

GLAZER & ASSOCIATES, P.A.

www.condo-laws.com

*One Emerald Place
3113 Stirling Road
Suite 201
Hollywood, Florida 33312*

*(954) 983-1112
(954) 333-3983 (fax)*

*♦Eric M. Glazer
Ralph C. Ruocco
Scott R. Shapiro
Kristy L. Phillips
May Hustey
Pennie S.A. Mays
Jason A. Shepelrich
Jenna L. Jennings
Jeremy M. Zubkoff

*♦Also admitted in New York State
and The District of Columbia
Of Counsel

Certified by the Florida
Supreme Court as a Circuit
& County Court Mediator

*Eric M. Glazer, Esquire
Eric @ condo-laws.com*

July 18, 2011

Re: Proposed changes to Florida Statute 718 and 720 regarding condominiums and Homeowner Associations

Dear :

I am currently entering my 20th year as a Florida lawyer practicing community association law and for the past two years have had the pleasure of being the host of Condo Craze and HOAs, a weekly one hour radio show on 850 WFTL. Furthermore, I was the first attorney in the State of Florida that designed a course that certifies condominium residents as eligible to serve on a condominium Board of Directors. I have now certified over 1,300 Floridians. Moreover, I am certified as a Circuit Court Mediator by The Florida Supreme Court and have mediated dozens of disputes between associations and unit owners. Finally, I recently argued the Cohn v. Grand Condominium case before The Florida Supreme Court, which is perhaps the single most important association law case decided by the court in a decade.

As a result of deficiencies in Florida Statutes 718 and 720, owners of homes located in condominiums and homeowner associations have suffered financial losses in their communities that far exceed homeowners who do not live in community associations. The foreclosure crisis has allowed for tens of thousands of condominium units and homes not paying their mandatory monthly assessments, thus forcing the paying owners to pay even more each month to make up for the shortfall.

There are a few simple solutions that The Florida Legislature can take to help the over one million Florida residents that live in a community association. They are the following:

1. Increase the current statutory cap from 1% to 2% of the original mortgage debt, that a bank is required to pay, once a bank forecloses on a unit and obtains title. Last year, The Florida Legislature raised the bank's limit from the lesser of 6 months of unpaid assessments or 1% of the original amount of the mortgage, to the lesser of 12 months of unpaid assessments or 1% of the mortgage. This did not put an extra penny into the coffers of Florida community associations because the 1% cap remained in place. The cap needs to be raised to 2%.
2. During the pendency of any foreclosure action by the association against a unit owner, the unit owner must place the condominium assessments into the court registry as they come due. This is exactly what the current landlord/tenant statute allows for. Failure of the defendant to place the condominium or HOA assessments into the court registry would allow the association to obtain a default.
3. In addition to the financial problems plaguing our homeowner associations, they face additional burdens of having no government oversight, unlike condominiums which are somewhat regulated by the Department of Business and Professional Regulation. As a result of non regulation, homeowner associations, unlike condominium associations, have no Ombudsman's Office to report irregularities to and no agency exists that has the authority to investigate wrongdoing in Florida homeowner associations, some who possess 7 figure annual budgets. Every single condominium resident in the state of Florida is annually assessed \$4.00 per unit in order to pay for the cost of regulation by the DBPR. If every owner of a home in a homeowner's association were assessed the same \$4.00 annually, the DBPR would easily have a budget sufficient enough to also regulate homeowner associations. There is simply no justifiable basis whatsoever why condominiums are regulated and homeowner associations are not.
4. Moreover, Florida Statute 720 allows HOAs to administer their annual elections solely according to the terms of their governing documents. The problem is that these governing documents normally require that a majority of the community appear at the annual meeting and without same, there is no new election. Since a majority of owners normally do not appear at the annual meeting, this allows the same Board members to remain on the Board for years and sometimes decades on end and prevents thousands of people who want to serve on these volunteer Boards from serving. This year, legislation was pending which would have required homeowner associations to adopt the same voting procedures and eligibility requirements that condominiums use, as per Florida Statute 718.112. However, this provision never made it into the final bill, HB 1195. In Florida condominiums all directors must run for election each year, and more importantly, the election is valid as long as 20% of the eligible voters cast votes in the condominium election. The HOA statute should simply mirror the condo statute. This would prevent the disenfranchised feeling that literally thousands of residents around the state feel each year when their request to serve on an HOA Board is denied, simply because a majority of owners failed to attend the annual meeting. Again...just like in condominiums, an election should be valid as long as 20% of the eligible voters participate in the annual election.
5. In condominium associations all Board members must now become certified, either by signing an affidavit that they read the statutes and governing documents, or by attending a Board certification course that is approved by the DBPR. As I indicated earlier, I was the first attorney in the State of Florida that designed a course that certifies condominium residents as eligible to serve on a condominium Board of Directors. I have now certified over 1,300 Floridians. I can tell you that the course is appreciated by all who attend. They appreciate the opportunity to learn and simply can't believe that the course isn't mandatory for all Board members. It makes no

sense whatsoever that members of a condominium Board of Directors must get certified but members of an HOA Board do not. Indeed, many participants at the seminar that I teach are residents of homeowner associations and who enjoyed taking the course and would love a specific course designed for members of a homeowner's association Board. An educational requirement for all Board members is simply a law that can only benefit all Florida community associations. Each director should have the opportunity to learn the statutes, the codes and the importance of their governing documents. It can only result in greater harmony for all of Florida's community associations.

6. The homeowner's statute contains a provision for mandatory mediation, prior to arbitration or the filing of an action in Circuit Court. The statute is very well intentioned and is a wonderful idea. Mediation unclogs the court system and keeps the costs down for owners and associations. Most disputes between associations and unit owners can easily be settled by a qualified mediator at a fraction of the cost of litigation or arbitration. Again, it simply makes no sense for the members of a homeowner's association to be required to mediate, but condominium owners and Board members must try to resolve their dispute in either court or arbitration. Both association statutes should require mediation as a prerequisite to arbitration or litigation.

In my humble opinion, and the opinion of countless listeners to the Condo Craze radio show, and other attorneys who practice in this area, these six simple measures will do more to help the people that live in Florida community associations than all of the other legislation in this area that has been passed over the last three years.

I am writing to each and every Florida legislator to obtain a commitment that they would vote either for or against these proposals. After 30 days, I will announce the results on the air and advise the show's listeners throughout the state which legislators support these proposed amendments to the statute and which do not. I have enclosed the attached ballot, and a postage paid return envelope, to be returned to this office.

I thank you in advance for your cooperation in this regard and always invite any of you to express any of your proposed solutions to solve the current housing crisis in Florida, to be a guest on the show, as some of you have already done.

Very truly yours,

ERIC M. GLAZER, ESQUIRE