the property owners' association and references the recording information of the covenant or restriction to be preserved.” This last method of preservation will, quite likely, become the main means by which Ch. 720 Association governing documents are preserved under MRTA since very few go through a 30-year period after the initial recording without some amendment being filed that refers back to the recording information for the original covenant or restriction.

Subsection (3) is amended to remove the requirement that the Board of Directors of an Association approve the filing of a notice under Sec. 712.06 after providing notice of the meeting and proposed Statement of Marketable Title Action to all members of the Association.

**C. Sec. 712.12 - Covenant or restriction revitalization by parcel owners not subject to a homeowners' association**

This is a new section added to Ch. 712 that allows for covenant “revitalization” by parcel owners who are not in a Ch. 720 Association.

**D. Sec. 720.303(2)(e)**

This subsection is added to provide that, at the first board meeting, excluding the organizational meeting, the “board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.” This new language will likely have little practical application with the amendment to Sec. 712.05(2) that now provides that any recorded amendment to the governing documents that refers back to the initial recording information of the declaration or covenants as this language for a board meeting action is a carryover from prior Bills seeking to amend MRTA and probably should have been edited out of HB617.

**E. Sec. 720.3032 Notice of association information; preservation from Marketable Record Title Act.**

This is a newly created Section in Ch. 720 that now provides a third means for the preservation of covenants and restrictions affecting Ch 720 Association, but which with the mentioned amendment to Sec. 712.05(2) that now provides that any recorded amendment to the governing documents that refers back to the initial recording information of the declaration will also be effective to preserve the covenants under MRTA, this section will, quite likely, seldom be used as the form of document authorized by this new section is quite detailed in the information required to be included and would, almost certainly, require the involvement of association counsel to be prepared in a manner that will meet the requirements of the statute.

**F. Sec. 702.09, 702.10, and 720.403**

Each of these sections are amended in several instances to delete references to “homeowners’ and substitute “property owners” with reference to “association”.

## **CS/CS/CS/HB 841 Codified as Ch. 2018-96 Laws of Florida**

This Bill was the general “Community Associations” Bill that moved through the 2018 Legislature and it includes many of the provisions that were in HB653, which passed in the 2017 Session only to be vetoed by Governor Scott because of some of the “Life Safety” provisions that were included. HB 841 also provides some clarification of provisions added to Ch. 718 by HB1237 that was passed in 2017 and approved by the Governor. HB841 contains amendments to each of Ch. 718, 719, and 720 summarized as follows:

### **1. AMENDMENTS TO CHAPTER 718 - FLORIDA CONDOMINIUM ACT**

#### **A. Sec. 718.111(12) – The Association**

The Bill deletes several references in subsection (a) to records retention for a period of seven (7) years as that is provided for all official records in subsection (b).

The Bill modifies Section 718.111(12) (b) to substitute “email” for “electronic mailing” addresses and conforms to the HOA act and require condominium associations to provide access to official records within ten (10) business days rather than the existing five (5) business days.

The Bill modifies subsection (g) to clarify the website requirement as being only applicable to an association managing a condominium with 150 or more units. It also extends the time deadline for compliance from July 1, 2018 until January 1, 2019. This subsection also requires the website to contain a list of all “executory contracts or documents” to which the Association is a party or under which the Association is obligated and, after bidding for certain products and services is closed, a list of bids received within the past year. Summaries or complete copies of bids for materials, equipment or services which exceed \$500 must be maintained on the website for one (1) year.

HB1237 included language regarding the Association taking action to protect from the disclosure of information that is excluded from inspection from being posted on the website. This Bill adds the following clarification “Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted pursuant to this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

#### **B. Sec. 718.111(13) – The Association**

The Bill provides language to clarify that the period for which an association is prohibited from waiving financial reporting requirements after the Division receives a request from an owner under subparagraph (e) and the association fails to comply with the request is limited to one (1) year.

#### **C. Sec. 718.112(2)(a) – Bylaws**

The Bill clarify the provision that, for a condominium with 5 or fewer Units and for which the Association is a not-for-profit corporation, the Board shall consist of not less than 3 members.

**D. Sec. 718.112(2)(c) & 718.112(2)(d) – Bylaws**

The Bill modify §718.112(2)(c) to require disclosure in the notice of any meeting to consider regular or special assessments. The Bill further modify this Section to allow the use of a website to post notice of meetings, with the added protection of requiring electronic notice and a link to the posting.

The Bill modifies the “term limits” provisions included in HB 1237 so that the pertinent language now will read as follows: “Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years, unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.”

The Bill modifies §718.112(2)(d) to place the onus of removing spam filters on the unit owners consenting to receive electronic notice.

**F. Sec. 718.112(2)(j) – Bylaws**

The Bill modifies the “Recall” provisions amended by H1237(2017) regarding the effect of filing of recall petitions and challenges to recall petitions. New language is added to provide that: (i) if an Arbitrator determines the recall was invalid, the petitioning board member will immediately be reinstated, (ii) a Board member who successfully challenges a recall is entitled to recover reasonable attorneys fees and costs from the “respondents” which, presumably, will include the association, and (iii) the arbitrator may award reasonable attorney’s fees and costs to the respondents “if they prevail, if the arbitrator makes a finding that the petitioner’s claim is frivolous.”

**G. Sec. 718.113- Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.**

The Bill adds language to specify that any required votes to approve material alterations or substantial additions must be taken before the material alterations or substantial additions are commenced.

**H. Sec. 718.113 (8)**

This new Subsection (8) provides language regarding the installation of electric vehicle charging stations by an Owner “within the boundaries of his or her limited common area parking area”. Basically, all costs related to the installation, maintenance, operating costs, including hazard an liability insurance are to be borne by the Owner who installs the electric vehicle charging station.

**I. Sec. 718.121 – Liens.**

Language is added to provide that the costs of labor and materials provided in the installation of an “electronic vehicle charging station pursuant to s. 718.113(8)” may not become a lien under Ch. 713 against the association, but such lien may be filed against the unit owner who contracts for the installation of the charging station.

**J. Sec. 718.3026 Contracts for products and services; in writing; 837 bids; exceptions**

**and 718.3027 Conflicts of interest.—**

The Bill deletes the language in subsection (3) of Sec. 718.3026 and move this language to subsection (2) of Sec. 718.3027

**K. Sec. 718.303 (3) – Obligations of owns and occupants; remedies.**

The Bill propose to conform the “fining” provisions of the Act to the equivalent provisions of Ch. 720 with respect to the makeup of the fining committee and propose a due date for any fine confirmed by the Committee.

**L. Sec. 718.707 – Time limitation for classification as bulk assignee or bulk buyer.**

The Bill propose to remove the “Sunset” date of July 1, 2018.

**2. AMENDMENTS TO CHAPTER 719 - FLORIDA COOPERATIVE ACT**

**A. Sec. 719.104(2)(a) & 719.104(2)(b) & (c) – Cooperatives; access to units; records financial reports; assessments; purchase of leases.**

The Bill deletes several references in subsection (a) to records retention for a period of seven (7) years as that is provided for all official records in subsection (b).

The Bill modify Section 719.104(2)(b) to conform to the HOA act and require cooperative associations to provide access to official records within ten (10) business days rather than the existing five (5) business days.

**B. Sec. 719.106(1) (a), (b), (c), (d), and (m) – Bylaws; cooperative ownership.**

For cooperatives of more than 10 units, the Bill includes language that would preclude co-owners of a Unit from both serving on a Board of Directors unless the persons own more than one unit. This is consistent with the Condominium Act.

The Bill incorporates the change made in the Condominium Act into the Cooperative act to allow directors to communicate but not vote by email, to require disclosure in any notice of meeting where assessments may be considered and allow notice to be posted on a website, with the added protection of requiring electronic notice to include a link to the posting. Section 719.106(1)(d)3., has been modified to place the onus of removing spam filters on the unit owners who consent to receive electronic notice.

A new subsection (m) Director or officer delinquencies. is added to conform Ch 719 to the Condominium Act provision that a director or officer that is more than 90 days delinquent in the payment of any monetary obligation to the association shall be deemed to have abandoned the office.

**C. Sec. 719.107 Common expenses; assessments**

The Bill includes language to allow cooperative associations to contract for communication services, information services and internet services in the same manner as is currently permitted for condominium associations under Ch. 718.

**D. Section 719.303 – Obligations of owners.**

The Bill includes language to conform the “fining” provisions of Ch 719 to the equivalent provisions of Ch. 720 with respect to the makeup of the fining committee and propose a due date for any fine confirmed by the Committee.

**3. AMENDMENTS TO CHAPTER 720 - HOMEOWNERS ASSOCIATIONS**

**A. Sec. 720.303(2)(a) & 720.303(2)(c) & 720.303(4)(l) & 720.303(5)(a) – Association powers and duties; meeting of board; official records; budgets; financial reporting; association funds; recalls.**

The Bill incorporates the changes made in the Condominium Act into Ch 720 to allow directors to communicate but not vote by email, to require disclosure in any notice of meeting where assessments may be considered and allow notice to be posted on a website, with the added protection of requiring electronic notice to include a link to the posting. Sub-section (c)1., has been modified to place the onus of removing spam filters on the unit owners who consent to receive electronic notice.

The “catch all” provision in Section 720.303(4)(l) has been modified to exclude documents maintained on the personal computers of officers, directors and committee members from inspection by home owners.

Section 720.303(5)(a) has been modified to modify that section to limit the presumption of a willful failure if the request is delivered via certified mail or if delay in producing the records is not related to redactions necessary to comply with other laws.

**B. Sec. 720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—**

The Bill clarifies the fining process, including required notice and opportunity for a hearing before a fine may be imposed and provides a due date for any fine confirmed by the Committee.

**C. Sec. 720.306(1)**

A new subsection (e) is added to incorporate language from Ch 718 regarding the form for amendments to governing documents of an Association and providing that an amendment to the governing documents is effective when recorded in the public records of the county in which the community is located.

A new subsection (f) is added to reflect that an “immaterial error or omission” in the amendment process will not invalidate an otherwise properly adopted amendment.

A new subsection (g) is added to provide that any notice sent under the terms of Sec. 720.305 must be mailed or delivered to the address of the parcel as identified in the property appraiser’s website for the county in which the parcel is located or electronically transmitted to an owner who has consented, in writing, to receive notice by electronic transmission. This is consistent with Ch. 718.

**D. Sec. 720.306(9) – Meetings of members; voting and election procedures; amendments.**

In an effort to conform Ch 720 to the Condominium and Cooperative Acts, the Bill removes the need for an election if there are equal or fewer pre-nominated candidates than open positions for the board and where nominations from the floor are not permitted either by Ch. 720 or the bylaws of an association.

**D. Sec. 720.3085 - Payment for assessments; lien claims.**

The Bill propose to amend Section 720.3085(3)(b) to ensure restrictive endorsements or purported attempts at accord and satisfaction do not impact the application of payments received by the association.