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**MEMORANDUM**

**TO: CLIENTS OF PAPPAS METCALF JENKS & MILLER, P.A.  
AND OTHER INTERESTED PARTIES**

**FROM: THOMAS M. JENKS, ESQ.  
JOHN R. CAMPBELL, ESQ.** 

**RE: RECENT AMENDMENTS TO CHAPTERS 718 AND 720, *FLORIDA  
STATUTES***

**DATE: JUNE 17, 2010**

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On June 1, 2010, Governor Christ signed into law two bills important to community associations. Senate Bill 1196 (enacted as Ch. 2010-174, *Laws of Fla.*) and House Bill 663 (enacted as Ch. 2010-176, *Laws of Fla.*), made sweeping changes to Chapters 718 and 720, *Florida Statutes*, including changes to provisions concerning unpaid assessments, fire alarm, sprinkler system and elevator requirements, recordkeeping, director qualification and condominium "bulk buyers" and "bulk assignees." This memorandum highlights the provisions concerning collection of unpaid assessments and condominium "bulk buyers" and "bulk assignees." Other memoranda will address other aspects of SB1196 and HB663. This memorandum is only a summary of some of the provisions of the new laws and Community Associations are encouraged to obtain assistance of counsel before implementing the provisions of the new laws, which take effect July 1, 2010.

**UNPAID ASSESSMENTS**

Condominium and Homeowner Associations: If a unit or a lot is tenant occupied and the owner is delinquent in the payment of "any monetary obligation" to the association, then the association may make a written demand to the tenant for the tenant to pay "future monetary obligations related to the condominium" directly to the association. The meaning of this phrase is ambiguous. Until a court rules on this issue, we will take the position that an association may, in good faith, make a demand on a tenant to pay rent directly to the association until the delinquent

owner's account is brought current, regardless of when the delinquency arose. The association must notify the unit owner of its demand to the tenant. If the tenant fails to pay rent to the association, then the association may evict the tenant.

Condominium Associations: If a unit owner is over 90 days delinquent in paying a monetary obligation due to the association, then the association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use the common elements, common facilities, or any other association property. However, the association may not suspend use rights to limited common elements intended to be used only by that unit, common elements that must be used to access the unit (ex., gate or roadway), utility services provided to the unit, parking spaces, or elevators. The association must provide notice and the decision to suspend use rights must be made at a board meeting.

Homeowner Associations: If an association member is delinquent for more than 90 days in paying a monetary obligation due the association, then the association may suspend the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities. However, the suspension-of-use rights do not apply to the portion of common areas that must be used to provide access to the lot or utility services provided to the lot. The association must provide notice and a hearing prior to implementing suspension-of-use rights.

Homeowner Associations: An association may levy a fine if a member is delinquent for more than 90 days in paying a monetary obligation due the association. The amount of the fine is limited to \$100.00 per violation, per day, and \$1,000.00 in the aggregate (unless provided otherwise in the governing documents). The new law provides that a fine of "less than \$1,000.00" may not become a lien against a parcel. This implies that fines of greater than \$1,000.00 may become a lien. This is a significant change in the HOA statutes. Fines still require at least 14 days' notice and opportunity for a hearing.

Condominium Associations: If a unit owner is over 90 days delinquent in paying a monetary obligation due to the association, then the association may suspend the voting rights of the unit owner.

Condominium Associations: Raised first mortgagee liability for unpaid assessments from 6 months to 12 months after acquisition of title by foreclosure or deed in lieu (but retains the 1% of original mortgage debt cap).

**BULK BUYERS AND ASSIGNEES**  
**"DISTRESSED CONDOMINIUM RELIEF ACT"**

SB1196 created a new Part VII of Chapter 718, *Florida Statutes*, consisting of Sections 718.701 through 718.708, called the "Distressed Condominium Relief Act" (hereafter "DCRA"). Generally, the DCRA is meant to encourage investors to buy unsold developer inventory by

relieving such investors from certain developer liabilities and obligations. Additionally, the DCRA protects lenders from assuming the responsibilities of the developer when the lenders take title to the units in connection with developer defaults. The DCRA only applies to purchases or other acquisitions of title that take place before the law automatically "sunsets" on July 1, 2012.

The DCRA creates two special categories of bulk owners, i.e., "bulk assignees" and "bulk buyers." A "bulk assignee" is a person or entity that acquires more than seven (7) condominium units and receives an assignment of some or all of the rights of the original developer. A bulk assignee assumes and is liable for all duties and responsibilities of the developer, except:

- (a) Warranties under Sections 718.203(1) or 718.618, *Florida Statutes*;
- (b) Certain obligations to fund converter reserves and provide converter warranties;
- (c) The requirement to provide the association with a cumulative audit of the association's finances from the date of formation of the condominium association;
- (d) Any liability arising out of or in connection with actions taken by the board before the bulk assignee elects a majority of the members of the board; and
- (e) Any liability for or arising out of the developer's failure to fund previous assessments or to resolve budgetary deficits in relation to a developer's right to guarantee assessments (except as otherwise provided below).

A bulk assignee receiving the assignment of the rights of the developer to guarantee the level of assessments and fund budgetary deficits pursuant to Section 718.116, *Florida Statutes*, assumes and is liable for all obligations of the developer with respect to such guarantee. A bulk assignee not receiving such assignment does not assume and is not liable for the obligations of the developer with respect to such guarantee, but must pay assessments in the same manner as all other condominium unit owners.

Unless control of the board of administration of the association has already been relinquished pursuant to Section 718.301(1), *Florida Statutes*, the bulk assignee must relinquish control pursuant to Section 718.301, *Florida Statutes*, and the DCRA, as if the bulk assignee were the developer.

An assignment of developer rights to a bulk assignee may be made by the developer, a previous bulk assignee, or a court acting on behalf of the developer or the previous bulk assignee. At any particular time, there may be no more than one bulk assignee within a condominium, but there may be more than one bulk buyer. If more than one acquirer of condominium parcels in the same condominium receives an assignment of developer rights from the same person, the bulk assignee is the acquirer whose instrument of assignment is recorded first.

A "bulk buyer" is a person or entity that acquires more than seven (7) condominium units but who does not receive an assignment of developer rights other than:

- the right to conduct sales, leasing, and marketing activities;

- the right to be exempt from the payment of working capital contributions; and
- the right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third party purchaser concerning one or more units.

A bulk buyer's duties and responsibilities are limited as compared to a developer or bulk assignee. In general, the bulk buyer's obligations are limited to those obligations that the bulk buyer expressly assumes and those specifically provided in the DCRA. With respect to the units acquired in the bulk purchase, the bulk buyer must comply with the association's transfer approval procedures and is not entitled to any exemptions afforded a developer or successor developer under Chapter 718, *Florida Statutes*, regarding the transfer of a unit (including sales, leases, or subleases).

With respect to the offering of units for sale by a bulk assignee or bulk buyer, the DCRA provides a list of documents that the bulk owner must file with the Florida Department of Business and Professional Regulation and provide to prospective buyers together with certain disclosures as set forth in the DCRA.