

2018
FLORIDA REAL PROPERTY LAW
STATUTORY UPDATE

By: Michael J. Gelfand, Esq.
Gelfand & Arpe, P.A.
West Palm Beach, Florida

Disproving the naysayers, the 2018 Florida legislative session did not repeat the melt-down of last year. Concern was heightened this year because 2018 is an election year. Every statewide office is open for election, and reapportionment resulted in a number of contested legislative races. Overcoming these concerns was the State treasury, seemingly flush with post-recession dollars, allowing for a relatively easy budget processes.

Then came the students! The gun safety protests following the Stoneman Douglas High School massacre arrived by happenstance at a critical point in the legislative process. The House Appropriations Committee was just starting its final push with most matters awaiting final hearing when the students literally arrived on the doorstep.

Constitutionally mandated timing for budget approval annually leads to an end of session bottleneck. The students arrival had an unanticipated consequence, even slower proceedings as time was running out. This assisted the students in their efforts to obtain some legislative action and forced legislators to either quickly compromise on other issues or watch their bills languish.

Moving forward, this outline provides short summaries, briefly identifying 2018 Florida Laws which are anticipated to impact the real property law practitioner and providing selected commentary. All Bills that became law were effective July 1, 2018, unless stated otherwise below.

This Statutory Update outline arranges 2018 Florida Laws chronological number, followed by House Resolutions. A Bill that was vetoed includes a hyperlink to the Governor's veto message.

Practitioners should review the text of each cited law. Hyperlinks to the outlined Florida Laws are embedded in the titles below. Duplicates of the Bills, Laws and veto messages are posted at: <https://gelfandarpe.com/resources/2018-statutory-update/>

BANKRUPTCY
FLORIDA LAWS 2018 – 15 / SENATE BILL 220

A lien holder seeking to foreclose a mortgage upon property may utilize a defendant owners' bankruptcy filings made under the penalty of perjury that have not been withdrawn which show an intent to surrender the property. §702.112. Effective for foreclosures filed after October 1, 2018.

HOMESTEAD WAIVERS
FLORIDA LAWS 2018 – 22 / SENATE BILL 512

Deed language for surviving spouse waiving Article X.4(c) Fla. Const. Homestead rights:

By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me.

However, this is not effective to waive the Homestead protection against creditor claims during the owner's lifetime and after death, nor is it a waiver of the restrictions of alienation by mortgage, sale, gift or deed without the joinder without the joinder of the owner's spouse. §732.7025.

LINEAR FACILITIES
FLORIDA LAWS 2018 – 34 / HOUSE BILL 405

Deletes the distribution of gas, electricity or water in established rights of way or corridors from the definition of development as regulated by the Florida Local Government Development Agreement Act. §§163.3220 – 163.3243, 163.3221, 380.05 and 403.511. Provides the Public Service Commission exclusive jurisdiction to require transmission lines to be located underground. §403.531. Effective upon becoming law.

FOREIGN MONEY JUDGMENTS
FLORIDA LAWS 2018 – 37 / HOUSE BILL 623

Defenses to recognition of a foreign judgment may include substantial doubt about the integrity of the rendering court with respect to the judgment, and that the specific proceedings leading to the judgment were not compatible with due process of law. §55.605. Effective upon becoming a law.

MORTGAGE BROKERING
FLORIDA LAWS 2018 – 44 / HOUSE BILL 193

Exemptions from certain mortgage brokering regulations include certain activities by a securities dealer, investment adviser, or an associated person registered under §517.12. §494.00115.

ALARM CONFIRMATION
FLORIDA LAWS 2018 – 51 / HOUSE BILL 539

Expands verification processes from calls to include text and other electronic means. §489.529.

CONSTRUCTION PUBLIC RECORDS
FLORIDA LAWS 2018 – 53 / HOUSE BILL 551

Exempts from public records access certain security, internal layout and structural components of health care of many health care facilities. §119.071. Takes effect upon becoming law.

**MARKETABLE RECORD TITLE ACT
COVENANTS AND RESTRICTIONS
FLORIDA LAW 2018 – 55 / HOUSE BILL 617**

The governor signed House Bill 617, revising the Marketable Record Title Act, including providing a formal title for the Act. §712.001. Overall, the new law provides greater specificity, removing some uncertainties. Nevertheless, many will be disappointed as the new Law does not rescind the requirement for homeowners' associations to preserve covenants or lose the covenants! Note that the Law refers to "property owners' association" which largely, but not entirely, includes homeowners' associations.

Covenants. A "community covenant or restriction" to be preserved must be recorded and submits parcels to a lien, or a charge or assessment against a parcel owner. §712.01.

Process. The process to file a notice of preservation is revised deleting the board of directors' vote after notice to all members, and references the use of amendment certificate. §712.05.

Organizations. The statutory revitalization process is extended to certain communities which do not have an established homeowners' association. §712.12.

Consideration. After the organizational meeting, annually, the board of directors must consider whether to undertake a preservation project. §720.303(2)(e).

Notice. The process of providing notice to the members is specified providing for a certificate process and recording. §720.3032.

Organizations. Paralleling the change to Chapter 712 concerning preservation, revitalization is extended to all communities, not just residential communities. §720.404.

**BUSINESS FILINGS
FLORIDA LAWS 2018 – 58 / HOUSE BILL 661**

The Florida Department of State, Divisions of Corporations is required to provide notice to a business entity when there are changes made to the business entity's record, including corporations and limited liability companies. §605.0210. If there is a false, misleading or fraudulent filing, then the corporation can seek a correction at no charge if undertaken within fifteen days of the Division's notice. §605.0209.

**HOMEOWNERS INSURANCE DISCLOSURES
FLORIDA LAWS 2018 – 63 / HOUSE BILL 1011**

A homeowner's insurance policy must include clarified disclosures concerning flood insurance §627.7011.

**COURT REGISTRY
FLORIDA LAWS 2018 – 71 / HOUSE BILL 1361**

A claim for surplus proceeds resulting from a clerk's sale must be filed no later than the date that the clerk reports the funds as unclaimed, deleting the 60 days after sale limit, with parallel changes to the notice of publication and certificate of disbursements. §43.19. The term "surplus

trustee” is deleted and the 60 day period for filing a claim is substituted for one year after sale when the clerk is required to report unclaimed surplus. Those entitled to a surplus are limited to the owner of record as reported by the clerk of court, beneficiary as defined in §731.201 of a deceased owner of record as reported by the clerk. §45.032.

UNLAWFUL DETENTION **FLORIDA LAWS 2018 – 83 / SENATE BILL 566**

An action for unlawful detention may include the recovery of a transient occupant’s personal belongings. §82.045/

Transiency. Factors that may establish transiency are expanded to include an inability to produce documentation by government agency showing that the person used the property address as an address of record within twelve months.

Termination. A transient occupancy terminates when the transient: resides elsewhere; surrenders the key to the premises; or, leaves when directed by a law enforcement officer in receipt of a sworn affidavit, the party entitled to possession, or a court.

Personal Property. Merely leaving personal belongings is not an extension of a transient occupancy; however, the person entitled to possession shall allow a former transient occupant to recover personal belongs at a reasonable time and under reasonable conditions generally within 10 days of termination of the transient occupancy. Reasonable conditions of entry to recover personal property may be imposed, especially if there is reasonable belief of misconduct, or history of drug or alcohol abuse or violence. A presumption of abandonment of personal property exists after a reasonable time after surrender of occupancy which period may be shortened due to circumstances such as perishable or hazardous nature of belongs or significant impairment of use of dwelling. Unreasonable withholding of a former transient’s personal belongings give rise to a civil action for damages or for recovery of the property for which the prevailing party is entitled to recover reasonable attorney’s fees and costs.

EJECTMENT / TENANCIES / BEACHES & RECREATIONAL AREAS **FLORIDA LAWS 2018 – 094 / HOUSE BILL 631**

Removing a tenant has been of increased interest by community associations in light of earlier amendments to §718.116 and §720.3085 regarding “eviction” when a landlord fails to pay assessments, but the landlord has a tenant presumably paying rent. Public access to beaches and recreation areas was also limited.

Location and Parties. A party may seek to possess a unit or parcel through an “ejectment” lawsuit without first providing the tenant pre-suit notice or a demand. A landlord who is not a party to the lawsuit must be made a party. Details of the chain of title together with copies of title instruments must be filed by parties. §66.021.

Remedies. In addition to possession, a plaintiff may obtain damages equal to double the reasonable rental value, and other damages including damages for waste. Claims for damages and possession may be bifurcated, or separated, and be brought in a summary fashion. §82.03

Beaches/Recreation. An ordinance or governmental rule adopted after January 1, 2016, may not provide for public access above the mean high water line as a “customary use” without the

governmental entity holding a public hearing after notice to detailing the parcels, uses and legal basis provided obtaining a judicial declaration that the proposed recreation uses were ancient, reasonable, without interruption, and free from dispute. This does not prevent customary use from being a governmental entities defense to a claim concerning a rule or ordinance adopted before July 1, 2018. §163.035.

COMMUNITY ASSOCIATIONS

FLORIDA LAWS 2018-096 / HOUSE BILL 841

Official Records: Condominium and Cooperative Associations. The time for retaining many records has been extended. For example, association minute books must be retained indefinitely, deleting the seven-year minimum retention period. All other records unless specified now must be kept for at least seven years. An exception exists for most election documents, confirming a one-year retention period, noting that “electronic records relating to voting” are included in records to be retained. An owner’s request for records must normally be granted within ten working days, doubling the five-day requirement. §718.111(12); 719.104(2).

Website: Condominium Associations. Which condominium associations must have websites has been narrowed. The threshold was “an association with 150 or more units....” This is now “an association managing a condominium with 150 or more units...” which may exempt many multi-condominium association that have condominiums with less than 150 units. The deadline for creation has been extended from July 1, 2018 to January 1, 2019. The items to be posted on the website have been limited, agreement now limited to executory contracts or documents in lieu of all agreements. All bids have been limited to those received within the past year and in certain situations summaries are permitted. Liability for improper disclosure is significantly narrowed to knowing or intentional disregard of protections or restrictions for the association or it’s agent. It is unclear as to whether directors are included in this protection. §718.111(12)(g).

Financial Statements: Condominium Associations. The penalty for failing to timely respond to an owner request for financial statements; the inability to waive reporting is limited to the fiscal year in which the owner’s request was made and the immediately following year. §718.111(13).

Directors, Number (Condominium and Cooperative Associations). The number of directors shall be five unless stated in the bylaws; however, for associations with five or fewer units, the number of directors shall not be less than three. §718.112(a)1; 719.106(1)(a)1.

Assessment Notices: Condominium and Cooperative Associations. A notice of board of directors’ meetings in which assessments are to be considered must specifically state that assessments will be considered, the estimated cost of the assessment, and the description of the purpose or purposes of the assessment. §718.112(2)(c)1 and §719.106(1)(c).

Electronic Notice: Condominium and Cooperative Associations. As an alternative to paper notice of board of directors’ meetings, notice may be provided by posting the meeting notice and agenda on the association’s website if a separate electronic notice is provided to the members with a hyperlink to the website. Owners who consent to electronic notice have the duty to unblock or unfilter for notices provided on behalf of the association. §718.112(2)(c)1 and §719.106(1)(c).

Recalls: Condominium and Cooperative Associations. Within ten days of a board of directors’ meeting determining that a recall is facially valid, a recalled director must return to the association books and records in his or her possession. If a timely board of directors meeting concludes that a

recall is not “facially valid” then a challenging unit owner must file an arbitration action within 60 days, the petition limited to challenging the sufficiency of service and “facial validity” of the ballots or written agreements. A recalled director may challenge the decision to recall in arbitration. A recalled director who successfully challenges the recall is entitled to recover reasonable attorneys’ fees and costs from the arbitration respondent. If the respondents prevail, then they may be entitled to an award of attorneys’ fees and costs. §718.112(2)(j).

Directors Terms: Condominium Associations. A person may not serve as a director for more than eight consecutive years unless approved by two-thirds of all votes cast in the election. Terms longer than one year are permitted if stated in the association’s articles or bylaws. §718.112(2)(d)2.

Alterations: Condominium Associations. The Condominium Act’s cure, allowing alterations when governing documents are silent, must be invoked before the alteration commences. §718.113(2).

Electric vehicle charging stations within a unit owner’s limited common element parking area are exempt from many statutory alterations requirements, when not causing irreparable damage, the electricity is paid for by the utilizing unit owner, the unit owner is responsible for maintenance repair, and the unit owner pays for removal when there isn’t a need for the station. §718.113(8).

An association may require compliance with building codes and architectural standards, and utilize a licensed contractor or engineer, provide a certificate of insurance and pay the expense of additional insurance. The expense shall not be a lien against the common elements, only the limited common elements. §718.113 and §718.121.

Conflicts of Interest: Condominium Association. The approval and disclosure requirements for contracts that pose a conflict of interest have been moved from §718.3026 to §718.3067.

Fines: Condominium and Homeowners’ Associations. Clarifying, a committee of three independent persons must approve a fine before it can be imposed. Fines are due five days after the committee meeting when the fine is approved. Written notice of a fine or suspension must be provided to the unit owner, tenant and other persons impacted. §718.303(3), §720.303(3).

Bulk Buyers: Condominium Associations. The sunseting of the bulk buyer provisions has been removed, allowing the provisions to continue indefinitely. §718.707.

Email: Condominium and Cooperative Associations. Directors may utilize email to communicate, but not to vote. §718.112(2)(c); §719.106(1)(c) and §720.303(2)(a).

Director Delinquencies: Cooperative Associations. Similar to the Condominium Act’s provisions, a director who is more than ninety days delinquent; however, a director who is delinquent will be deemed to have abandoned the office to be filled as provided by law. §719.101(m).

Communications: Cooperative. The provisions for allowing bulk contracts for cable are extended to include defining communication services such as the Internet. §719.107(1)(b).

Fines: Cooperative Association. The process for levying a fine or suspension is updated to parallel the Condominium Act’s provisions including a notice of hearing before a committee of at least three persons independent of the board of directors’ and management and clarifying that the fining committee must approve a fine by a majority vote. §719.303.

Amendments: Homeowners' Associations. The manner of presenting an amendment is amended to parallel the Condominium Act's requirement for specifying the text and providing that effectiveness is upon the date of recording. Errors in the amendment process do not automatically lead to defeat. Notices pursuant to this section shall be delivered to the address shown on the property appraisers website. §720.306(1)(a).

Elections: Homeowners' Associations. Nominations from the floor are not required. §720.306(a).

Assessments: Homeowners' Associations. Replicating the Condominium Act's requirement, cooperative associations shall accept partial payments and that restrictive endorsements shall not be a basis for rejections. §720.3085(3)(c).

WATER MANAGEMENT SURPLUS LANDS
FLORIDA LAW 2018- 155 / HOUSE BILL 703

If a water management district determines to dispose of surplus lands, a proposed sale is to be advertised and noticed to an adjoining property owner. This does not prevent the district from selling to the highest bidder. §373.089.

CONSTRUCTION CLAIMS
FLORIDA LAWS 2018-097 / HOUSE BILL 875

The time limit for filing lawsuits for construction defects is clarified, including a one-year extension for counter-claims, cross-claims, and third-party claims within one year after the complaint is filed. However, claims based on design, planning or construction if performed pursuant to a duly issued building permit and if a specified government agency or inspector issued a final certificate of occupancy or certificate of completion are not entitled to the extra year. §95.11(3)(c).