

## JUNE 2015 MONTHLY COLUMN

### 2015 LEGISLATIVE CHANGES RELATING TO FINES AND SUSPENSIONS FOR CONDOMINIUMS AND HOMEOWNERS ASSOCIATIONS

As discussed in last month's column, House Bill 791 ("HB 791") was signed by the Governor and will become effective July 1, 2015. HB 791 presents several changes to both the Condominium and Homeowners Association Acts, including changes relating to the levying of fines and suspensions.

HB 791 amends both Chapter 718 and Chapter 720 to clearly provide that the role of the fining (and suspension) committee is solely to approve or disapprove of a proposed fine or suspension levied by the Board. Remember that fines can only be approved by an independent committee of unit owners upon 14 days' notice and a hearing provided in front of such committee. Sometimes, associations allow their committee to reduce the amount of the fine or to even be involved in the investigative portion of the violation process. However, this statutory change makes it clear that the only role for the committee is to approve or disapprove of the fine or suspension that has been proposed and levied by the Board of Directors.

Another portion of the new law clarifies the effect of a suspension of voting rights. Specifically, the legislation provides that, where a voting right is suspended by the Board of Directors, the total number of voting interests in the association will be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. So, for example, if there are 100 votes in the association, and the vote being taken requires a majority vote of the entire membership for approval, if 10 voting rights were suspended, the action would now require 46 of the 90 remaining voting interests for approval rather than 51 of the original 100. It is important to point out that this is really not new, as has been a requirement for several years, but the legislation has added language to clarify the existing law.

Chapter 718 and Chapter 720 are also amended to provide that, where an owner owns multiple units or parcels in an association, and his or her voting rights or common area use rights are suspended due to a delinquency, that person will be suspended from voting or using common areas for all of his or her units or parcels. In other words, if an owner owns 2 units and is only delinquent in paying assessments on 1 of those units, that owner may still be suspended from exercising his or her voting rights or using the common areas as to all of the units or parcels. This will prevent owners from successfully arguing that, even though they are delinquent as to only 1 unit, that they have the right to use the common elements or vote based on the ownership of another unit that is not delinquent.

Also, with regard to fining in a homeowners association, Chapter 720 was amended to provide that the governing documents may be amended to increase the amount of a fine for an individual violation. Prior to July 1, 2015, the amount of a fine was capped at \$100.00 per violation. As of July 1, 2015, the governing documents may now be amended to increase the amount of a fine for a violation. Previously, the statute also provided a cap on the aggregate amount of a fine for a continuing violation at \$1,000.00. Now, as of July 1, 2015, the governing documents of a homeowners association may be amended to increase both the amount of the individual fine as well as the amount of the total aggregate amount of fines for a continuing violation. For a condominium association, the statute remains the same and

a fine may not exceed \$100.00 per violation with a total aggregate amount of \$1,000.00 for a continuing violation.

When levying fines and suspensions, it is important to take into account these new changes in the law and to consult with association counsel to make sure that all necessary requirements and procedures are followed.

SACHS SAX CAPLAN

A handwritten signature in black ink, appearing to read 'Peter S. Sachs', written over the printed name below.

PETER S. SACHS