

2010 FLORIDA REAL PROPERTY STATUTORY UPDATE SUMMARY

**MICHAEL J. GELFAND, ESQ.
GELFAND & ARPE, P.A.**

Bills adopted during the 2010 Florida legislative session deemed significant to Florida real property practitioners are listed below. The portions of those Bills appropriate for this presentation are then summarized. Many Bills have provisions of tangential, if any interest to the real property practitioner; thus, those tangential provisions are not summarized.

Copies of the Bills, and for Bills signed by the Governor, the Laws, are posted at www.gelfandarpe.com and are accessible by clicking the “2010 Statutory Update” area. The website is anticipated to be updated with additional Laws as the Bills are signed by the Governor. Please note that the text that follows is merely summary in nature and the exact text should be referred to before taking action.

Each Bill summarized provides and effective date of July1, 2010, except as stated below. All Bills signed into Law will have a *Florida Laws* Chapter number in the format “Ch. 2010-xxx *Fla. Laws.*” Chapter Laws numbering known at time of publication are stated. Bills are presented below in numeric order by the number of the Bill enacted with companion Bill numbers stated when identifiable.

1. **DOCUMENTARY STAMPS: Short Sales.** [Ch. 2010-032](#), *Fla. Laws*, ([HB 109 / SB234](#)). Section 202.02 is amended to address short sales. Excepted from the definition of “taxable consideration” is a mortgage holder’s release of the unpaid indebtedness on property transferred, if the mortgage secures an amount greater than the purchase price, the mortgage holder does not receive an interest in the property, and the grantor and grantee are independent of the mortgagee. The Bill also provides for certain procedures and education criteria.

2. **APPRAISERS: Regulation.** [Ch. 2010-084](#), *Fla. Laws*, ([HB 303 / SB 2210](#)).

§ 475.611: Definitions. New definitions are provided for “Appraisal Management Company,” “Appraisal Management Services,” “Appraiser Panel,” and “Client.” In addition, “Signature” is defined to require the signing appraiser to have personal evidence and to accept responsibility for the appraisal.

§475.613: Florida State Real Estate Appraiser Board. The Governor’s appointment authority is expanded to nine members, two of which must represent the appraisal management industry.

§475.614: Board Rule Making. Rules shall be adopted specifying the signature process.

§475.6147: Fees. State fees for appraisal management company registration may not exceed \$150.00 per year.

§475.6235: Registration of Appraisal Management Companies. Engaging in appraisal management under that term, or any other term, is prohibited unless registered, except that employees of registered companies are not required to register separately. Applications must include the principal's fingerprints, a pledge to comply with the Uniform Standards of Professional Appraisal Practice, and for non-residents, consent to personal jurisdiction and venue in the county in which a plaintiff has a claim against the company and acceptance of service through the Division of Real Estate. Registration is for four years.

§475.624: Appraiser Discipline. Expands disciplinary authority to those providing appraisal services.

§475.6245: Discipline. Provides for Division investigation, fines not to exceed \$5,000.00, and suspension for up to ten and probation. Causes for discipline include failing to communicate an appraisal without good cause, accepting an appraisal assignment if the assignment is contingent upon a pre-determined result, attempting to influence an appraisal through improper means including withholding timely payment without good cause or threatening to withhold future business, providing a proposed or target value, other than by providing a sales contract for a transaction, obtaining a second appraisal unless the initial appraisal was flawed.

§475.626: Penalties. Expands penalties to include violations by an appraisal management company, registered trainee appraiser, licensed or certified appraiser.

§475.629: Records Retention. Appraisal records generally must be retained for five years, except as provided in the Uniform Standards of Professional Appraisal Practice. The Department may inspect records only in connection with a pending investigation or complaint. If an appraisal is subject to litigation, records regarding appraisal must be kept for at least two years after trial or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is "greater."

3. **MARKETABLE RECORD TITLE: Exceptions** [Ch. 2010-104, Fla. Laws, \(HB 435 / SB 518\)](#).

§712.03. Exceptions to Marketability. An exception to marketability of record title is added, any right, title or interest held by: the Board of Trustees of the Internal Improvement Trust Fund; any water management district created under Chapters 373; or, the United States.

§712.04: Interests Extinguished. Clarifies the exceptions provided by §712.03.

§712.06: Notice. In addition to recording and the clerk providing notice, the person providing notice must also publish the notice in a newspaper.

4. **SALES: RESIDENTIAL: Disclosures** [Ch. 2010-VETOED](#), *Fla. Laws*, ([HB 545 / SB 2190](#)).

§689.262: Disclosure of Windstorm Mitigation Rating. The duty to inform the purchaser of residential property in a wind-born debris region of windstorm mitigation rating of the structure is repealed.

5. **INSURANCE: Mortgage Guarantee**. [Ch. 2010-056](#), *Fla. Laws*, ([HB 0661 / SB 2084](#)).

§635.042 Minimum Surplus. The Commissioner of Insurance Regulation may permit a temporary exception to minimum surplus requirements if the Commissioner finds that the financial position is reasonable taking into account insured risk and financial needs.

6. **BUILDING CODES: Safety**. [Ch. 2010-176](#), *Fla. Laws*, ([HB 663 / SB648](#)). Except as otherwise expressly stated the Act is effective July 1, 2010. Building Code regulations are generally amended, including providing for numerous fees and rule making authority.

§196.031: Exemption of Homesteads. Homestead status shall be considered abandoned three years after the expiration of a building permit issued following a casualty making the property uninhabitable.

§399.02: Department Authority. Department authority is expanded to allow reasonable access to areas with newly installed conveyances and equipment. Rule making authority is expanded, including extending the time for enforcing new fire fighter service on elevators until July 1, 2015 or the elevator is replaced or substantially modified, whichever occurs first.

§399.15: Regional Emergency Elevator Access. Allows for lock box access in certain situations to be uniform in each of the state emergency response regions.

§468.631. Fees. Allocates 1.5% of permit fees to be assessed, the minimum amount being \$2.00, to fund the Homeowners Construction and Recovery Fund and the functions of the Building Code Administrators and Inspectors Board.

§468.83 et. seq.: Home Inspections Services. Expands the home inspection services licensing program with details, including licensing requirements and rule making authority.

§468.84 et. seq.: Mold Related Services Licensing Program. Expands mold related services licensing, including examination, educational background, registration process, and penalties, including a grandfathering provision.

§553.375: Re-Certification of Manufactured Building. Re-certification is not available for relocation of manufactured buildings to sites that have the same or less than design wind

speed.

§553.373: Florida Building Code. Exemptions from the Florida Building Code include defined prefabricated family mausoleums, and Department of Corrections temporary housing of prisoners. Local governments cannot require existing mechanical equipment on a roof to be upgraded to current code until it is required to be removed or replaced. Local governments are prohibited from adopting the most recent version of the International Resident Code, Section R313, unless adopted before January 1, 2010.

§553.74: Florida Building Commission. Exempting certain types of commission members representation from conflict of interest rules.

§553.79: Permits. Inspection services not required by federal law or Florida Building Code, are to be performed by an alternative statutory process or the local governmental entity.

§553.79: Enforcement. Enforcement provisions are re-categorized under §553.80, specifying the non-application of exemptions to single family residences for fees in certain flood hazard areas.

§553.844: Windstorm and Roofs. Exposed mechanical equipment fastened to a roof or installed on the ground in compliance with the Code are deemed to comply with wind resistance requirements of the 2007 Florida Building Code, clarifying that support or enclosure of such equipment is not required by the Florida Building Code; however these provisions expire on the effective date of the 2010 Florida Building Code.

§553.885 Alarms. Expands requirements for installation of carbon monoxide alarms with exceptions including alterations and repairs to existing buildings unless as specifically defined.

§553.9061: Thermal Efficiency Standards. Goal setting has been expanded to include duct systems with devices and features, installation procedures for air conditioning systems, shading and sun screen materials, weather stripping, caulking and sealing, as well as computerized data centers in office buildings.

§627.71: Premium Discounts. Authorized mitigation inspectors are expanded to include licensed home inspectors, as well as those who are acceptable by the insurer. While mitigation verification forms must be signed by the person who personally inspected the structure, certain licensees may authorize direct employees to undertake the inspection. Penalties are provided for improper inspections and verifications.

§663.21: Definitions. Numerous definitions, particularly concerning fire equipment.

§663.0215: Florida Fire Prevention Code. Expedited declaratory statements, within 45 days of receipt, are required from the State Fire Marshall under certain criteria including pending construction. Condominiums less than three stories in height with an exterior corridor for

a means of egress are exempt from installing manual fire alarms as required by §9.6 of the Life Safety Code.

§663.025: Fire Safety Standards. Residential property owners are not required to install fire sprinklers when changing the property use from primary use to rental.

§663.26: Legislative Intent. The Florida Fire Prevention Code is intended to be interpreted in a reasonable, cost effective manner, protecting public safety, health, welfare and uniform interpretation, providing also for just and expeditious dispute resolution. Interpretation issues may be delegated to a third party whose performance is to be evaluated, and providing for procedures before a fire code interpretation committee.

§663.082: Fire Control Systems. Criteria for fire hydrant inspections in specified.

§718.113(6): Condominium Building Inspections. Repeals requirement for condominium association to obtain an architect or engineering structural report every five years.

7. **LIABILITY: Premises.** [Ch. 2010-008](#), *Fla. Laws*, ([HB 0689 / SB 1224](#)).

768.0755 Premises liability. Without effecting common-law duties of one in possession or control of a business establishment, an establishment's slip and fall claimant must prove that the establishment had actual or constructive notice of the dangerous condition and should have taken corrective action. Constructive notice may be shown by the length of time the situation existed, or the situation's repetitive nature. §768.0710 is repealed.

8. **UNIFORM COMMERCIAL CODE: Electronic Documents.** [Ch. 2010-131](#), *Fla. Laws*, ([HB 731 / SB 1336](#)), effective October 1, 2010. Extensive changes to the Uniform Commercial Code, and bailee and warehouses liens.

§671.201: General Definitions. Definitions amended or added include the following by Code paragraph number:

- (5) "Bearer" expands the concept of possession to those in "control of a negotiable electronic document of title."
- (6) "Bill of Lading" deletes a warehouse receipt.
- (10) "Conspicuous" simplifies appearance of text.
- (15) "Delivery" expanded to include electronic documents voluntarily transferred, including certificated securities.
- (16) "Document of Title" expands possession to also add "control" of a

“record,” distinguishing between electronic and tangible document of title.

- (21) “Holder” includes those in possession of a negotiable tangible document of title, and those in control of a negotiable electronic document of title.
- (25) “Notice” a new provision specifies the receipt of notice by actual notice, notice of notification or a objective basis for imputing knowledge.
- (26) “Notifies” enlarges the method of providing notice as including those that are reasonable to inform the receiving person in the ordinary course including safe harbors for actual attention and delivery.
- (27) Notice is effective when brought to an individual’s attention if due diligence was utilized, clarifying that due diligence is receipt as opposed to acting upon the information.

§672.310: Payment. Payment is normally due at the place where the buyer is to receive delivery of the tangible documents or an electronic document, regardless of where goods are actually received.

§677.102: Definitions and Index. Examples of changes specifying that documentation may either be electronic or tangible, and the manner of possessing and controlling that documentation. Good faith means honesty in fact and observance of reasonable commercial standards or fair dealing.

§677.103: Relationship of Chapter. Specifies that the Chapter does not modify or repeal other bailee provisions, but does supercede the Electronic Signatures in Global and National Act, except for the electronic delivery provisions, and that this Chapter shall govern conflicting provisions in state statutes.

§677.105: Re-Issuance. A person entitled to an electronic document of title may seek an electronic re-issuance of a tangible document.

§677.106 Control. Defines control of electronic document of title and authentication.

§677.602: Judicial Process. Judicial process does not act as a lien upon goods in the hands of a bailee except under certain circumstances.

§679.2081: Secured Party Duties. A secured party having control of an electronic document has duties including transferring control to the debtor or its defined custodian and taking action to enable a debtor to make copies as well as other actions.

9. **SERVICE CONTRACTS: Renewal.** [Ch. 2010-058, Fla. Laws, \(HB 751 \ SB 1332\)](#). Effective July 1, 2010 only to contracts entered into after that date. Service contracts effective for over six months providing renewal for over one month unless the consumer gives notice, shall conspicuously disclose the automatic renewal. If the contact is for twelve months or more, then the seller shall provide notice of the renewal provision no less than thirty and no more than sixty days before renewal. Exceptions include most financial institutions, utilities, insurers, and health studios.

10. **BUILDING CODES: Fire Sprinklers.** [Ch. 2010-099, Fla. Laws, \(SB 846 \ HB 7094\)](#). Effective upon becoming a law.

[§553.73 Florida Building Code.](#) Local governments may not adopt §R313 of the International Residents Code (requiring installation of sprinklers in one and two family dwellings, except if in effect on January 1, 2010.

[§633.055 Minimum Fire Safety.](#) A change in use to residential rental cannot be used to mandate sprinkler installation.

11. **TAXATION: Homestead.** [Ch. 2010-109 Fla. Laws, \(HB 927 / SB 1884\)](#).

[§193.155: Homestead Assessments.](#) Transfers which do not constitute a change of ownership triggering homestead assessed value changes, include a transfer between equitable title holders and no additional person applies for homestead protection, transfers of legal and equitable title between husband and wife not limited to dissolution transfers, transfer by operation of law to a surviving spouse or minor child pursuant to §732.401. Leasehold interests may also be considered as qualifying for homestead treatment.

[§193.1554 and §193.155: Non-Homestead Resolution Property.](#) The cumulative transfer of more than fifty percent of the ownership in an entity that owns property through the buying and selling of shares on a public exchange for a publicly traded company does not constitute a transfer for this provision, except for a merger.

[§193.1556: Notice of Change of Ownership.](#) Notice is deemed provided to a property appraiser by recording a deed or other instrument in the county in which the property is located. The Department of Revenue shall provide a form for notice to all property appraisers.

12. **TAXATION: Chinese Drywall.** [Ch. 2010-170, Fla. Laws, \(HB 965 June 2, 2010 / SB 2160\)](#). Effective upon becoming law, applicable to the 2010 and subsequent assessment rolls; however, the provision is scheduled to be repealed July 1, 2017.

[§193.1552.](#) A property appraiser determining that single family residential property is affected by drywall containing elevated levels sulfur which results in the corrosion of certain

metals, then the value shall be adjusted, and shall be adjusted to zero if the building cannot be utilized for its intended purpose. Criteria for evaluation is provided.

13. **TAXATION: Agriculture.** [VETOED May, 15, 2010, \(HB 981 / SB 2182\)](#). Adjusts agricultural regulations.

[§193.461. Agricultural Lands.](#) Clarifies for classification of bona fide agricultural purposes taxation classification is not affected by offering property for sale if the use of the land continues to be for agricultural purposes. Applies retroactively unless a final judgment is entered.

14. **LIABILITY: Underground Facilities.** [Ch. 2010-100, Fla. Laws, \(SB 982 / SB 0691\)](#). Effective October 1, 2010. Amends Chapter 556, Sunshine State One-Call, to preempt local regulation in conflict, including licensing of operators identifying underground facilities, specifying types or markers, or requiring removal of marks. Other changes include providing for low impact marking systems, an alternative dispute resolution process, and high-priority claims such involving for gas transmission lines.

15. **BUILDING CODES: Elevator Safety.** [Ch. 2010-110, Fla. Laws, \(HB 1035 / SB 1172\)](#). The Bill provides for certain definitions, and allows reasonable access to spaces in which existing or newly installed conveyances and equipment are located.

[§399.02\(9\) General Requirements.](#) Provides that the safety code for existing elevators and escalators, ASME 17.1 and A17.3 providing for modifications to a fire fighter service on existing elevators may not be enforced on buildings with a certificate of occupancy as of July 1, 2008, for five years or until the elevator is replaced or requires modifications. Elevator inspections are also addressed.

16. **ENVIRONMENTAL: Docks.** [Ch. 2010-208, Fla Laws, \(SB 1118 \ HB 1239\)](#).

[§258.42 Maintenance of Preserves.](#) Allows creation of slips at single family boat docks within preserve areas with walls and roofs not overhanging more than one foot, but floating lifts and davits are prohibited.

[§403.061 Department Powers.](#) Authorizes rulemaking for docks with ten or fewer slips to protect shellfish harvesting waters, an inventory list of projects, and self certification.

[§403.813: Permits.](#) Provides for use of fill materials and deviations in upgrades necessary for docks and piers.

17. **ZONING: Disabled Community Residential Homes.** [Ch. 2010-193](#), *Fla. Laws*, ([SB 1166 / HB 645](#)).

§393.501. Authorizes rulemaking concerning the number of facilities on a lot or adjacent lots for individuals with developmental disabilities. Community residential home facilities are not limited within a planned residential community as defined in §419.001(1), which in turn is created by a new definition specifying a minimum growth lot area of eight acres and with amenities designed to serve residents with a developmental disability and others, not restricting freedom of movement within and outside the community, so long as not within a ten mile radius of another planned residential community. Community residential homes for six or fewer residents are not subject to proximity requirements. Local governmental entities may not impose proximity requirements upon homes within a planned residential community if the limitations are solely based on the types of residents anticipated to be living in the community.

18. **COMMUNITY ASSOCIATIONS.** [Ch. 2010-174](#), *Fla. Laws*, ([SB 1196 \ HB 561](#)).

§399.02: Elevator Fire Fighter Service. Condominium and cooperative associations administering elevators in buildings certified for occupancy are granted a five year extension to comply with new firefighter control upgrade requirements.

§617.0721, 617.0808 and 617.1606: Corporate Statutes. The Florida Not for Profit Corporation Act is clarified, confirming that these three sections concerning member voting, removal of directors and access to records do not apply to condominium, cooperative, or homeowners' associations.

§627.714: Condominium Insurance Policies. New individual condominium unit owner insurance policies must include lost assessment coverage of at least \$2,000.00, that dollar amount is not multiplied by the number of association assessments, the policy is considered excess over other policies which presumably means the association's policy, and a maximum deductible of \$250.00 per loss applies.

§633.0215: Florida Fire Prevention Code. Condominium and cooperative buildings less than four stories in height with an exterior exit corridors are exempt from the manual fire alarm requirements under Section 9.6 of the Life Safety Code.

§718.110: Condominium Amendments. The limitation on leasing amendments is clarified, limited to new restrictions that totally prohibit leasing or the number of leases. An amendment may reclassify as limited common elements, a portion of common elements that is designed and intended for use by less than all unit owners.

§718.111(11): Condominium Insurance. The requirement of an a condominium unit owner to obtain their own insurance, and the corresponding requirement that the condominium association be an additional insured on such policies, is repealed. Property excepted from

Association insurance coverage is the responsibility of each unit owner. A condominium association must reevaluate the replacement cost amount for casualty coverage every 36 months. The special notice requirement for a meeting at which a deductible is approved is repealed.

§718.111(12): Condominium Association Records. The Association must remove from open records electronic mailing addresses and telephone numbers upon the request of a member. The Association is not responsible for a member's use of official records unless the Association has an affirmative duty not to disclose the misused information. Penalties are specified for persons who fail to keep records or defacing or destroying records. Information exempt from unit owner access and copy rights include most personnel records, Social Security and driver's license numbers, e-mail addresses, emergency contact information, electronic security information including passwords, as well as software and operating systems.

§718.111(13): Condominium Association Financial Records. Annual reserve summaries shall include a good faith estimate of reserves utilizing a straight line accounting method unless pooled reserves are utilized. Small associations, those administering fewer than seventy-five units may prepare a cash report, rather than a statutory financial report.

§718.112(2)(d): Condominium Association Unit Owner Meetings. The process for cancelling a director's election because there are no more candidates than terms vacant, is clarified. Outgoing directors are eligible for reappointment if there is no election. Co-owners serving as directors is permitted if the two owners own more than one unit. Within ninety days after election, a director must certify his or her their ability to comply with the condominium's documents or has completed a State education course, and if a certificate is not filed, then the director may be temporarily suspended and the position filled by a board appointed alternative.

§718.112(2)(l): Condominium Fire Sprinklers. By December 31, 2016, condominium associations that have not opted out of retrofitting requirements must apply for a building permit demonstrating compliance with the retrofitting requirement no later than December 31, 2019. If an effort to obtain members' votes to opt out fails, then the association may seek a new vote only after the passage of three years. Electronic notice of such a meeting is prohibited. The Division of Land Sales is to establish rules for voting procedures.

§718.111(2)(n): Condominium Association Director Delinquencies. Officers and directors who are delinquent for more than ninety days of not only regular assessments, but also any monetary obligations to the association shall be deemed to abandon their office.

§718.111(2)(o): Condominium Association Director Crimes. An officer or director charged by indictment or information of felony theft or embezzlement of their condominium association's funds, are suspended, until the resolution of charges or the end of the term, whichever is first.

§718.115(d): Condominium Communications Services. Communications, including internet and other information services, provided pursuant to a bulk contract may be incorporated into an Association's budget.

§718.116: Condominium Association Assessments. Lenders who acquire units as the result of a mortgage foreclosure are to pay twelve months of delinquent assessments, or one percent of the original principal balance, whichever is less. Tenants in units for which the unit owner failed to pay assessments may be required to pay association assessments up to their obligation to the owner.

§718.117: Condominium Termination. The process of terminating a condominium after a catastrophe or when it is not economically viable to continue the condominium, is clarified.

§718.202: Condominium Developer Sales Escrows. To clarify previous laws, a developer may hold escrow deposit funds in one account, rather than required to be in separate accounts.

§718.301: Condominium Association Transition. When transition is triggered by the appointment of a receiver, a court may delay mandatory transition of control of a condominium association if the action is sought within thirty days of a receiver's appointment, and if transition would be detrimental to the association or its members.

§718.303: Condominium Enforcement. If a unit owner's monetary obligations, including assessments, are delinquent for over ninety days, then common element and facility use rights may be suspended, except for those rights intended only for that unit, or for egress, such as parking and elevator access. Fines or suspensions may not occur without fourteen days advance notice to the unit owner and the person whose rights will be suspended or who will be fined. A notice and hearing is not necessary if a suspension or fine is the result of failure to pay monies to the Association; however, the fine or suspension still must be approved by the board of directors and notice of imposition must be provided. Voting rights may also be suspended for non-payment of monetary obligations.

§718.701-.708: Bulk Sales. A new part VII of the Condominium Act is created, entitled the "Distressed Condominium Relief Act" responding to the economic downturn and assisting lenders and unit owners who have purchased in distressed condominiums, announcing a public policy to protect interests and provide relief to allow economic opportunities.

§718.703 Definitions. Differentiates between those who acquire more than seven units, between a "bulk assignee" who is assigned at least some of the developer's rights, and a "bulk buyer" who receives no assigned rights except for exemption from the condominium association's sale marketing limitations, capital contributions, and a right of first refusal.

§718.704 Assignment and Assumption. Permits a bulk assignee to be exempt from certain prior developer obligations, including: construction warranties and converter

reserve obligations, except for the assignee's work; audit; developer appointed director liabilities; failure to fund assessments or budget guarantee if the right to guarantee is not assigned; and, other Condominium Act and Declaration obligations unless provided by the new Part VII. Insider and those intending to hinder or defraud are not entitled to these benefits. Multiple assignees are permitted, priority determined by date of recording an assignment.

§718.705 Board and Transition. Transfers under this part do not trigger transition. Assignees are required to make a good faith effort to acquire items to be provided to the Association at time of transition, and certify to the Association that the items are not available. Substantial compliance required to obtain the benefits of this Part.

§718.706 Offering. Offering for sale or lease in excess of five years requires a prospectus, Questions and Answers Sheet, escrow agreement, financial information with disclaimer of missing information if appropriate. An assignee must provide a statement and description of assignment, including treatment of reserves and contracts. Bulk buyer must comply with the declaration's transfer provisions.

§718.707 Timing. Buyer or assignee under this Part must take title as shown by a instrument recorded before July 1, 2012.

§718.708 Liability. Original developer not released from liabilities under the Act or declaration.

§719.106(d)(1): Cooperative Association Directors. Cooperative association director vacancies may be filed by the board of directors or by member election. Unless provided by a cooperative association's by-laws, the person filling a vacant term serves to the end of the term.

§719.1055: Cooperative Life Safety Compliance. Life Safety Code provisions are updated, including allowing a licensed electrical contractor's certificate of compliance to be accepted as evidence of compliance with applicable fire and Life Safety Codes. Cooperatives which have not voted to opt out of fire sprinkler system retrofits must apply for an installation permit by December 31, 2016 with installation and compliance by December 31, 2019. Procedures for opt out are specified, noting that if a vote fails, then the vote may be rescheduled only once every three years.

§719.108: Cooperative Association Assessments. A cooperative association's lien may include late fees and collection fees in addition to other expenses; however, the lien may not be recorded until thirty days after providing the owner a notice of intent to file a lien. If an owner has not paid monetary obligations to the cooperative association, then the cooperative may require the tenant to pay the obligation, up to the amount of the monies due to the association, and if the tenant does not pay, then the association may evict the tenant.

§720.303(2)(b): HOA Directors' Meetings. Homeowners' association board of directors

meeting requirements are clarified, including closing meetings to members if proposed or pending litigation is being discussed with the Association's attorney, or the board of directors is discussing personnel matters.

§720.303(5): HOA Records. Access by a member to homeowners' association records is triggered upon the association's receipt of a Certified Mail Return Receipt letter. Charges for "reasonable costs" may be sought for administrative and costs to the association to duplicate. Certain records are not available to owners, including employee payroll records as well as social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers and other personal identifying information, as well as electronic security measures including pass words and software and operating systems.

§720.303(6): HOA Budgets. Reserve funding requirements for homeowners' associations are clarified, including permitting lot owners to terminate reserve funds by a majority vote of all of the association votes, and providing for disclosures when reserves are not kept as otherwise required.

§720.303(12): HOA Volunteer Compensation. Homeowners' association directors, officers and committee members may not receive compensation for their duties in such a position; however, this does not prohibit monies being paid to them as the monies are paid to any other member, such as for reimbursement of out-of-pocket expenses, insurance proceeds, developer representatives, as otherwise authorized by the governing documents, or as authorized by majority vote of the votes cast at a members' meeting.

§720.304 (2)(b): HOA Parcel Flags. Flag poles and displays of flags are subject to most other governmental requirements, including building codes, and setback and location criteria specified in the governing documents.

§720.305(2): HOA Member Obligations. If a homeowner association's member's monetary obligations to the association are delinquent for more than ninety days, then common area and facility use rights may be suspended, except for parcel and utility service access. Fines may not be a lien unless the amount exceeds \$1,000.00. The association must provide notice to those impacted by imposition of a fine or suspension.

§720.306(7): HOA Meetings. Members' meetings may be adjourned to another time and place.

§720.306(8): HOA Voting. Absentee ballots may be utilized in homeowners' association elections if permitted by the governing documents, and ballot secrecy procedures are utilized, including secrecy envelopes and a verification to ensure that only one ballot is submitted per parcel.

§720.306(9): HOA Director Term. Nominations in advance of directors' elections are permitted when absentee ballots are utilized. When a vacancy other than a recall occurs, the remaining directors may fill the vacancy or call an election. The person appointed or elected

shall serve for the unexpired term.

§720.308(5): HOA Assessments. Tenants in parcels for which the owner failed to pay assessments may be required to pay association assessments up to the tenant's obligation to the owner.

§720.31(6): HOA Recreational Facilities Homeowners' association acquisition of recreational facilities, including golf courses and marinas are limited, including requiring that the declaration as originally recorded provides acquisition rights, or within twelve months thereafter if approved as a material alteration or addition; however, if the declaration is silent, then approval must be by seventy-five percent of those holding all the voting interests.

§720.315: HOA Developer Assessments. Before a homeowner association's control is transitioned from the developer to the lot owner controlled board of directors, a special assessment may not be levied, except if approved by a majority vote of non-developer unit owners at a special meeting.

19. **TAXATION: Compliance, Retroactive.** [Ch. 2010-66](#), *Fla. Laws*, ([HB 1279 / SB 2450](#)).

§193.092 Assessment. Retroactive assessment or collection of ad valorem taxes shall not be applied if the owner complied with all necessary permitting requirements, or voluntarily disclosed the existence of the property before January of the year of first assessment, on a form provided by the property appraiser.

20. **MORTGAGES: Loan Origination.** [Ch. 2010-067](#), *Fla. Laws*, ([HB 1281 / SB 2548](#)). Effective October 1, 2010. Amends Chapter 494, including regulations and penalties for loan originators, excepting licenses loan originators who is solely a loan processor or who contracts with multiple loan brokers or processors.

21. **FORECLOSURE: Time Shares (Non-Judicial).** [Ch. 2010-134](#), *Fla. Laws*, ([HB 1411 / SB 2358](#)). Effective upon becoming a law. Chapter 721 is extensively amended to provide a procedure for the foreclosure of liens, including mortgage and condominium assessment liens against time share parcels through a non-judicial foreclosure process. In addition, §721.13(13) provides that time share association officer, directors and agents must discharge their duties in good faith in a manner reasonably believed to be in the best interest of the time share owners association. Thresholds for liability are set forth. A new part III of Chapter 721 is created in 721.81 et. seq. to provide for a managing entity's non-judicial foreclosure proceedings.

22. **LIABILITY: Design Professionals.** [Ch. 2010-VETOED](#), *Fla. Laws*, ([SB 1964 \ HB 701](#)). Does not apply to contracts or services performed before July 1, 2010. Creates §558.0035, excusing design professionals from tort liability for economic damages except to the limit of insurance

required by the parties contract so long as the contracted insurance is obtained, for person injury claims and claims for property other than that which is the subject of the contract.

23. **INSURANCE: Windstorm Claims.** [VETOED June 1, 2010, \(SB 2044\)](#). Effective July 1, 2010, except for otherwise provided and the effective date provision which shall take effect June 1, 2010. Included in a amendment to may different insurance provisions are the following:

§626.854: Public Adjuster. Compensation for reopened or supplemental claims may not exceed twenty percent of the reopened or supplemental claim payment. The ten percent limitation on a public adjusters' claim, after one year may be increased to twenty percent, as well as for claims that are not subject to a state of emergency. Insurers, adjusters, investigators and others shall provide at least forty-eight hours notice to an insured or claimant before undertaking an onsite inspection. When notice of a public adjusters retention including contract is provided to the insurer, insurer may not exclude the public adjuster from in-person meetings. Insurers have a duty to meet and resolve matters through the public adjuster and allow the insurer access to the property to facilitate resolution. A licensed contractor or subcontractor may not adjust a claim unless licensed as a public adjuster.

§626.70132: Claims. A claim pursuant to a personal lines residential coverage defined in §627.4025, as a result of windstorm or hurricane loss damage is barred unless filed with the insurer within three years of when the hurricane first made land fall or the windstorm covered the damage; however, this deadline does not reduce the statute of limitations for claims pursuant to §95.11.

§627.7011: Homeowners Policies. Concerning a loss for a dwelling covered on a replacement basis policy, the insurer must initially pay the actual cash value of the insured loss less any applicable deductible. The insurer shall pay any remaining amounts incurred to perform repairs as the work is performed. With the exception of incidental damages to mitigate further damage, the insurer or any contract or contractor may not require the policyholder to advance payment for such repairs or expenses. The insurer may waive the contract requirement. An insured shall have a one year period after the insurer's payment of actual cash value to make a claim for replacement cost. If there is a total loss of the dwelling, the insurer shall pay the replacement cost coverage without reservation or hold back of any depreciation any value pursuant to §627.702.

24. **LIABILITY: Sovereign Immunity.** [Ch. 2010-026, Fla. Laws, \(SB 2060 \ HB 111\)](#). Effective October 1, 2010, applying to claims arising on and after that date. §768.28 is amended to increase the maximum tort claim otherwise barred by sovereign immunity to \$200,000.00, \$300,000.00 if insurance provides coverage.

25. **LIABILITY: Releases.** [Ch. 2010-027, Fla. Laws, \(SB 2440 / HB 0285\)](#). Effective upon becoming a law.

§744.301(3) Natural Guardians. Authorizes natural guardians on behalf of their minor children to release in advance a commercial activity provider and those affiliated with the provider, claims for property and personal injury, including death, arising from inherent risks of the activity, whether due to lack of notice or from negligence. If a specified conspicuous form of release is utilized, then there is a rebuttable presumption that the release is valid and the claim arose from inherent risks which can be overcome only by clear and convincing evidence that the injury was not from an inherent risk, liability and damages requiring a preponderance of the evidence. The Act does not limit ability to release non-commercial parties.

26. **TAXATION: Business Transfers.** Ch. 2010-166, Fla. Laws, (HB 5801). Effective upon becoming a law, except as otherwise stated. In addition to various tax matters, directs the Department of Revenue to develop and implement a one-time amnesty program for state and local taxes imposed by *Florida Statutes* chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211, 212, 83 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681, to occur between July 1 and September 20, 2010 when payment of the tax is paid in full, or in a payment plan, with interest and processing fees generally calculated as if penalties were levied. Criminal action cannot be based on an amnesty filing. Matters excluded from amnesty include those settled before July 1, 2010, criminal investigations, fraud, and local option taxes unless the taxing authority opts in.

216.692 Integrated Enforcement. After recording of a warrant, lien, or judgment lien certificate, and an informal conference with the taxpayer, the Department of Revenue may revoke and without issuance of certificates of registration, permits or licenses to the taxpayer. Emergency rules are authorized for six months.

213.758 Transfer of Tax Liabilities. A taxpayer closing a business without a transferee, and a transferee unless excused, must file a final tax return and make final payment of taxes, or be barred from engaging in a business in the State until all taxes, interest and penalties are paid. A transferee of fifty percent of a business or its stock of goods, and those acting in concert to that amount, are liable for the transferor's taxes, unless: the transferor obtains a Department receipt for the tax payment, or an audit which may be requested by the parties shows no liability. The transferor may withhold consideration to pay, and pays the amount to the State.

27. **TAXATION: Short Sales.** Ch. 2010-138, Fla. Laws, (HB 7157\SB 1976). Effective upon becoming law except as otherwise expressly stated in the Act. Provides numerous taxation changes to Chapter 202, and Chapter 443 concerning garnishment.

§55.204: Judgment Liens. Unemployment tax liens lapse ten years after the date of original filing. No second lien may be obtained.

§201.02: Taxes on Deeds. Short sale transfers are treated as set forth above, see Ch. 2010-032, Fla. Laws, (HB 109 / SB234).

28. **ZONING: Energy Improvements.** [Ch. 2010-139](#), Fla. Laws, ([HB 7179 \ SB 2322](#)). Effective upon becoming a law.

§168.08: Supplemental Authority. A public policy is declared, encouraging energy conservation strategies including improvements of real property. Definitions provided include “qualified improvement.” Local governments may finance qualified improvements, creating lien rights documented by a recorded instrument, upon property with no involuntary liens unless over three years, and a current mortgage debt. The lien may be secured by a recorded notice equal in dignity to county taxes and assessments as of the date of recordation. A seller must disclose to a buyer that the property appraiser’s appraisal is not related to fair market value.

§288.9602 et. seq. Amends application of the energy technology and employment development guaranty fee fund and the Florida Development Finance Corporation. Repeals certain limitations on use of the State Transportation Trust Fund.

29. **TAXATION: CCD’s.** VETOED June 1, 2010, ([HB 7203 \ SB 1866](#)). Allows a lienable one percent tax on sales and rentals within district upon sixty days notice after approval of four of five supervisors and two-thirds of votes cast at a landowners’ meeting. Exempt are districts with qualified electors, and transactions exempt from sales tax

This information is provided for general information purposes only, and may not be relied upon and is provided without obligation or fee. It is distributed to the firm's association clients to provide a general comment of recent legal changes. This information is not legal advice, representation counsel or opinion. The changes in the law may not have been reviewed by Florida courts and may be subject to further challenge. Before taking any action you are urged to consult with counsel to ensure that your legal rights are protected. © 2010 by Gelfand & Arpe, P.A.

F:\LL\SPEECHES\2010 RP Statutory Update100618.wpd