

CAN Analysis

2012 Community Association Legislation (HB 319)

Homeowners' Associations

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.



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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.

➤ **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.

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

➤ **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.

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