Condominium Law: 1992 Amendments to the Florida Condominium Act

Gary A. Poliakoff*
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Abstract

Following the enactment of the 1991 amendments to the Condominium Act, representatives of various special interest groups barraged their Legislators with complaints concerning what they felt were over-reaching changes in the law.

KEYWORDS: kickbacks, records, funds
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I. INTRODUCTION

Following the enactment of the 1991 amendments to the Condominium Act, representatives of various special interest groups barraged their Legislators with complaints concerning what they felt were over-reaching changes in the law. In an effort to provide Legislators an opportunity to reflect upon the impact of the 1991 Amendments, the effective date for implementing the 1991 Amendments to the Condominium Act was changed from January 1, 1992 to April 1, 1992, during a Special Legislative Session called in December, 1991 for the purpose of adjusting the budget to compensate for a revenue shortfall. These Amendments reflect the lobbying efforts of various special interest groups.

II. 1992 AMENDMENTS

A. General Provisions

1. Definition of Committee

As originally approved, all "committees" as well as unit owner and board meetings were to be subject to notice, posted agenda and unit owner participation. As amended, only committees which make recommendations to the board regarding the association budget or those committees which take action on behalf of the board will be required to post notice and agendas and be open to unit owner observation and comment.

2. The Fiduciary Relationship of a Condominium Manager

The 1991 Amendments expanded the Act to provide that, in addition

3. Two of the most prominent interest groups are "S.C.O.R.N." and "Tri-Con." S.C.O.R.N. is an acronym for Secure Condominium Owners Rights Now. Tri-Con refers to Tri-County Condominium Alliance, which includes representatives of condominium board members from Dade, Broward and Palm Beach Counties.
5. For ease of reference, subsections to this survey will be labeled in accordance with their corresponding parts of chapter 718 of the Florida Statutes. Part IV and Part VI will not be discussed herein, because they only provide for changes in effective dates. See Fla. Stat. §§ 718.401, 608, 618 (Supp. 1992).
6. Id. § 718.103(6).
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1. The 1991 Amendments were the ultimate product of the Condominium Study Commission's final report issued in February, 1991.

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association and required to be licensed under section 468.432 of the Florida
Statutes also had a fiduciary relationship to the unit owners. It was felt by
several Legislators that the Legislature should not statutorily create a
specific fiduciary duty that did not otherwise exist in law. Accordingly,
the specific language imposing the duty was repealed; however, section
718.111 was amended to read, "[i]t is the intent of the Legislature that
nothing in this paragraph shall be construed as providing for or removing
a requirement of a fiduciary relationship between any manager employed by
the association and the unit owners." 10

3. Kickbacks

Confusion over whether the 1991 Amendment prohibiting officers,
directors or managers from accepting any thing or service of a value
exceeding $100 from persons providing goods or services to the condomi-

nium allowed the acceptance of gifts with a value of less than $100
resulted in a repeal of the $100 reference. Accordingly, effective April
1, 1992, an officer, director, or manager may not solicit or accept any thing
or service of value for which consideration has not been provided.

4. Election of Officers by Secret Ballot

The general rules of voting precluded directors from voting by secret
ballot. However, the 1992 Legislature, in the case of electing officers,
approved an exception to allow directors to vote by secret ballot. 13

5. Access to the Official Records

An on-going debate has evolved concerning the distance from the
condominium property at which the official records could be maintained, if
not maintained on the condominium property. This provision was created
primarily to accommodate the needs of condominium management
companies which preferred to maintain the records at their offices. Initially,
records were required to be maintained in the county in which the condo-


9. Id.
11. Id.

   pecuniary damages to an owner denied access to the records, or minimum damages of
   $500.00.
to the officers and directors of an association, managers employed by the association and required to be licensed under section 468.432 of the Florida Statutes also had a fiduciary relationship to the unit owners. It was felt by several Legislators that the Legislature should not statutorily create a specific fiduciary duty that did not otherwise exist in the law. Accordingly, the specific language imposing the duty was repealed; however, section 718.111 was amended to read, "[i]t is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners." 9

3. Kickbacks

Confusion over whether the 1991 Amendment prohibiting officers, directors or managers from accepting any thing or service of a value exceeding $100 from persons providing goods or services to the condominium allowed the acceptance of gifts with a value of less than $100 resulted in a repeal of the $100 reference. 10 Accordingly, effective April 1, 1992, an officer, director, or manager may not solicit or accept any thing or service of value for which consideration has not been provided.

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9. Id.
11. Id.

The Condominium Commission had recommended that the distance be reduced to twenty-five miles. 15 However, in 1992, the Legislature struck the distance requirement in favor of language which allows the records to be kept anywhere within the State of Florida so long as the official records are made available to a unit owner on the condominium or association property within five working days after the receipt of a written request. 16

6. Damages for Failure to Deliver the Official Records

In an effort to impress upon members of condominium boards the importance of responding in a timely fashion to a unit owner’s request for review of the official records, the 1991 Legislature imposed severe penalties for the association’s failure to respond within five working days of a written request. 17 In an effort to reach a compromise between an owner’s right of access and the logistics associated with the association fulfilling the unit owner’s request, the penalty provision was softened to provide for damages of $50 per calendar day up to ten days, with calculations of penalties not commencing until the eleventh working day after the receipt of the written request. 18

7. The Official Records

The 1991 Amendments to the Condominium Act imposed upon the association an obligation to make available to a unit owner requesting same, copies of attorney opinions, including situations where the unit owner requesting same was a party in litigation adverse to the association. In an effort to level the playing field, the Act was further amended in 1992 to exclude from unit owner inspection, records prepared by an association attorney or at the attorney’s express direction, which reflect a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which were prepared exclusively for, or in anticipation of, civil or criminal litigation, or for adversarial administrative proceedings. This was done with the provision that such record or opinion would be

accessible at the conclusion of the litigation or adversarial administrative proceeding. In addition, medical records of unit owners and information obtained by the association in connection with the approval of the lease, sale or other transfer of a unit, were similarly excluded.

8. Public Access to Association Year-End Financial Reports

Every association is required to furnish to each unit owner, a complete financial report of actual receipts and expenditures for the previous twelve month period. In the alternative, the association may be required to furnish a compiled, reviewed or audited statement. In addition, effective April 1, 1992, a copy of the year-end report must also be furnished to the Division of Florida Land Sales, Condominiums and Mobile Homes. To preclude misuse of these reports, the Act exempts the reports from the provisions of section 119.07(1) of the Florida Statutes, which allows public access under the Open Government Sunshine Review Act.

9. Commingling of Association Funds

The 1991 Amendments mandated that reserve funds be maintained separate from operating funds. To accommodate the objections of boards and management, the law was modified to allow the reserve and operating funds to be commingled for purposes of investment, so long as separate ledgers are maintained for each account.

10. Responding to Unit Owner Complaints and Inquiries

In an effort to motivate boards to be more responsive to their members' complaints and inquiries, the 1992 amendments established parameters for timely responses. When a unit owner files a written complaint by certified mail with the board of administration, the board is given thirty days from receipt of the complaint to either give a substantive response, notify the complainant that advice has been sought from the Division or that a legal opinion has been requested. The board's failure to act and to respond within thirty days precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the complaint.

11. Board Action on Non-Agenda Items

Notice of board meetings must contain an identification of agenda items. Many boards expressed concern with their ability to address matters inadvertently omitted from the agenda and/or emergencies. A legislative compromise allows boards to consider non-agenda items on an emergency basis so long as at least a majority plus one of the members of the board agree to consider the item, and the matter be noticed and ratified at the next regular meeting of the board.

12. Personal Notice of Specified Board Action

In order to afford unit owners the opportunity to provide input relative to special assessments and rules regulating unit use, the Act required that written notice be given to the unit owners whenever a special assessment or use restriction was proposed, discussed or approved. Many boards complained that such a restriction severely restricted the board's ability to discuss use concepts in advance of taking action on same. Accordingly, the Act was amended to provide that notice is only required when boards consider (construed to mean take action) on special assessments or amendments to rules regarding unit use.

13. No Election Required When No Contest

In an effort to clarify situations where no election is required, the Act

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19. Id.
20. Id. §§ 718.112(12)(c)2-3.
21. Id. § 718.111(13).
22. Id. § 718.111(14).
23. FLA. STAT. § 718.111(13) (Supp. 1992). Examples of some of the actual accounts and expense classifications included in the financial report are: costs for security; professional and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administrative and salary expenses; and general reserves, maintenance reserves and depreciation reserves.
24. Id.
25. Id. § 718.111(15).
26. Id.
27. Id. § 718.112(2)(a).
29. Id. Non-emergency special assessments and amendments to rules regarding unit use may not be taken up on an emergency basis and must be properly noticed not less than fourteen days prior to the meeting at which they will be considered.
30. Id.
31. Id.
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24. Id.
25. Id. § 718.111(15).
26. Id.
specifies that if there is only one candidate for election to fill a vacancy, no election is required.32

14. Notices Need Not Be Posted if No Place to Post

In addition to giving each unit owner written notice of the annual meeting, notice needs to be posted in a conspicuous place fourteen continuous days preceding the annual meeting. The board must adopt a rule designating a specific location for posting notice. An exception is made in a situation where there is no condominium property or association property upon which notices can be posted.33

15. Additional Nominations for the Board

Under the procedures established in 1991, unit owners are given notice sixty days in advance of the meeting at which the board will be elected. Unit owners desiring to run for the board must give written notice to the association of their desire to run for the board not less than forty days before the scheduled election. A number of condominium associations expressed concern with the possibility of not having unit owners qualify to fill all board vacancies. To alleviate this concern, the Act was further amended to provide that between forty days and thirty-five days before the election date, the board shall hold a meeting to accept additional nominations. At said meeting, any unit owner or other eligible person may nominate himself or may nominate another unit owner or eligible person.34

16. Candidate Information Sheets, and Liability for Contents

A candidate for the board may submit an information sheet no larger than 8 1/2 x 11 inches to the association for dissemination to the members as part of the notice package.35 The information sheet must be furnished

32. Id. § 718.112(2)(d).
33. Fla. STAT. § 718.112(2)(d)2 (Supp. 1992). The example given during Legislative discussion was that of an RV lot condominium without a clubhouse or common facility.
34. Id. § 718.112(2)(d)3. A unit owner nominating a person other than himself, must have written permission to nominate said person.
35. The notice package must also contain a ballot listing the candidates in alphabetical order without reference to incumbency, an outer self-addressed envelope and a smaller inner envelope in which the ballot is placed. The exterior of the outer envelope shall indicate the unit or unit numbers being voted, and shall contain a signature space for the voter. FLA. ADMN. CODE ANN. r. 7D-23.0021 (1991).
36. Id. § 718.112(2)(d)7. The statute does not address the question of whether the vote to opt-out of the statutorily required process is an annual vote, or a one time vote.
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by the candidate not less than thirty-five days before the election. Many condominium associations voiced concern as to potential liability associated with the dissemination of potentially libelous materials. To alleviate their concerns, the Act was amended to specifically provide that the association has no liability for the contents of the information sheets prepared by the candidates.36

17. Quorum for the Annual Election

Responding to concerns that a few participating unit owners could control the election in an apathetic community, a minimum threshold of twenty percent of the eligible voters casting votes was established in order to have a valid election.37

18. No Election Required if No Contest

In situations where the number of candidates is less than or equal to the number of vacancies, no election is required and those qualified are automatically elected.38

19. Opting Out of the Election Process

An association consisting of fewer than twenty-five units may, by a two-thirds vote of the unit owners, provide for a different voting and election procedure in its by-laws. This vote may be cast by proxy.39

20. Fidelity Bonds

The Act has, for some time, required those persons who control or disburse association funds to be bonded. There has always been uncertainty as to what level of activity constituted control of the funds. The Act was amended to alleviate that uncertainty. Effective July 1, 1992, the term "persons who control or disburse funds of the association" is defined to mean those individuals authorized to sign checks, and the president,

32. Id. § 718.112(2)(d).1.
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35. The notice package must also contain a ballot listing the candidates in alphabetical order without reference to incumbency, an outer self-addressed envelope and a smaller inner envelope in which the ballot is placed. The exterior of the outer envelope shall indicate the unit or unit numbers being voted, and shall contain a signature space for the voter. FLA. ADMIN. CODE ANN. r. 7D-23.0021 (1991).
37. Id.
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39. Id. § 718.112(2)(d).7. The statute does not address the question of whether the vote to opt-out of the statutorily required process is an annual vote, or a one time vote.
21. Filling Vacancies on the Board Resulting From a Recall

Members of the board may be recalled, with or without cause, either by a petition signed by a majority of all voting interests or at a special meeting called for said purpose. Prior to amending the Act to require a sixty day notice of the date, time and place of the meeting to elect the board, as well as the establishment of the procedure for conducting said election, the members could fill the vacancies at the meeting at which a director was recalled. In response to the uncertainty created by the 1991 Amendments, the Act was amended to provide that if a vacancy occurs on the board as a result of a recall and less than a majority of the board is removed, the vacancies may be filled by the affirmative vote of a majority of the remaining directors. However, if vacancies on the board occur as a result of a recall and a majority is removed, the vacancies shall be filled in accordance with rules to be adopted by the Division.

22. Vote to Approve an Alteration or Addition

If the declaration does not specify the procedure for approval of alterations or additions to the common elements or to association owned property, seventy-five percent of the total voting interests of the association must approve the alteration or addition.

40. For associations with gross receipts of less than $100,000, the bond shall be in the principal sum of not less than $10,000 for each such person. For associations with gross receipts between $100,000 and $300,000, the bond shall be in the principal sum of $30,000 for each such person. For associations with annual gross receipts in excess of $300,000, the bond shall be in the principal sum of $50,000 for each such person. Id. § 718.112(2)(b).

41. Fla. Stat. § 718.112(2)(k) (Supp. 1992). The Division of Florida Land Sales, Condominiums and Mobile Homes is presently holding informal public hearings to gather input on its proposed new rules. Among these are several draft rules regarding recall of directors. The Division is considering rule 7D-23.0029, whereby an election of replacement board members would be held at a recall meeting upon the recall of a majority of the board members. These replacement board members would then serve for an interim period of ninety days or less.

42. Id. § 718.113(2). The author of this provision failed to distinguish between an association operating one or multiple condominiums. Why would 75% of the association membership have to approve an alteration within a single condominium of a multiple condominium complex?

23. Making Up for Lost Common Expenses

In an effort to encourage institutional mortgagees to expedite their foreclosures against condominium units, section 718.116(6) was amended in 1991 by deleting all of said section and incorporating into section 718.116(1)(a) certain protections for institutional first mortgagees. In deleting section 718.116(7), the drafter inadvertently struck the following language: "The unpaid share of common expenses or assessments are common expenses collectible from all of the unit owners, including such acquirer and his successors and assigns." The effect of this inadvertence was to create a shortfall of operating revenues. Given the fact that a budget covered all anticipated expenses and revenues, the elimination of the common expense obligation of a foreclosed unit would result in an operational shortfall. This inadverdence was corrected in 1992 by adding, to section 718.115(1), a new paragraph "(c)" as follows:

If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all of the unit owners in the condominium in which the unit is located.

24. Mortgagee’s Liability for Common Expenses

The problem experienced by many condominium associations over the years has been the reluctance of mortgagees to foreclose delinquent units and/or to take title after a foreclosure due to the obligation, upon taking title,


45. Section 718.116(6) of the Florida Statutes (1989) was amended and renumbered, in chapter 90-151, Laws of Florida, § 12, as Florida Statute § 718.116(7). 1990 Fla. Laws ch. 90-151, § 12, at 669. Subsequently, in chapter 91-103, Laws of Florida, § 9, the legislature deleted a significant part of § 718.116(7), leaving only the last sentence: A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of ownership.

1991 Fla. Laws ch. 91-103, § 9, at 592.

This language was retained in § 718.116(7) of the Florida Statutes. FLA. STAT. § 718.116(7) (Supp. 1992).

46. 1992 Fla. Sess. Law Serv. 92-49, § 5, at 381 (West) (codified at FLA. STAT. § 718.115(1)(c) (Supp. 1992)).
secretary, and treasurer of the association. In addition, the amount of the bond is now based upon the gross receipts of the association.40

21. Filling Vacancies on the Board Resulting From a Recall

Members of the board may be recalled, with or without cause, either by a petition signed by a majority of all voting interests or at a special meeting called for said purpose.41 Prior to amending the Act to require a sixty day notice of the date, time and place of the meeting to elect the board, as well as the establishment of the procedure for conducting said election, the members could fill the vacancies at the meeting at which a director was recalled. In response to the uncertainty created by the 1991 Amendments, the Act was amended to provide that if a vacancy occurs on the board as a result of a recall and less than a majority of the board is removed, the vacancies may be filled by the affirmative vote of a majority of the remaining directors. However, if vacancies on the board occur as a result of a recall and a majority is removed, the vacancies shall be filled in accordance with rules to be adopted by the Division.42

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42. Id. § 718.112(2)(k). The Division of Florida Land Sales, Condominiums and Mobile Homes is presently holding informal public hearings to gather input on its proposed new rules. Among these are several draft rules regarding recall of directors. The Division is considering rule 7D-23.0029, whereby an election of replacement board members would be held at a recall meeting upon the recall of a majority of the board members. These replacement board members would then serve for an interim period of ninety days or less.

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In an effort to encourage institutional mortgagees to expedite their foreclosures against condominium units, section 718.116(6) was amended in 1991 by deleting all of said section and incorporating into section 718.116(1)(e) certain protections for institutional first mortgagees.44 In deleting section 718.116(7),45 the drafter inadvertently struck the following language: "The unpaid share of common expenses or assessments are common expenses collectible from all of the unit owners, including such acquirer and his successors and assigns."

The effect of this inadvertnce was to create a shortfall of operating revenues. Given the fact that a budget covered all anticipated expenses and revenues, the elimination of the common expense obligation of a foreclosed unit would result in an operational shortfall. This inadvertnce was corrected in 1992 by adding, to section 718.115(1), a new paragraph "(c)" as follows:

If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all of the unit owners in the condominium in which the unit is located.46

24. Mortgagee’s Liability for Common Expenses

The problem experienced by many condominium associations over the years has been the reluctance of mortgagees to foreclose delinquent units and/or to take title after a foreclosure due to the obligation, upon taking title,
for common expenses and special assessments. The 1991 legislative solution, limiting a mortgagee's liability to six months of unpaid assessments providing that the mortgagee took a deed in lieu of foreclosure or initiated a foreclosure within six months after receipt of the last payment of principal and interest, created more confusion than cure. Accordingly, the 1992 Legislature revisited the issue. The 1991 Amendment was repealed in its entirety, and the Legislature imposed upon a first mortgagee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure, liability for unpaid assessments that became due prior to the mortgagee's receipt of the deed. However, that liability is limited to a period not exceeding six months, or one percent of the original mortgage debt, whichever is the smaller amount.

25. Recovery of Legal Fees in Arbitration

As adopted in 1991, section 718.1255(4)(c) provided that the prevailing party may be awarded attorney's fees. An attempt was made during the 1992 Legislative Session to make the award of attorney's fees discretionary with the arbitrator. A compromise was reached and the final language as amended, stated that the amount of the attorney's fees is discretionary, not the question of whether attorney's fees should be awarded.

B. Rights and Obligations of Associations

1. Repeal of Design Professional Liability

In the continuing battle between consumers and design professionals, the consumers were the losers in 1992. As noted in Gary A. Poliakoff, The Florida Condominium Act, the Legislature in 1991 sought to clarify the liability of a design professional for negligence in the design of a condominium. That effort was for naught as the design professionals, led by an active lobbying effort and the support of key Legislators, one of whom is a design engineer, repealed the language added in 1991. As amended, section 718.203 of the Florida Statutes imposes an implied warranty of fitness upon the work performed or materials supplied by contractors, subcontractors and suppliers, but not upon work performed by design professionals, architects and engineers.

C. Rights and Obligations of Associations

1. Competitive Bidding of Contracts for Goods and Services

In an effort to fine tune the provision added in 1991, which established criteria for letting contracts for purchase, lease or rental of materials or equipment to be used by a condominium association, the 1992 amendments to section 718.3026 of the Florida Statutes made six revisions. First, the amendments allow associations with less than 100 units to opt out of the section upon approval of two-thirds of the unit owners. Second, the amendments replace the $5,000 threshold for obtaining competitive bids with a percentage—any sum that exceeds five percent, in the aggregate, of the total annual budget of the association. Third, they add to the list of those exempt from the competitive bidding provision. In addition to employees of the association, attorneys, and accountants provided for in the 1991 Act, architects, engineers, and landscape architects are now also exempt. Fourth, contracts executed before January 1, 1992, including any renewals thereof, are exempt. In addition, renewals of contracts let under the competitive bid provisions are not subject to competitive bids if the contract contains a provision that allows the board to cancel the contract on thirty days notice. Fifth, a contract with a manager, if made by a competitive bid, may be for a term of up to three years. Sixth, if the declaration provides a competitive bid procedure, the association may operate under said provision in lieu of the Act, so long as the Declaration's

52. Senator Winston W. “Bud” Gardner, President Pro Tempore of the Florida Senate, (Democrat, D-17).
54. This opting-out procedure may be accomplished by a proxy specifically setting forth the association's exemption from § 718.3026. Id. § 718.3026.
55. Poor craftsmanship fails to distinguish between an association operating a single condominium from one operating multiple condominiums.
56. Materials, equipment, or services provided to a condominium under a local governmental franchise agreement by a franchise holder are not subject to these competitive bid requirements.
for common expenses and special assessments. The 1991 legislative solution, limiting a mortgagee's liability to six months of unpaid assessments providing that the mortgagee took a deed in lieu of foreclosure or initiated a foreclosure within six months after receipt of the last payment of principal and interest, \(^{47}\) created more confusion than cure. Accordingly, the 1992 Legislature revisited the issue. The 1991 Amendment was repealed in its entirety, and the Legislature imposed upon a first mortgagee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure, liability for unpaid assessments that became due prior to the mortgagee's receipt of the deed. \(^{48}\) However, that liability is limited to a period not exceeding six months, or one percent of the original mortgage debt, whichever is the smaller amount. \(^{49}\)

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49. Id.
50. The prevailing party may be awarded the cost of the arbitration, reasonable attorney's fees, or both, in an amount determined at the discretion of the arbitrator. Id. § 718.1255(4)(c).
52. Senator Winston W. "Bud" Gardner, President Pro Tempore of the Florida Senate, (Democrat, S-17).
54. This opt-out procedure may be accomplished by a proxy specifically setting forth the association's exemption from § 718.3026. Id. § 718.3026.
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provisions are not less stringent than the requirement of the Act.\textsuperscript{57}

2. Time-Frame for Transition Conformed to Election Notice Requirement

In order to conform the time periods for calling the transition meeting to that of the election requirements, Florida Statute section 718.301(2) was amended to provide for an outside time frame of seventy-five days after unit owners other than the developer are entitled to elect the Board, for the association to call a transition meeting in accordance with section 718.112-(2)(d) of the Florida Statutes.\textsuperscript{58}

3. Committee of Unit Owners to Consider Fines

If the declaration or by-laws so provide, the association may levy reasonable fines against a unit for the failure of the owner, its occupant, licensee, or invitee, to comply with any provision of the declaration, by-laws, or reasonable rules and regulations. As amended in 1992, the hearing to consider a fine must be held before a committee of other unit owners.\textsuperscript{59}

D. Regulation and Disclosure Prior to Sale of Residential Condominium

1. Willfully and Knowingly

One of the primary catalysts for modification of the 1991 amendments was the provision imposing a civil fine individually against any officer or board member who willfully and knowingly violated a provision of the Act, a rule adopted by the Division, or a Final Order of the Division. Under threat of wholesale resignation of boards, the Legislature softened the impact of the law by defining "willfully and knowingly" to mean that the Division informed the officer or board member that his action or intended action violates the Act, a Division rule or Final Order, and that the officer or board member refused to comply with the requirements.\textsuperscript{60} Prior to initiating a formal agency action, the Division must afford the officer or board member an opportunity to voluntarily comply within ten days.\textsuperscript{61}

2. Recruitment of Mediators

In an effort to encourage mediation of condominium disputes, the division is mandated to develop a program to recruit volunteer mediators, who will serve without compensation or reimbursement.\textsuperscript{62}

3. Encouraging Timely Division Responses to Complaints

A recurring complaint heard by the Condominium Commission as it traveled around the State was the division's lack of responsiveness to unit owner complaints. In an effort to expedite the complaint process, the Act was amended, imposing the following statutory guidelines and restraints:

Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. If an investigation is not completed within the 90 days, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation.\textsuperscript{63}

4. Broker Immunity for Error or Inaccuracy in Condominium Documents

In an effort to alleviate a primary cause of unit owner complaints, the failure to receive and be informed as to the covenants and restrictions at the time of purchase of a condominium unit, the 1991 legislation mandated that each prospective purchaser of a previously owned condominium is entitled


\textsuperscript{58} Id. § 718.301(2).

\textsuperscript{59} Id. § 718.303(3). While it is believed that the intent of this amendment was to preclude members of the board from deciding questions concerning the levying of fines, the Act as amended does not preclude board members from doing so, as long as they are unit owners.

\textsuperscript{60} Id. An officer or board member who complies within 10 days is not subject to a civil penalty.

\textsuperscript{61} F.L.A. STAT. § 718.501(1)(m) (Supp. 1992). A list of those individuals who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes will be provided by the division upon the request of any association.

\textsuperscript{62} Id. The failure of the division to complete the investigation within 90 days does not preclude the division from continuing its investigation, accepting or considering evidence after the 90 days, or taking administrative action, if reasonable cause exists to believe that a violation of the Act or a division rule has occurred. Id.
to receive, at the seller’s expense, a current copy of the condominium documents.\textsuperscript{64} Apparently, fearful of potential liability for their dissemination of inaccurate documents, the real estate brokers sought protection from the Legislature. They received it in the form of an amendment providing that they are not liable for any error or inaccuracy contained in the documents.\textsuperscript{65}

5. Right of Rescission

The purchaser of a previously owned condominium is entitled to void the contract of purchase within three days\textsuperscript{66} of receipt of the condominium documents, excluding Saturdays, Sundays and legal holidays.\textsuperscript{67}

6. Repeal of Ombudsman and Random Investigation by Division

Doomed from their inception as adding too great a cost and burden on the process, the Legislature, in its infinite wisdom, repealed the ombudsman and division’s right of random inspection prior to such right ever having been utilized.\textsuperscript{68} Few will mourn the passing of either concept.

E. Conformity of Co-Op Act to Condominium Act

In 1976, at the time the Condominium Act was renumbered from Chapter 711 to 718, a separate and almost identical Co-op Act was created.\textsuperscript{69} In the ensuing years, as amendments were added to the Condominium Act, efforts were made to conform the Co-op Act. Unfortunately, the legislative efforts to conform the two laws have not always been successful, resulting in several discrepancies between the laws. In 1992, the legislature attempted to incorporate into the Co-Op Act most of the 1991 amendments to the Condominium Act, as further modified by the 1992 amendments. While outside the scope of their control, practitioners should be sensitive to these changes.

F. Homeowners’ Association (HOA) Legislation

For the past twenty years, efforts to provide homeowners, residing in mandatory membership communities, with protection similar to that afforded condominium and cooperative owners has failed. This result was due largely to the result of lobbying efforts by the Florida Homebuilders Association. Consequently, in 1992, the legislature had limited success in enacting the framework for HOA Legislation.\textsuperscript{70}

The Act covers associations, other than those excluded,\textsuperscript{71} in which membership, either by the parcel owner or by an association in which parcel owners are members, is a condition of ownership of a parcel and which is authorized to impose a charge or assessment that if unpaid, may become a lien on the parcel. Under the Act’s provisions, the association’s officers and directors are said to have a fiduciary relationship to the owners; meetings of the board are to be open to all parcel owners, with notice of meetings posted; minutes are to be maintained; specified records are to be maintained, with rights of owner inspection; owners are insured the right to peaceably assemble on all common areas and recreational facilities; and the use of general proxies is outlawed.

III. Conclusion

Given the impact that condominiums have on the economy and political structure of the State of Florida, it is doubtful that any legislative session will even be free of some proposed legislation change to the Condominium Act. Hopefully, however, as time, experience and legal precedents establish a framework for development and operation of condominiums, the existing provisions of the law will be given an opportunity to work with minimal future tampering.

\textsuperscript{65} Id. § 718.503(2)(b).
\textsuperscript{66} The 1991 amendment, adding the right of voidability, initially provided for a seven day cooling off period. Id. § 718.503(2)(b).2.
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\textsuperscript{68} 1992 Fla. Sess. Law Serv. 92-49, § 12, at 384 (West).
\textsuperscript{71} Effective October 1, 1992, the legislation excludes from its coverage homeowners’ associations serving less than 50 parcels. Those associations in which the assessments do not exceed $150 per year per parcel, as well as developer controlled associations.
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