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## NEW APPELLATE DECISION AFFECTING DEVELOPERS OF CONDOS AND CONDO ASSOCIATIONS

An important Florida Appellate Court decision was issued Wednesday upholding the ability of a condominium association to terminate a cable agreement entered by the developer prior to turnover. Several trial courts have previously held that a condo association could use Section 718.302, Florida Statutes, to terminate a cable agreement entered by the developer prior to turnover of the condominium association to residents. Section 718.302, provides in pertinent part: "any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for the operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be fair and reasonable, and such grant, reservation, or contract may be cancelled by unit owners other than the developer: (a) ... by concurrence of the owners of not less than 75% of the voting interests other than the voting interests owned by the developer..."

In *Comcast of Florida, L.P. vs. L'Ambiance Beach Condominium Association, Inc.*, No. 4D08-2326 (FL 4th DCA August 26, 2009), the District Court of Appeals for the Fourth District affirmed a Broward County Court decision finding that a condominium association could rely on Section 718.302 to terminate a cable agreement entered by the developer prior to turnover upon more than 75% of the unit owners voting to cancel the agreement. Comcast had argued that cable agreements are not for the "operation, maintenance, or management" of the association or property serving the unit owners and thus, 718.302 did not apply. Comcast also argued that Section 718.115(d), which provides expressly for terminating cable agreements at the next regular or special meeting after they are entered, should apply. The court rejected Comcast's arguments.

It is our understanding that this is the first appellate court decision in Florida upholding this application of Section 718.302, and thus, becomes a stronger state-wide precedent. Based on this decision, many condo associations will most likely try to get out of many current cable TV agreements, and cable operators and developers may change their form agreements and business practices relating to entering into such agreements.

If you have any questions, please do not hesitate to contact GrayRobinson's Communications, Cable & Broadband practice group.