

Legislature Changes Corporate Laws

The Florida Legislature passed Senate Bill 2330, sponsored by Senator Richter. This bill makes numerous changes to Florida Statutes under chapters 607 and 617, the laws governing for-profit and not-for-profit corporations, respectively. Since the result of these changes may require an update of your association's bylaws and policy documents, this article attempts to highlight some of the more important changes for 501(c) corporations. These changes go into effect October 1, 2009. Given space limitations for this article, please go to www.flsenate.gov to read the bill in its entirety.

New Definitions

Florida will recognize a "Mutual Benefit Corporation," which is defined as a corporation not formed under 501(c)(3), and not organized for religious or charitable purposes. This new term appears throughout the bill.

The statute will include a definition of "Distribution" that allows not-for-profit corporations to donate or transfer assets or income to another, as long as neither is a member of the other. The bill amends the distribution; exception section to allow corporations regulated under chapters 718, 719, 720, 721 and 723 (e.g. homeowners associations) to disburse refunds or proceeds to its members.

Member Issues

Section 617.0605, F.S. prohibits the transfer of membership or membership rights unless otherwise allowed in the articles of incorporation or bylaws of a mutual benefit corporation. Section 617.0606, F.S. states that the resignation of a member does not negate any obligations incurred or commitments made before resignation.

Section 617.0607, F.S. addresses the termination, expulsion and suspension of members from a corporation. Under the new law, the corporation cannot impose these sanctions except pursuant to a procedure that is fair, reasonable, and executed in good faith. If written notice is given, it must be communicated via certified or first-class mail. The sanctioned member has one year after the effective date of the sanction to challenge the action. The member may be liable to the corporation for dues, assessments or fees incurred before the expulsion or suspension.

The right to call special meetings of the members has been expanded to allow holders of at least 5 percent of the voting power to do so, unless otherwise provided in the bylaws. [617.0701(3)(e), F.S.]

The statute provides for circumstances under which the corporation may reject the vote of a member. The law now allows members and proxies to participate in meetings via remote communication. (617.0721, F.S.)

The bill creates an entire section governing the process under which a member may bring a derivative action against the organization. (617.07401, F.S.)

Board of Directors

Except for homeowners' associations and their counterparts, an organization may permit a director as young as 15 years of age to serve as long as the bylaws or AOI permit. (617.0802, F.S.) Directors under 18, however, may not be counted toward quorum (617.0824)

Removal of a director under 617.0808, F.S. has been more thoroughly explained and is worth reading, as the statute assumes you will use this process regardless of what the bylaws dictate. A director may be removed by a vote of directors if that position was filled by a vote of the directors. A majority vote is adequate if removal is for cause, and a 2/3 vote is required if there is no cause. If a director was elected by a vote of the membership, then the membership must vote to remove that director. In cases where removal is based upon violation of attendance policies, the board has the authority to remove that person with a majority vote.

A vacancy of a director who was elected by a class, chapter, unit or group may only be filled by a vote of the members of said class, chapter or group. (617.0809, F.S.)

Finances

617.1605, F.S. will no longer require the board to supply each member with a complete financial report of receipts and expenditures. Instead, release of financial data is contingent upon a member's written request.