



CAN Analysis

2012 Community Association Legislation (HB 319)

Section 01: F.S. 399.02

➤ Elevator Retrofit – *CAN Legislative Agenda*

This provision would eliminate the 2015 deadline for associations to be in compliance with the Phase II Elevator Retrofit requirements. If approved, this change would provide financial relief to community association residents by postponing the Phase II implementation until the association needs to replace or make major upgrades to their elevators as opposed to requiring this costly work to be finished by 2015 regardless of need.

Background: Under Phase II Retrofit requirements, elevators must have a system that would permit fire fighters, exclusively, to control the elevator in an emergency. Associations may waive the Phase II requirement if the local fire marshal creates a substitute elevator access plan “if it is technically, financially or physically impossible” for the association to comply with the regional access requirements.

The Phase II elevator retrofit costs are significant. Depending on the number of elevators in a community, the estimates run from hundreds of thousands of dollars into the millions. For homeowners already trying to weather community association life in the face of delinquencies, this is a major financial burden. Although the goal of the retrofit is laudable, the danger and harm it addresses has not been documented as being rampant. In fact, the DBPR has stated that there have been no reported instances of injury or death in Florida related to the failure or absence of these components in an elevator. [Click here](#) to read a Florida Senate report on elevator safety. Consequently, a delay in the implementation of the proposed code revision would provide significant financial relief to homeowners and pose little to no danger to their life or safety.

Section 02: F.S. 468.433

➤ Personal Addresses on DBPR’s Website – *CAN Legislative Agenda* ~ *Community Association Managers (CAM)*

This provision would prohibit the DBPR from posting the home addresses of Florida licensed community association managers on the DBPR website. These records would still be available through the formal public records request system.

Background: CAMs can sometimes be subject to the “blame the messenger” mentality. As such, posting a CAM’s home address on a website which can be accessed immediately after a resident receives bad news could be a recipe for disaster. Notwithstanding any perceived safety issues, most CAMs value their privacy and would not necessarily want uninvited guests appearing on their doorstep to chat. Lastly, there has been no public policy purpose articulated which would warrant making this information accessible on the State’s website.

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Section 03: F.S. 718.112

➤ **Unit Owner Meetings – CAN Legislative Agenda** ~ *Condominiums*

Removes the current requirement that an association broadcast notice at least 4 times every broadcast hour of each day that a posted notice is required under the statute, even when such notice has been physically posted on the association property. This would correct an inadvertent deletion by last year's community association legislation, which increased the burden of an association to post and broadcast meeting notices.

➤ **Board Member Certification Records – CAN Legislative Agenda** ~ *Condominiums*

This would clarify that an association must keep board members' certification records for the duration of their service. The association is required to maintain the records for a minimum of five (5) years. If a board member serves less than five (5) years, the association must keep their certification on file for the minimum five (5) year period.

➤ **Election Challenges – DBPR Legislative Agenda** ~ *Condominiums*

This would require that any challenge to a condominium's election must be commenced within 60 days after the election results are announced.

➤ **Recall of Board Members – DBPR Legislative Agenda** ~ *Condominiums*

- *Recall Arbitration Deadlines* – Under this change, the Division would not accept recall arbitration petitions if:
 - 1) there are 60 or fewer days until the member being recalled is up for re-election; or
 - 2) 60 or fewer days have passed since the board member being recalled has been elected.
- *Unit Owners* – This language would permit unit owners to file a petition challenging the board's failure to duly notice and hold a board meeting to certify the recall or the board's failure to file a petition for arbitration if it refuses to certify the recall. The DBPR's scope of review under such challenge would be limited to determining if the recall petition was properly served on the board and whether the written agreements or ballots are valid on their face.
- *Board Members* – This measure would give recalled board members the ability to challenge the validity of the recall. The petition must be filed within 60 days after the recall is certified.

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Section 04 & 05: F.S. 718.113 & 718.115

➤ **Hurricane Protection** ~ *Condominiums*

This language clarifies changes made by last year's community association legislation.

Currently, the law permits an association to upgrade to hurricane shutters, impact glass, or other code-compliant windows with majority approval of the total voting interests. If, however, the association has the responsibility to maintain, repair or replace these protections, they do not need a vote of the majority interests to upgrade. Additionally, a board may not prohibit a unit owner from installing these protections if the protections meet specifications approved by the board.

This change would add the terms "code-compliant doors" and "other types of hurricane protection" to these provisions.

Additionally, this provision would provide that a unit owner who installed code-compliant protections will receive a credit against their portion of the assessment should the association approve additional protections.

Section 06: F.S. 718.116

➤ **Liability for Fees Associated with Delinquent Units – CAN Legislative Agenda** ~ *Condominiums*

This measure would assist condominium associations to recoup more than just past due assessments when a third party purchaser (other than a bank) takes title to a property at a foreclosure sale.

This language would make both third party purchasers and previous owners liable for all late fees, interest, costs and reasonable attorneys' fees associated with collection efforts against the delinquent property.

➤ **Master and Sub Association Liability – CAN Legislative Agenda** ~ *Condominiums*

Under this proposal, whichever association (the master or the sub) acquires title would not be liable to the association that did not acquire title for unpaid assessments, fees, interest or attorney's fees and costs that came due prior to taking title (currently, only sub associations benefit from this provision due to a drafting issue last year).

This is intended to end the standoff in many large communities where both the master and the sub association have legal rights to pursue in the face of a delinquency but are fearful of joint and several liability for past due assessments.

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Section 07: F.S. 718.303

➤ **Suspension of Rights: Governing Document Violations** ~ *Condominiums*

This is a technical amendment that would add language inadvertently omitted in last session's community association legislation.

This change would add exceptions to an association's authority to suspend the right of a unit owner, a unit owner's tenant, guest or invitee to use the common elements, common facilities or any other association property for violations of the association's governing documents, including violations of the declaration, bylaws or reasonable rules and regulations of the association.

Specifically, this language would prevent the association from suspending access to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces or elevators. This limiting language is already in place for suspension of use rights attributable to an owner's delinquency.

➤ **Suspension of Voting Rights – CAN Legislative Agenda** ~ *Condominiums*

This proposal would clarify the intent of language passed into law during the 2011 legislative session that mandated that a unit owner whose voting rights had been suspended could not count towards the total number calculated to constitute a quorum.

For example, assume an association has suspended 20 unit owners' voting rights. In an association requiring 100 unit owners to constitute a quorum, that number will be reduced by the number of suspended voting rights to 80.

Section 08: F.S. 718.403

➤ **Phase Condominiums – FL Bar Legislative Agenda** ~ *Condominiums*

The Real Property Probate and Trust Law (RPPTL) Section of the Florida Bar drafted this provision which relates to the development of condominium phases. Specifically, it would:

- Require that all phases must be added within seven (7) years of submitting the original declaration for the initial phase;
- Provide that this 7-year period may be amended by a vote of the unit owners, but may only be amended during the last three (3) years of the original 7-year period;
- Require that an amendment to the original 7-year period may not exceed ten (10) years and must state the length of time the original 7-year period has been extended.
- Provide that the amendment procedures set out in F.S. 718.110(1) (a)ⁱ must be followed; conversely F.S. 718.110(4)ⁱⁱ would not apply to a vote to extend the original 7-year period.

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Section 09: F.S. 718.406

➤ **Condominiums within Condominiums – *FL Bar Legislative Agenda*** ~ *Condominiums*

Florida Statutes permit a single structure that consists of a master or "primary" condominium and one or more sub-condominiums or "secondary" condominiums. These properties are frequently referred to as "hotel condominiums" or "condos in a condo". Typically, these are commercial properties. When developers were given the authority to create these properties, various other legal and operational aspects of these entities were not addressed. This section addresses these commercial property and developer issues and was drafted by the Florida Bar. For more information on this issue, [click here](#).

Section 10: F.S. 718.5011

➤ **Outside Employment: Condominium Ombudsman Staff – *DBPR Legislative Agenda***

Currently, any full-time Condominium Ombudsman staff person is prohibited from "actively engaging in any other business or profession". Consequently, these staff persons may not have jobs outside the Ombudsman's Office.

This change would permit full-time Condominium Ombudsman staff to seek additional employment, as long as the secondary position does not directly or indirectly relate or conflict with their responsibilities in the State's Condominium Ombudsman's office.

Section 11: F.S. 718.707

➤ **Bulk Buyers & Bulk Assignees — *FL Bar Legislative Agenda*** ~ *Condominiums*

The Florida Bar drafted this provision which would extend the Distressed Condominium Relief Act's sunset date from July 1, 2012 until July 1, 2015.

In 2010, the Florida Legislature passed the Distressed Condominium Relief Act, which was designed to address the problem of large numbers of unsold condominium units in newly built and recently converted communities as a result of the real estate market collapse. The goal was to encourage purchases in these struggling communities by clarifying that purchasers of 7 or more units (bulk buyers) would not be held to developer standards and developer liabilities. Most experts agree that the legislative changes did result in an increase in unit sales but that more time is needed to realize additional benefit.

The Florida Bar maintains that, "an extension of the sunset of the Relief Act until July 1, 2015, will provide lenders, bulk purchasers, unit owners and associations with much needed additional time to resolve issues involving distressed condominiums, thereby enabling the conveyance of condominium units to third party purchasers and providing economic stability and future growth to the condominium market."

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Section 12: F.S. 719.104; Official Records

➤ **Personal Information –** ~ *Cooperatives*

This change would provide cooperative owners the same privacy protections with regard to their personal information as condominium unit and homeowner association parcel owners.

Specifically, the following information would not be accessible without the consent of a cooperative owner:

- Social Security Number
- Driver License Number
- Credit card numbers
- E-mail addresses
- Telephone numbers
- Emergency contact information
- Any address other than the addresses required for the association's notice obligations
- Any personal identifying information except for the owners;
 - Name
 - Unit designation
 - Mailing address
 - Property address

➤ **Personnel Records –** ~ *Cooperatives*

This provision would make the personnel records of association or management company employees, including but not limited to, disciplinary, payroll, health, and insurance records, not accessible to unit owners.

The following records are specifically excluded from the statutory definition of "personnel records," and are therefore accessible to unit owners:

- written employment agreements with an association employee or management company; or
- budgetary or financial records indicating the compensation paid to an association employee.

Section 13: F.S. 719.1055

➤ **Lender/Mortgagee Consent Requirements – *CAN Legislative Agenda*** ~ *Cooperatives*

This change would prohibit cooperative association documents from requiring a lender's consent for amendments that do not affect the lender's rights or interests. Specifically, this provision would create an outright prohibition after the legislation's effective date. For mortgages entered into prior to this date, the bill proposes clear protocol for boards to obtain lender consent and provides that any lender who fails to respond to an association's request for approval within 60 days after the mailing shall be deemed to have consented to the amendment. This provision currently exists in the condominium statute (F.S. 718).

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Section 14: F.S. 719.106

➤ **Election Challenges – DBPR Legislative Agenda** ~ Cooperatives

This would require that any challenge to a cooperative's election must be commenced within 60 days after the election results are announced.

➤ **Board Member Certification – CAN Legislative Agenda** ~ Cooperatives

There has been greater outcry from directors, association residents and managers that all volunteer directors in the State of Florida should demonstrate some understanding of the role their job entails.

This provision would require cooperative association board members to be certified to serve on their boards in the same manner as condominium directors are currently. There would be two certification methods: a signed statement from the director that he or she has read the association's governing documents and policies and agrees to uphold them to the best of his or her ability OR a certificate of completion that the director has attended an educational course approved by the State. Either certificate must be provided to the Secretary of the Association within 90 days after a director is newly elected or appointed to the board. Course completion certificates for classes attended up to a year before submitting the certification are still valid.

This is identical to the current certification procedure for condominium board members.

➤ **Board Member Certification Records – CAN Legislative Agenda** ~ Cooperatives

This language would require cooperative associations to keep board members' certification records for the duration of their service. The association is required to maintain the records for a minimum of five (5) years. If a board member serves less than five (5) years, the association must keep their certification on file for this five (5) year period.

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➤ **Recall of Board Members – DBPR Legislative Agenda**

~ Cooperatives

- *Recall Arbitration Deadlines* – Under this change, the Division would not accept recall arbitration petitions if:
 - 1) there are 60 or fewer days until the member being recalled is up for re-election; or
 - 2) 60 or fewer days have passed since the board member being recalled has been elected.
- *Unit Owners* – This language would permit unit owners to file a petition challenging the board's failure to duly notice and hold a board meeting to certify the recall or the board's failure to file a petition for arbitration if it refuses to certify the recall.
- *Board Members* – This measure would give recalled board members the ability to challenge the validity of the recall. The petition must be filed within 60 days after the recall is certified.

Section 15: F.S. 719.303

➤ **Suspension of Rights: Governing Document Violations**

~ Cooperatives

This is a technical amendment that would add language inadvertently omitted in last session's community association legislation.

This change would add exceptions to an association's authority to suspend the right of a unit owner, a unit owner's tenant, guest or invitee to use the common elements, common facilities or any other association property for violations of the associations' governing documents, including violations of the declaration, bylaws or reasonable rules and regulations of the association.

Specifically, this language would prevent the association from suspending access to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces or elevators. This limiting language is already in place for suspension of use rights attributable to an owner's delinquency.

➤ **Suspension of Voting Rights – CAN Legislative Agenda**

~ Cooperatives

This proposal would clarify the intent of language passed into law during the 2011 legislative session that mandated that a unit owner whose voting right had been suspended could not count towards the total number to constitute a quorum.

For example, assume an association has suspended 20 unit owners' voting rights. In an association requiring 100 unit owners to constitute a quorum, that number will be reduced by the number of suspended voting rights to 80.

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Section 16. F.S. 720.303

➤ **Personnel Records – CAN Legislative Agenda** ~ Homeowners' Associations

This change would add management company employee personnel records as a record that cannot be disclosed to parcel owners. These records include, but are not limited to, disciplinary, payroll, health and insurance records.

The following records would be specifically excluded from the statutory definition of “personnel records,” and are therefore accessible to parcel owners:

- written employment agreements with a management company; or
- budgetary or financial records indicating the compensation paid to a management company

➤ **Recall of Board Members – DBPR Legislative Agenda** ~ Homeowners' Associations

- *Recall Arbitration Deadlines* – Under this change, the Division would not accept recall arbitration petitions if:
 - 1) there are 60 or fewer days until the member being recalled is up for re-election; or
 - 2) 60 or fewer days have passed since the board member being recalled has been elected.
- *Parcel Owners* – This language would permit parcel owners to file a petition challenging the board's failure to duly notice and hold a board meeting to certify the recall or the board's failure to file a petition for arbitration if it refuses to certify the recall.
- *Board Members* – This measure would give recalled board members the ability to challenge the validity of the recall. The petition must be filed within 60 days after the recall is certified.

Section 17. F.S. 720.305

➤ **Suspension of Rights: Governing Document Violations** ~ Homeowners' Associations

This is a technical amendment that would add language inadvertently omitted in last session's community association legislation.

This change would add exceptions to an association's authority to suspend the right of a parcel owner, a parcel owner's tenant, guest or invitee to use the common elements, common facilities or any other association property for violations of the associations' governing documents, including violations of the declaration, bylaws or reasonable rules and regulations of the association.

Specifically, this language would prevent the association from suspending access to limited common elements intended to be used only by that parcel, common elements needed to access the parcel, utility services provided to the parcel, parking spaces or elevators. This limiting language is already in place for suspension of use rights attributable to an owner's delinquency.

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➤ **Suspension of Voting Rights – CAN Legislative Agenda**

~ Homeowners' Associations

This proposal would clarify the intent of language passed into law during the 2011 legislative session that mandated that a parcel owner whose voting right had been suspended could not count towards the total number to constitute a quorum.

For example, assume an association has suspended 20 parcel owners' voting rights. In an association requiring 100 parcel owners to constitute a quorum, that number will be reduced by the number of suspended voting rights to 80.

Section 18. F.S. 720.306

➤ **Lender/Mortgagee Consent Requirements –CAN Legislative Agenda**

~ Homeowners' Associations

This change would prohibit homeowners' association documents from requiring lender's consent for amendments that do not affect the lender's rights or interests. Specifically, this provision would create an outright prohibition after the legislation's effective date. For mortgages entered into prior to this date, the bill proposes clear protocol for boards to obtain lender consent and provides that any lender who fails to respond to an association's request for approval within 60 days after the mailing shall be deemed to have consented to the amendment. This provision currently exists in the condominium statute (F.S. 718)

➤ **Election Challenges - DBPR Legislative Agenda**

~ Homeowners' Associations

This legislative change would require that any challenge to a homeowners' association election must be commenced within 60 days after the election results are announced.

➤ **Board Member Certification – CAN Legislative Agenda**

~ Homeowners' Associations

There has been greater outcry from directors, association residents and managers that all volunteer directors in the State of Florida should demonstrate some understanding of the role their job entails.

This provision would require homeowners' association board members to be certified to serve on their boards in the same manner as condominium directors are currently. There would be two certification methods: a signed statement from the director that he or she has read the association's governing documents and policies and agrees to uphold them to the best of his or her ability OR a certificate of completion that the director has attended an educational course approved by the State. Either certificate must be provided to the Secretary of the Association within 90 days after a director is newly elected or appointed to the board. Course completion certificates for classes attended up to a year before submitting the certification are still valid.

This is identical to the current certification procedure for condominium board members.

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➤ **Board Member Certification Records – CAN Legislative Agenda**
~ Homeowners' Associations

This language would require homeowners' associations to keep board members certification records for the duration of their service. The association is required to maintain the records for a minimum of five (5) years. If a board member serves less than five (5) years, the association must keep their certification on file for this five (5) year period.

Section 19. F.S. 720.3085

➤ **Liability for Fees Associated with Delinquent Lots – CAN Legislative Agenda**
~ Homeowners' Associations

This measure would assist homeowners' associations to recoup more than just past due assessments when a third party purchaser (other than a bank) takes title to a property at a foreclosure sale.

This language would make both third party purchasers and previous owners liable for all late fees, interest, costs and reasonable attorneys' fees associated with collection efforts against the delinquent property.

➤ **Master and Sub Association Liability – CAN Legislative Agenda**
~ Homeowners' Associations

Under this proposal, whichever association (the master or the sub) acquires title would not be liable to the association that did not acquire title for unpaid assessments, fees, interest or attorney's fees and costs that came due prior to taking title (currently, only sub associations benefit from this provision).

This is intended to end the standoff in many large communities where both the master and the sub association have legal rights to pursue in the face of a delinquency but are fearful of joint and several liability for past due assessments.

Section 20. Effective Date

If passed by both the Senate and the House and signed by the Governor, the provisions in HB 319 will become effective July 1, 2012.

ⁱ F.S. 718.110(1)(a) If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owners of not less than two-thirds of the units. Except as to those matters described in subsection (4) or subsection (8), no declaration recorded after April 1, 1992, shall require that amendments be approved by more than four-fifths of the voting interests.

ⁱⁱ F.S. 718.110(4) Unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment. The acquisition of property by the association and material alterations or substantial additions to such property or the common elements by the association in accordance with s. 718.111(7) or s. 718.113, and amendments providing for the transfer of use rights in limited common elements pursuant to s. 718.106(2)(b) shall not be deemed to constitute a material alteration or modification of the appurtenances to the units. A declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

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