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**COMMUNITY ASSOCIATION
LEGAL UPDATE
2024**

**New Laws Affecting
Chapter 718, *Florida Statutes*
(**The Florida Condominium Act**)**

Revised – July 16, 2024



COMMUNITY ASSOCIATION LEGISLATIVE UPDATE – 2024
Bills Impacting Chapter 718, *Florida Statutes*
(THE FLORIDA CONDOMINIUM ASSOCIATION ACT)



HB 1029: SAFE FLORIDA CONDOMINIUM PILOT PROGRAM

- Provides for a new hurricane inspection program to be administrated, monitored and enforced through the Department of Financial Services. The program’s purpose is to provide licensed inspectors to perform inspections for, and grants to, eligible association’s to fund necessary repairs for hurricane mitigation.
- Provides that an association can apply for either a hurricane mitigation inspection or a mitigation grant, or both.
- Applying to enter the program and receive an inspection or hurricane mitigation grant requires the approval of a majority of the association’s board of directors or a majority approval of the total membership. The department is to provide licensed hurricane mitigation inspectors to inspect properties and determine a sites vulnerability to hurricane damage.
- Provides the process and procedure for performance of the hurricane mitigation inspection.
- Association can apply for a hurricane mitigation grant to perform any repairs recommended by the inspector.
- Provides the funding limitations and process for funding “roof-related projects” and “protection-related projects” with a maximum total grant award of \$175,000 per association.
- The department can contract with third parties to facilitate the purpose of the program, including inspection services, grants management, contractor services, etc.

HB 1503: CITIZENS PROPERTY INSURANCE

- Allows surplus lines insurance companies that meet certain financial requirements to take out policies from Citizens for property that is a second home and/or not the owner’s homestead. The Office of Insurance Regulation must approve the take-out plan, including its rates.

- Where the purchase of flood insurance is a condition precedent to Citizens eligibility, owners are no longer required to purchase flood coverage for personal contents.
- Allows Citizens to share information with the National Insurance Crime Bureau in relation to efforts to fight insurance fraud.

HB 1021: CONDOMINIUM OMNIBUS BILL

Managers – Return of Association Records:

- Manager and/or management company must return all official records and association documents within 20 business days of termination.
- Termination of a management agreement must be by certified mail or as required under the agreement.
- Failure to return records creates a rebuttable presumption that the failure was willful.
- The manager and/or management company’s license can be suspended, and they can be fined \$1000 per day for up to 10 business days for each day the records are not provided.

Managers – Conflicts of Interest:

- Manager must disclose to the association any “*activity that may reasonably be construed to be a conflict of interest.*” Which activities include:
 - Having any financial interest in the association.
 - Receiving ANY form of kickback from an association vendor or potential vendor in relation to a proposed contract with the association.
- Any bid from the association’s CAM or management company to provide a service that exceeds \$2,500, other than the fee for management services, must receive competitive bids for any such proposed contract.
- Provides the process an association must follow with regard to the approval of a “conflict-of-interest transaction” with the association’s CAM or management company.

- Provides that an association may cancel any management agreement where the management company violates any section of the new conflict of interest statute.
- Provides that the membership may cancel the transaction or contract with the association management company or CAM where there was no disclosure of any conflict as required under the statute. Specifically, at the next meeting of the membership, the contract can be terminated by filing a written instrument containing the signatures of at least 20% of the total voting interests.
- Failure to disclose conflicts of interest can subject the manager to disciplinary proceedings.

Milestone Inspections:

- Excludes four-family dwellings that are 3 or fewer stories.

Definitions:

- Expands the scope of the definition of “Condominium Property” to include all improvements, easements and rights appurtenant to ownership of the condominium unit.
- Statute now identifies and defines “Hurricane Shutters” and “Kickback”.

Condominium Creation:

- Condominiums within a portion of a building must contain specific wording in the name of the condominium property. For example, the following wording can follow the name of the condominium, “ABC Condominium Association, a condominium within a portion of a building or within a multiple parcel building.” The underlined wording must be included in the declaration title and name for the new condominium community if created under this section.
- Declaration must contain a statement providing who is responsible (Association or Owner) for maintenance of the hurricane protection mechanisms for the property.

Director Kickbacks:

- Any officer or manager who accepts a kickback commits a 3rd degree felony.

Association Insurance:

- Division can now issue fines and penalties for an association's failure to maintain the insurance required under statute.

Official Records:

- Provides that e-mail addresses are only available for owners who specifically consent to receipt of electronic notices.
 - The association must ensure that the email addresses are only used for business purposes.
- Documents released to third parties must be redacted.
 - Provides for association liability where third party misuses the information where the association made a "knowing or intentional disregard" as to the protected nature of the information.
- Receipts and deposit slips that substantiate association expenditures are now official records.
- Copies of any building permits and board member education certificates are official records.
- Records must be maintained in an organized manner.
- Records requests can be responded to by directing the owner to the documents posted to the association's website.
- When responding to an owner's records request, the association must create a checklist of all records made available for inspection as well as those not made available. This checklist must be kept for 7 years.
- Knowing or willful failure to provide records is a 3rd degree felony.
- An association that has 25 or more units (reduced from 150 units) must post certain documents to its website.
 - This means that any condominium with 25 or more units must obtain and maintain a website.

Financial Reports:

- Within 5 days of a written request from an owner, the association must provide the owner with a copy of BOTH, the most recent financial report, and a notice that a copy

of said report will be provided. This language appears superfluous and will likely be addressed by the legislature at some time in the future.

- The membership cannot approve the production of a lesser financial reporting requirement for consecutive years.

Association Debt Cards:

- Use of a debit card “*for any expense that is not a lawful expense*” is criminal “Theft” pursuant to Florida Statute.

Required Bylaw Provisions:

- The board of directors for a condominium that has more than 10 units MUST meet at least once every quarter.
- The agenda for director meetings shall provide for an opportunity for members to ask questions of the board.
- Regardless of whether the issue is on the meeting agenda, members have the right to ask questions related to:
 - Status of repair projects
 - Status of revenues and expenditures
 - Other issues affecting the condominium.
- Where a contract for goods or services is to be considered, a copy of the proposed contract must be attached to the meeting notice and must be provided to the membership. The notice must provide that a copy of the contract is available for inspection, or it may be posted to the association’s website.

Education Requirements:

- New directors must now certify in writing that they have read, understand and will uphold the association’s governing documents AND provide a certification of having completed a DBPR approved Board Certification class.
- Board certification class must be at least 4 hours long and must include the following specific topic:
 - Milestone inspections,
 - Structural integrity reserve studies,
 - Elections,
 - Recordkeeping,
 - Financial literacy and transparency,

- Levying of fines, and
- Notice and meeting requirements.
- All directors who were elected or appointed before July 1, 2024, have until June 30, 2025, to comply with the new educational requirements for association directors.
- Written certifications are good for 7 years.
- Developer appointed directors who serve on more than one association board for the developer only need to satisfy the educational requirements once during a 7-year tenure on the board.
- Every year, a director must certify that they have taken a DBPR approved legal update course concerning new legislation applicable to condominium associations.

Reserve Accounts:

- If a local building official determines that the condominium is uninhabitable, the membership, by majority vote, may pause contributing to reserves until the building official determines the condominium is habitable.
- The board may use the funds from any reserve line items to make the building structurally sound and habitable.
- Once the building is deemed habitable, reserve accounts must again be fully funded as required under Statute.

Structural Integrity Reserve Study (SIRS):

- Within 45 days after receiving the SIRS study, the association MUST provide a copy of the study to each unit owner or provide the membership with notice that the study is available upon request. Any request may be fulfilled by providing a copy of the report via email to the owner.
- Within 45 days of obtaining the SIRS study, the association must notify the Division of the SIRS completion using a form established by the Division.

Director Crimes/Offenses:

- Any director charged with the following crimes must be immediately removed from office:
 - Forgery of a ballot envelope or voting certificate used in an election.
 - Theft or embezzlement of association funds or property.

- Refusal to allow access to, or the destruction of, association official records in furtherance of any crime.
 - Obstruction of justice.
 - Any other criminal violation under the Condominium Act.
- Any director removed for any of the above reasons may not have access to association official records except pursuant to court order.

Fraudulent Voting:

- The following acts are a 1st degree misdemeanor:
 - Willfully and falsely swearing to or affirming an oath or affirmation in connection with or arising out of voting activities.
 - Perpetrating fraud in connection with a vote.
 - Fraudulently changing the ballot, ballot envelope, vote or voting certificate of the owner.
 - Trying to influence a vote through coercion, duress, or bribery.
 - Trying to influence voting through promising to give anything of value in exchange for a specific vote.
 - Knowingly aiding, abetting or advising a person as to the commission of election fraud.
 - Conspiring to commit election fraud.
 - Giving any aid to an offender committing election fraud.

Hurricane Protection:

- Mixed-use condos must now prepare and adopt specifications for hurricane protection devices.
- The addition of hurricane protection to a building or community is not a material alteration.
- The majority vote and approval for the installation of hurricane protection must be shown in a recorded certificate. Association must deliver the recorded certificate to the members through the mail.
- The board may only order the replacement of hurricane protection when the currently used mechanism has reached the end of its useful life.
- With regard to installation of hurricane protection, the *“board may require the unit owner to adhere to an existing unified building scheme regarding the external appearance of the condominium.”*

- If the hurricane protection has to be removed or reinstalled after fixing association common area or other area of association responsibility, the unit owner cannot be charged for the removal or reinstallation of the hurricane protection.
- If the unit owner is responsible for the removal and/or reinstallation, and the association has to pay for the work, those expenses related to removal/reinstall can be charged as an assessment to the unit.
- If the declaration provides that owners are responsible for hurricane protection, each install should be charged to the individual unit and may become an assessment against the unit.

Statute of Repose:

- The Statute of Repose for construction defect matters (7-years) does not begin to run until turnover of the association from the developer to membership control.

SLAPP Suits – Retaliatory Conduct by an Association:

- Association may not engage in any retaliatory conduct against an owner where that owner is complaining about the association to the board or any other governmental entity.
- Owner may present the defense of retaliatory conduct in any “action brought against him or her for possession.”
- Association funds cannot be used to pay for claims against a unit owner based on the association’s retaliatory conduct.

Online Voting:

- Once an owner opts-in to vote online, he or she must be allowed to vote online at every subsequent meeting unless the owner specifically opts-out of the online voting option.

Developer Reservation Deposits:

- Provides for what “other assurances” are acceptable with regard to evidence of the developer’s deposit of 10% of the unit sale price into escrow. This only applies to residential condominiums.
- Provides what assurances showing the developer’s required escrow deposit are sufficient in the context of a non-residential condominium.

Developer Turnover:

- SIRS is to be provided as part of the turnover documents produced to the new membership-controlled association under statute.

Conflicts of Interest:

- The conflicted director's presence at the meeting can be used to determine quorum.

Suspensions:

- At least 90 days before an election, the association must provide the owner with notice that his voting rights may be suspended for failure to pay a debt owed to the association.

Condominium Creation within a Portion of a Building or a Multiple Parcel Building:

- Provides that a condominium may be created within another parcel and provides for the identification of common areas subject to the condominium scheme under this concept.
- Provides that, under this condominium scheme, the following sections shall be included within the declaration.
 - Identify which portions of the building are inside and outside of the condominium.
 - Identify the maintenance responsibilities for shared elements or components.
 - Identify the way in which the expenses for shared facilities will be apportioned.
 - Must provide the basis through which shared expenses may be determined.
 - Must identify the party responsible for collecting the shared expenses.
 - Must provide the rights and remedies available to enforce the payment of shared expenses.
- Provides for additional sales disclosures to be provided by the developer of such a condo within a parcel development, i.e., hotel-condominiums.

Division Jurisdiction After Turnover:

- After turnover, the Division may only investigate complaints related to the following matters:
 - Annual financial reporting
 - Assessments for common expenses.
 - Fines

- Comingling of reserve with operating funds.
 - Use of debit cards for “unintended purposes.”
 - Annual operating budget and allocation of reserve funds.
 - Financial records.
 - Any other financial record necessary to determine revenues and expenses of the association.
 - Elections, recalls, electronic voting and emergency elections under s. 718.1265(1)(a).
 - Maintenance and access to association official records.
 - Procedural aspects of facilitating the association (meetings, quorum, voting certificates, voting rights, proxies, etc.)
 - Conflicts of interest.
 - Removal of a board member under s. 718.111(1)(a) and (15) and 718.112(2)(g).
 - The completion of an SIRS.
 - Any written inquiries presented by an owner to the association.
- Records subpoenaed by the Division in response to an association’s failure to provide records to an owner shall be immediately provided to the owner upon receipt by the Division without charge.
 - The Division can issue citations and adopt rules to provide the basis for any such citations.
 - The Division shall provide a Board Member Certificate form related to the completion of a director’s required educational class.
 - The Division shall report and refer any criminal conduct to local law enforcement in the county where the association is located.
 - Division representatives may attend any meeting of the association to ensure compliance with the statutes.
 - After December 31, 2024, the Division must create a list of associations that have completed their respective SIRS report.

Non-Developer/Owner Disclosures:

- The owner must provide the purchaser with the financial statements and annual budget for the association.
- Must state whether the unit is a condominium within a parcel (like a Condo-Hotel Unit).

HB 613: MOBILE HOME TENANCIES

- Providing that all owner petitions for mediation in relation to an owner objection to the increase in the rent attributed to a Lot, a decline in services, or a change in rules and regulations must be submitted to the Division.
- Provides the process and procedure for the Division's review of any petition for mediation and Division's authority with regard to dismissal of any petition.
- Provides that the parties may agree on a mediator rather than have one appointed by the Division.

HB 429: TIMESHARE PLANS

- "Commissioner of Deeds" shall be appointed by the Florida Secretary of State.
 - These are officers who take acknowledgments, administer oaths on, or notarize documents executed outside of Florida, but which documents are to be used or recorded in connection with a timeshare property located in Florida.
- Deletion or removal of facilities requires approval of 2/3 of the board of directors and must be "consistent with fiduciary duties" set forth in the statute.
- Provides for the managing entity to have powers and authority similar to any public lodging or food establishment and may have an owner removed from the property or arrested by law enforcement where the owner engages in certain conduct.
- Managing entity must provide a certificate of account in lieu of providing an estoppel in relation to the sale of a timeshare interest by an owner.

SB 382: LCAM LICENSING AND CONTINUING EDUCATION

- CAM may be exempted from the CLE requirements to hold the license where:
 - The individual's license is active.
 - The individual has been licensed for 10 consecutive years.
 - No disciplinary actions have been imposed on the individual's license.