

INTERESTING 2007 LEGISLATIVE UPDATES FOR HOA'S

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2007 HOA Legislative Update

The 2007 legislative session has ended with our elected lawmakers passing new laws that will substantially affect how your association conducts its business. This is perhaps one of the most important legislative sessions for homeowner associations in five years. The new laws make it more complicated and more expensive to operate your homeowners association and will require an even larger dedication of time and attention by the members of the community who volunteer to serve on the Associations' boards of directors and as its officers. The following is a summary of the most important new laws:

CHAPTER 2007-183, LAWS OF FLORIDA

This law creates Section 720.3085, Florida Statutes, which has been needed for several years to close loopholes in HOA assessment collections. **An owner is now jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of the transfer of title.** The present owner may sue the previous owner to recover the delinquent assessments. Delinquent assessments bear interest at the rate provided in the declaration or bylaws. If no rate is provided, delinquent assessments bear interest at 18%. If the declaration or bylaws provide authority, the Association may charge an administrative fee not to exceed the greater of \$25 or 5% of the delinquent assessment installment. The Association is required to apply all payments received and accepted in the following order: accrued interest, late fees, costs, attorney's fees incurred in collection and then to the delinquent assessments. Restrictive endorsement on checks or accompanying a payment are ineffective.

An HOA may not file a claim of lien against a lot until a written demand for payment (WDFP) is made. The WDFP must provide the owner 45 days to pay and be sent registered or certified mail, return receipt requested, and first class mail to the owner's address of record and to the parcel's address, if different. The Association may NOT file a foreclosure lawsuit until 45 days after it has provided WDFP to the owner.

HOA's are statutorily authorized to purchase a lot at the foreclosure sale, and hold, lease, mortgage and sell it.

If certain conditions are met, a homeowner in a foreclosure may file a qualifying offer at any time before the entry of the final judgment. A qualifying offer is a written offer to pay all amounts secured by the HOA's claim of lien in full, plus interest. A qualifying offer stays the foreclosure action for up to 60 days to permit the owner the opportunity to pay. The HOA may not recover any attorney's fees incurred if the owner pays in full, with limited exceptions.

CHAPTER 2007-173, LAWS OF FLORIDA

This new law makes several important changes to Chapter 720, Florida Statutes. A homeowner's association not otherwise subject to chapter 720, may now receive its covenants and restrictions that have been terminated by the operation of the Marketable Record Title Act ("MRTA).

Meetings of committees or other similar bodies that makes final decisions regarding the expenditure of HOA funds or that are vested with the power to approve or disapprove

architectural decisions with regard to a lot must be conducted with the same basic legal requirements as a meeting of the HOA's board of directors.

The HOA is now authorized to charge a purchaser or lien holder a "reasonable fee" for providing good faith responses to requests for information (other than that required by law), up to \$150 PLUS the reasonable costs of photocopying and any attorney's fees incurred by the Association in connection with the response.

RESERVES. The Legislature stopped just shy of mandating reserve accounts for all HOAs. Budgets for HOA's **may** include reserve accounts for capital expenditures and deferred maintenance to the extent the governing documents do not limit increases in assessments. However, once a HOA budget includes reserves, such reserves SHALL be determined, maintained, and waived in compliance with the new law.

If the HOA's budget does not provide for reserve accounts and the HOA is responsible for the repair and maintenance of capital improvements that may result in special assessments, each financial report for the preceding fiscal year shall contain a certain statutory notice that advises owners they have the right to elect to provide for reserves upon the approval of a majority of the total voting interests.

The amount to be reserved shall be established by a formula that is based on the estimated remaining useful life and replacement cost or deferred maintenance expense of each reserve item. The funding formula may be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

Once reserves are established, the HOA must propose to fully fund the reserves each year in the initial annual budget adopted by the board. If a majority of the members present at a membership meeting do not affirmatively vote to waive or reduce reserves, then the fully funded reserves as disclosed in the annual budget go into effect. The owner vote shall be applicable only to one budget year.

Reserve funds and interest thereon must remain in the reserve account(s) and SHALL only be used for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present.

FINANCIAL REPORTING. Within 90 DAYS after the end of the fiscal year or annually on the date provided in the bylaws, the HOA shall prepare and complete a financial report for the preceding fiscal year. Within 21 DAYS after the report is completed or received (but not later than 120 DAYS after the end of the fiscal year or other date as provided in the bylaws), the Association shall provide each member with a copy of the report or a notice that the report is available upon request at no charge.

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