



2017 Legislative Update

The Governor signed 3 bills into law during the last week of June affecting community associations. HB 1237 has dramatic effects for condominiums in Florida. SB 398 gives more specificity to the process of providing the certificates of assessment (also referred to as the estoppel letter) and clarifies fees that may be charged for the service. HB 6027 addresses financial reporting for community associations. We will provide a summary of each of these bills and provide a link so that the reader can access the entire bill.

HB 1237

This law is a result of the [investigative reporting](#) by El Nuevo Herald and Univision 23 last year on condominium association fraud primarily in Dade county. The reporting detailed serious issues with the Florida statutes governing condominiums and the enforcement of the statutes.

The report caused the state attorney's office to conduct a grand jury investigation, which culminated in February with a witheringly scornful report that called for major changes to the state's laws governing condominium associations and the agency that is charged with overseeing them.

Many of the changes suggested by the grand jury report are contained in the bill passed by the legislature. The bill was effective July 1, 2017 except for the provisions pertaining to a condominium association website which took effect July 1, 2018.

HB 1237 Summarized

Florida House Bill 1237 makes change that effect condominium associations. The changes stem from a need to prohibit self-dealing by members of boards of condominiums and to circumvent election fraud. The changes define activities that constitute conflicts of interest that are potentially detrimental to unit owners of condominiums. The change further prohibits or restricts such activities, which include prohibiting lawyers from representing both the board of a condominium association and the management company of the association; prohibiting members of the board or the management for a condominium association that is not a timeshare from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or from taking title to the unit by deed in lieu of foreclosure; prohibiting

condominium that are not timeshare condominium from contracting with a service provider that is owned or operated by a board member or a person who has a financial relationship with a board member, or a close relative of a board member or officer; prohibiting a party that contracts to provide maintenance or management services or a board member of the party from owning more than fifty-percent of the units of the condominium or from purchasing a property that is subject to a lien by the association; and, requiring officers and directors to disclose activities that may reasonably be construed to be a conflict of interest. An officer or director may choose to cease the activity that creates the conflict or withdraw as an officer or director, but if he or she does not do so then he or she must be removed from serving as an officer or director by the board.

Another area of change addressed in the bill seeks to increase access to records by unit owners. The bill requires condominium associations to keep additional records and to take measures to make the records available to unit owners . Records that must be maintained as a part of the condominium association's official records include bids for materials, equipment, and services. The condominium association must permit renters to inspect the association's bylaws and rules and make copies of same. The condominium association must provide an annual report to the Department of Business and Professional Regulation listing the financial institutions at which accounts are maintained. Unit owners must be allowed to obtain a copy of the report from the department. Unit owners will be allowed to give notice to the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation that an association has failed to mail or hand deliver to the unit owner a copy of the most recent financial statement after a request has been made. The division must then give the association notice that it must comply with the request, and if it fails to comply within five business days, the association may not prepare less complex financial statements than the statutory default requirements for three years.

The bill requires officers and directors of a condominium who are charged with certain crimes relating to the condominium generally may not access association records without a court order so long as and during the period that charges are pending.

Effective July 1, 2018, condominium associations with 150 or more units must have a website where copies of some of its official records must be posted. It can have a public page and must provide a portion which is accessible by members of the association only.

Click to read the entirety of HB 1237. New provisions are underlined and language eliminated is lined through with strikethrough.

[2017 - 188](#)

SB 398

This law addresses the certificate of assessment for condominiums, cooperatives and homeowners' associations. The legislature amended all three of the community association statutes several years ago to allow the associations to charge a fee for the preparation of the certificates. There was no limit on the amount of the fee and there were some associations and management entities that were charging what some considered outrageous fees. This law puts a limit on the amounts that can be charged and also specifies the information that must be provided as a part of the response to the request.

SB 398 Summarized

Senate Bill 398 amends chapters 718, 719 and 720 in the same manner, with regard to estoppel certificates for condominium, cooperative and homeowners' associations. Presently, the owner and new owners of a condominium, cooperative or homeowners' parcel are jointly and severally liable for unpaid assessments, and the unpaid assessments can become a lien on the property. New owners may request that the previous owners provide an estoppel certificate from the condominium, cooperative or homeowners' association to protect against any undisclosed financial obligations so that title may transfer free from any lien in favor of the association. An estoppel certificate provides the amount of any debt owed to the association for unpaid money obligations by a unit or parcel owner as a date certain.

The bill requires the association to respond to a request for an estoppel certificate within 10 days rather than the previous 15 days; requires an association to designate a person or entity who may receive the estoppel certificate requests on its website and include a street address or email address; estoppel certificates delivered by hand, mail or email must have a 30-day effective period, while one sent by regular mail must have a 35-day effective period; the association must identify the person or persons who may complete the estoppel certificate on behalf of the board or association; specify the information the association must provide in an estoppel certificate.

The bill also prohibits an association from charging a fee for an amended estoppel certificate, and provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and his or her successors and assigns, who in good faith rely upon the certificate.

An association may not charge a fee for preparing and delivering an estoppel certificate that is not delivered within ten business days.

The bill authorizes the use of a summary proceeding pursuant to section 51.011, Florida Statutes, to compel compliance with the estoppel certificate requirements for a cooperative association, as existing laws already provide for condominium and homeowners' associations. An association may charge a maximum fee of \$250 for the preparation and delivery of an estoppel certificate, if there are no delinquent amounts owed to the association and charge an additional maximum fee of \$150 if a delinquency exists. The maximum fee an association may charge when it receives simultaneous requests for estoppel certificates for multiple units or parcels owned by the same person when no past due monetary obligations are owed to the association are set forth in the bill.

The bill provides a lender or purchaser who pays for the preparation of an estoppel certificate may not waive the right to reimbursement if the closing does not occur and the prevailing party in a suit to enforce a right of reimbursement must be awarded damages, attorney's fees and costs.

Finally, the bill requires the Department of Business and Professional Regulation to adjust the estoppel certificate fees for inflation every five years, rounded to the nearest dollar. The adjusted amounts must be posted on the department's website.

Click to read the entirety of SB 398. New language is underlined and words eliminated are lined through with strikethrough

[2017 - 93](#)

HB 6027 Summarized

This bill removed the following language from all three statutes, Chapter 718, F.S., Chapter 719, F.S. and Chapter 720, F.S.

"An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a)."

This makes the threshold for formal financial statements versus a cash report the amount of the association receipts only. So all associations with \$150,000 or more in receipts must provide formal financial statements unless waived or reduced by the membership.

The bill also eliminated the following language from the provisions found in Chapter 718, F. S.

"An association may not waive the financial reporting requirements of this section for more than 3 consecutive years."

So, a condominium can waive the formal financial reporting requirement each year.

Click to read the entirety of HB 6027. New language is underlined and words eliminated are lined through with strikethrough.

[2017 - 161](#)

If you have questions or need additional information, please contact us.

Gray systems, Inc.

800-223-5457

Email: gsi@graysystems.com

Thanks for using our services

Fred R. Gray

President