



WHYNOT LAW FIRM

**COMMUNITY ASSOCIATION
EDUCATION SERIES**

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**CONDOMINIUM
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2022 LEGAL UPDATE

Florida Community Associations



WHYNOT LAW FIRM



Legislative Session Summary

➤ BUILDING SAFETY

(SB 4-D)

- Section 468.4334, *Florida Statutes*
- Chapter 553, *Florida Statutes*
- Chapter 718, *Florida Statutes*
- Chapter 719, *Florida Statutes*
- Chapter 720, *Florida Statutes*

➤ SPACE FORCE

(SB 438)

- Chapter 718, *Florida Statutes*
- Chapter 720, *Florida Statutes*

➤ TREE PRUNING & RESIDENTIAL PROPERTY

(HB 518)

- Section 163.045, *Florida Statutes*

➤ CONSTRUCTION LIENS

(SB 352)

- Chapter 713, *Florida Statutes*



➤ MARKETABLE RECORD TITLE ACT (MRTA) & TOWING FROM PRIVATE PROPERTY

(SB 1380)

- Chapter 712, *Florida Statutes*
- Chapter 715, *Florida Statutes*

➤ RENTER SAFETY – “MIYA’S LAW”

(SB 898)

- Chapter 83, *Florida Statutes*
- Chapter 509, *Florida Statutes*

➤ BUILDING INSPECTOR CERTIFICATION

(HB 423)

- Chapter 468, *Florida Statutes*
- Chapter 553, *Florida Statutes*

➤ PROPERTY INSURANCE

(SB 2-D)

- Section 215.5551, *Florida Statutes*

➤ ENGINEERING RECOGNITION PROGRAM

(HB 375)

- Section 471.055, *Florida Statutes*



SB 4-D: Building Safety



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SB 4-D: Building Safety

AMENDS Chapter 553, Florida Statutes

- Provides that where no more than 25% of a roof needs to be repaired or replaced, and where the portions not being repaired were constructed in compliance with the State building code that was in place at the time it was installed, only the portion of the roof being repaired must be constructed in compliance with the current Florida Building Code.

- **“Milestone Inspection”** Deadlines:
 - Must be performed by a Florida licensed engineer or architect.
 - Must be performed on buildings that are three (3) stories or higher.
 - The first report must be prepared before December 31st of the 30th year after the building certificate of occupancy was issued.
 - If the building is within three miles of the Florida coastline, the 30-year deadline is reduced to 25-years.
 - After the expiration of the original Milestone Inspection deadline, the Association must complete subsequent Milestone Inspections every ten (10) years thereafter.
 - Any condominium that has a building CT issued prior to July 1, 1992, must complete the initial Milestone Inspection **BEFORE December 31, 2024.**



SB 4-D: Building Safety

AMENDS Chapter 553, Florida Statutes

- The vendor completing the Milestone Inspection must submit a “*sealed copy of the inspection report*” to the local enforcement authority.
 - The report must provide a summary of “the material findings and recommendations in the inspection report.”
- Local authority may also make the determination as to which condominiums need a “Milestone Inspection.”
 - Upon receipt of notice from the local authority that a Milestone Inspection is necessary, the association has 180 days to complete the inspection.
- The statute then identifies two stages for the Milestone Inspection, “**Phase 1**” and “**Phase 2**”.

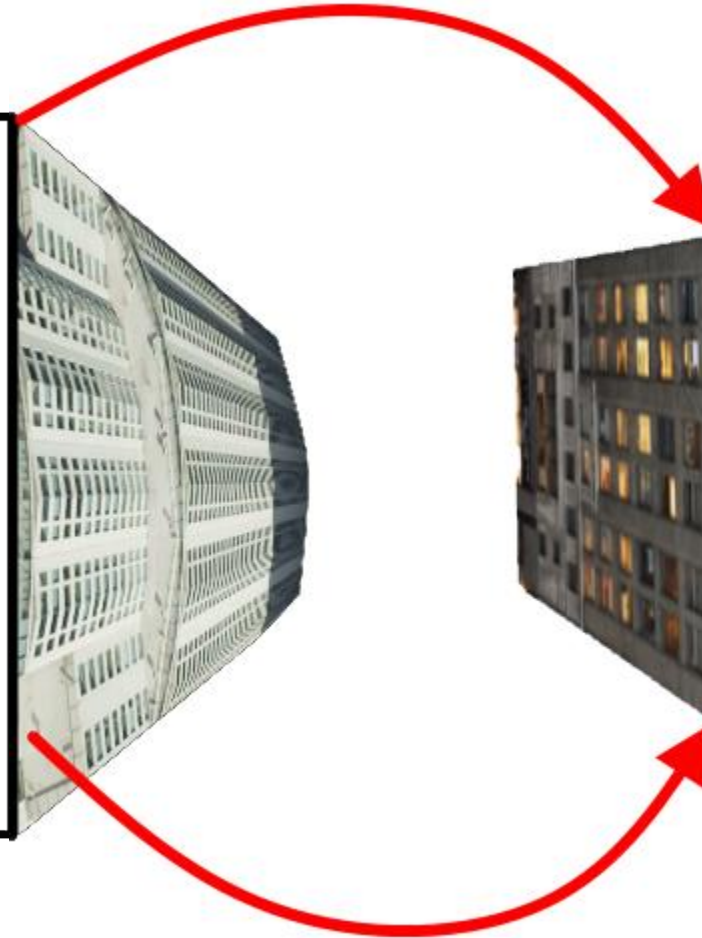


SB 4-D: Building Safety

AMENDS Chapter 553, Florida Statutes

PHASE 1 Inspection:

- This is primarily a visual inspection and report prepared by a Florida licensed engineer or architect.
- Provides a “*qualitative assessment of the structural conditions of the building.*”
- If signs of “*substantial structural deterioration*” are identified in the Phase 1 report, the Association **MUST** complete a Phase 2 report.



PHASE 2 Inspection:

- Involves further and more invasive testing of the building to “*fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use.*”



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SB 4-D: Building Safety

AMENDS Chapter 718, Florida Statutes

AMENDS Chapter 719, Florida Statutes

- Once the Association receives the Milestone Inspection report and inspection summary from the engineer or architect, the inspection summary must then be,
 - ✓ Provided to the Association’s membership,
 - ✓ Posted at a conspicuous place on the condominium property, and
 - ✓ The entire report and the summary must be posted to the Association’s website where the Association is required to have one.

- Defines and states the necessity for the Association to obtain a “Structural Integrity Reserve Study” (SIRS).
 - ❖ “...a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas.”
 - Must be performed every 10 years starting at the date on which the condominium was created.



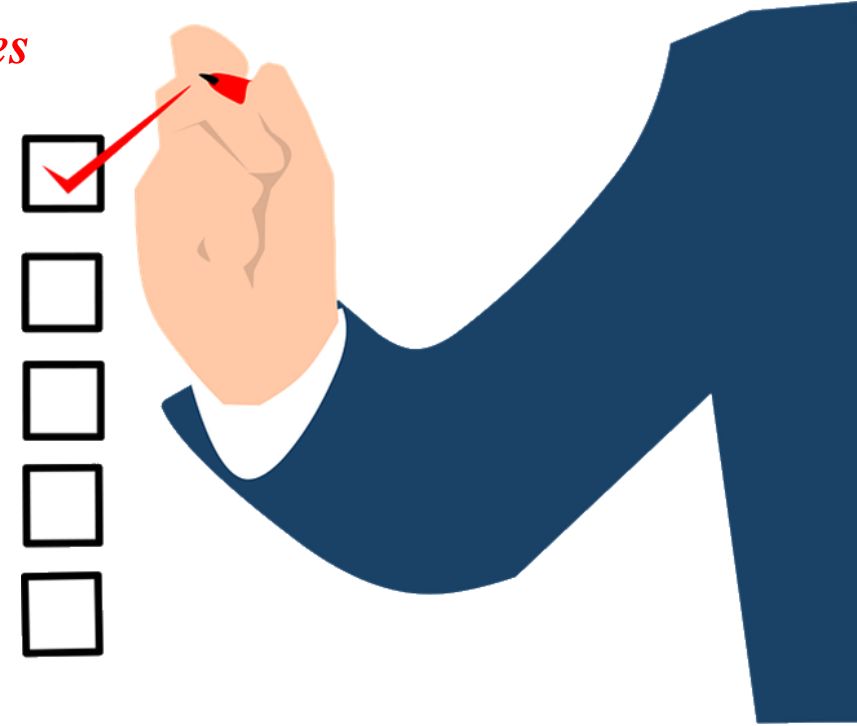
SB 4-D: Building Safety

AMENDS Chapter 718, Florida Statutes

AMENDS Chapter 719, Florida Statutes

➤ The SIRS must, at a minimum, address the following components:

- **Roof**
- Load-bearing walls or other primary structural members
- Floor
- Foundation
- Fireproofing and fire protection systems
- Plumbing
- Electrical systems
- Waterproofing and **exterior painting**
- Windows
- **Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000**



New Statute presents additional statutory reserve categories to be funded if specified in the SIRS



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SB 4-D: Building Safety

AMENDS Chapter 718, Florida Statutes

AMENDS Chapter 719, Florida Statutes

➤ **Funding of Statutory Reserves under the new SIRS statute.**

- Effective December 31, 2024, the membership is **NOT** authorized to:
 - Partially or fully waive the funding of SIRS reserve items.
 - Use funds earmarked for one of those SIRS reserve items for a different purpose.
- Difference between purpose and intent of traditional statutory reserves versus the SIRS reserve categories.
 - Maintenance, repair and replacement of the component once the life of the component expires.
 - SIRS line items are specifically related to the “*structural integrity and safety*” of those elements.
- Funding through the “straight-line” or “pooling” method:
 - The Division has simply stated that “pooling” is still permissible.
 - Given the foundational difference between the use of the two categories of reserves, I do not recommend pooling SIRS line items with any of the traditional statutory line items (Roof, Pavement, Exterior Painting, anything in excess of \$10,000).



SB 4-D: Building Safety

AMENDS Section 468.4334, *Florida Statutes*

➤ **Where the managed community is required to obtain a Milestone Inspection:**

- Both the manager and the management company are responsible for ensuring that the community complies with the statutory Milestone Inspection requirements *“as directed by the board.”*



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SB 438: Space Force Flags

AMENDS Chapter 718, Florida Statutes

AMENDS Chapter 719, Florida Statutes

AMENDS Chapter 720, Florida Statute



- U.S. Space Force flags, like all military flags, are now exempt from restrictions and covenants and may be “respectfully displayed” by an owner.



HB 518: Tree Pruning

AMENDS Chapter 163, Florida Statutes

- This bill provides that a local ordinance may not require the payment of any fee related to the removal or pruning of a tree on that owner’s residential property where said tree “*poses an unacceptable risk to person or property.*”
- Owner must possess “documentation” from an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect that verifies the tree poses an unacceptable risk to person or property
 - “Unacceptable Risk” means any tree if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures outlined in BEST MANAGEMENT PRACTICES—TREE RISK ASSESSMENT, Second Edition (2017).
 - “Residential Property” is defined as a single-family, detached building located on a lot that is actively used for single-family residential purposes.



SB 1380: Marketable Record Title Act (MRTA)

AMENDS Chapter 712, Florida Statutes

- **MRTA:** Currently, to be exempt from the application of MRTA, the “estate, interest, easements, or use restriction” must be specifically referenced by book and page number of the recorded document in any “muniment” of title for the property in issue.

EXAMPLES

EXEMPT

Legal Description – Condominium Deed

Unit 123, OCEAN POINTE, a Condominium, **according to the Declaration of Condominium thereof as recorded in O.R. Book 9000, Page 1234**, and all amendments thereto, Public Records of Orange County, Florida, together with an undivided interest in the common elements and limited common elements appurtenant thereto as set forth in said declaration.

**Usually
NOT
Exempt**

Legal Description – Homeowners' Association Deed

Lot 123, SUPER COMMUNITY, according to the map or plat thereof, **as recorded in Plat Book 10, Page(s) 1 though 5**, of the Public Records of Orange County, Florida.



SB 1380: Marketable Record Title Act (MRTA)

AMENDS Chapter 712, Florida Statutes

➤ **NEW MRTA:** “...or there is otherwise an affirmative statement in a muniment of title to preserve” the real property interest or restriction being considered.

➤ **Additional Exemptions:**

- A comprehensive plan or plan amendment;
- Zoning ordinance;
- Land development regulation;
- Building code;
- Development permit;
- Development order;
- Other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded in the official records
- Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any of the above.



SB 1380: Towing From Private Property

AMENDS Chapter 715, Florida Statutes

- An owner may establish rules and rates related to the use of his or her property for private parking purposes.
- Owner's rules and rate must be posted to the property and clearly visible.
- Invoice to car owner must have specific statement providing that it is a privately issued invoice, not issued by any governmental authority.
- A county or municipality may not adopt and enforce any ordinance or regulation that restricts a property owner's ability to use his property for private parking purposes.



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SB 2-D: Property Insurance

CREATES Section 215.5551, Florida Statutes

- Creates the Reinsurance to Assist Policyholders program to be administered in relation to the Florida Hurricane Catastrophe Fund. Defines and identifies qualifications and requirements for insurer participation in the program.

HB 423: Building Inspector Certification

AMENDS Chapter 468, Florida Statutes

AMENDS Chapter 553, Florida Statutes

- Provides additional requirements for a person to become certified as a building code inspector or plans examiner .
- Provides that a local building official shall issue a certificate of occupancy or certificate of completion upon receipt of specific documents, information and payment of applicable administrative fees.



SB 898: Renter Safety – “Miya’s Law”

AMENDS Chapter 83, Florida Statutes
AMENDS Chapter 509, Florida Statutes

- Employees of a landlord must undergo background checks as a condition of employment.
- “Reasonable notice for repair” was increased from 12-hours to 24-hours.
- Licensed Public Lodging Establishment:
 - Employees must submit to a background check.
 - Maintain an active and ongoing sign-out log for the keys to units.
 - Must establish policies and procedures related to the return, storage, and access to unit keys.
 - No hourly rates.



SB 352: HVAC Repair or Replacement

AMENDS Chapter 713, Florida Statutes

- Provides that the notice of commencement provisions **DO NOT** not apply to direct contracts for HVAC repairs that are less than \$15,000.00

HB 375: Structural Engineering Program

CREATES Section 471.055, Florida Statutes

- Provides additional state recognition and certification that a licensed engineer has successfully passed the Structural Engineering Program examination.

**A professional engineer who has the minimum program requirements shall be recognized as a professional engineer who has gone above and beyond in the field of structural engineering.
Section 471.055(2), Florida Statutes.**



2021/2022 CASELAW UPDATE



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CASELAW (Cont...)

MEMBERSHIP VOTE TO SUE

- ❖ De Soleil S. Beach Residential Condo. Ass'n, Inc. v. De Soleil S. Beach Ass'n, Inc., 315 So.3d 58 (Fla. 3rd DCA 2020)
 - Non-members cannot assert or try to enforce contractual rights under the Declaration that they are not a party to. “Although the three-fourths voting requirement is a condition precedent that may validly be asserted and enforced by unit owners, it may not be asserted and enforced by non-unit owners.”
 - “A non-party to a contract generally cannot raise, as a defense, the violation of the terms of that contract.”

PREVAILING PARTY

- ❖ Isola Bella Homeowners Ass'n, Inc. v. Clement, 328 So.3d 1132 (Fla. 4th DCA 2021)
- ❖ Georges v. Avanti Condo. Ass'n., Inc., 324 So.3d 991 (Fla. 1st DCA 2021)
 - Recognizing that when making a “prevailing party” determination, “courts must look to the substance of litigation outcomes—not just procedural maneuvers—in determining the issue of which party has prevailed in an action.”



CASELAW (Cont...)

DECLARATORY ACTION

❖ Mandarin Lakes Cmty. Ass'n, Inc. v. Mandarin Lakes Neighborhood Homeowners Ass'n, Inc., 322 So.3d 1196 (Fla. 3rd DCA 2021)

- A declaratory action is not “a vehicle for obtaining advisory opinions.”
- Although, a declaratory judgment “may be rendered by way of anticipation with respect to any act not yet done or any event which has not yet happened.”

CLAIM OF LIEN (HOA)

❖ Pash v. Mahogany Way Homeowners Ass'n, Inc., 310 So.3d 430 (Fla. 4th DCA 2021)

- “We do not interpret section 720.3085(1)(a) as invalidating a claim of lien simply because it contains a mistake or overstatement in the amount of unpaid assessments.”



CASELAW (Cont...)

ARBITRATION PROVISION

- ❖ Len-CG S. LLC v. Champions Club Condo. Ass'n., Inc., No. 5D21-1294 (Fla. 5th DCA 2022)
- ❖ Lennar Homes, LLC v. Mart. At the Oasis Neighborhood Ass'n, Inc., 332 So.3d 1054 (Fla. 3rd DCA 2021)
 - Where the arbitration provision in the Declaration is clear and unambiguous, both the owners and the Association are required to arbitrate “Construction Matters” with the developer as opposed to proceeding to court through the Statutory construction defect process proscribed by Chapter 558, *Florida Statutes*.
 - “The Association's right to sue in its representative capacity requires it 'to comply with the arbitration agreements signed by each of its members,”

ABUSE OF PROCESS

- ❖ Windsor v. Clayton & McCulloh, P.A., 324 So.3d 72(Mem) (Fla. 5th DCA 2021)
- ❖ Rosen v. Tiffany of Bal Harbour Condo. Ass'n., Inc., Case No. 3D21-1603 (Fla. 3rd DCA 2022)
 - "Due to Petitioner's apparent abuse of the legal process by his abusive, repetitive, malicious, or frivolous pro se filings...we conclude that he is abusing the judicial process and should be barred from further pro se filings."



CASELAW (Cont...)

RES JUDICATA

❖ Crescent Shore Condo. Ass'n, Inc. v. Lani Kai, L.P., 330 So.3d 582 (Fla. 2nd 2021)

- "Crescent Shore's 2018 claim against Lani Kai for failing to adhere to the easement agreement was based on a separate, new violation of the easement agreement than its 2000 claim and is therefore not barred by res judicata."

SAFE HARBOR

❖ Trident Asset Mgmt. v. 2050 Condotel Inn Condo. Ass'n., Inc., No. 5D20-2130 (Fla. 5th DCA 2022)

- "We reverse the portion of the Final Judgment that awarded Appellee \$168, 000 under the safe harbor provision." Safe harbor is based on a percentage of the total mortgage that is applicable to the unit or units being foreclosed upon as opposed to "per unit" where the mortgage secures more than one unit.



CASELAW (Cont...)

GOLD SMUGGLING & HARRASSMENT

❖ Ozyesilpinar v. Jalali, 325 So.3d 289 (Fla. 3rd DCA 2021)

- Board president alleged that an owner was stalking and harassing him when the owner posted allegations that the Board president was under investigation “and arrested in Columbia for smuggling gold.”
- Under Florida Statute, harassment and cyberstalking require a “course of conduct” that is “directed at a specific person” causing “substantial emotional distress to that person” that “serves no legitimate purpose.”

TOWING

❖ Lacayo v. Versailles Gardens I Condo. Ass'n, Inc., 325 So.3d 295 (Fla. App. 2021)

- Plain language of local towing ordinance subjects Association to liability for improper booting and immobilization of a vehicle parked on Association property.



CASELAW (Cont...)

DEVELOPER KNOWS BEST

❖ First Equitable Realty III, Ltd. vs. Grandview Palace Condominium Association, Inc., 329 So.3d 167 (Fla. 3rd DCA 2021)

- Post turnover amendment that directly affects developer rights from prior amendment was not valid.
- Said prior amendment was unambiguous where it provided the developer with the ability to, in its sole discretion, reject any future amendments that were harmful to the developer's ability to sell units.





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SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ **Milestone Inspection Reports and Requirements:**

- Milestone Inspection must be performed on **residential** buildings that are 3 stories or higher.
 - ✓ Mixed-use developments that have commercial aspects under the Declaration may be required to provide a report that covers both the commercial and residential aspects of the community.
 - ✓ Provides deadlines for buildings that will age 30-years by or before December 31, 2024.
 - ✓ Providing that a building that reaches 30-years between 2022 and 2024, shall have until December 31, 2025, to provide an applicable Milestone inspection reports.
- Provides that an owner may request an extension of the Milestone Inspection deadline by a showing of “Good Cause”, where the owner has entered into a contract for the report to be provided, but where it cannot be provided prior to the deadline.



SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ **Milestone Inspection Reports and Requirements:**

- Owner may submit a previous inspection report provided it complies with the Milestone Inspection requirement and was performed by a licensed engineer or architect.
- Provides that a project timeline for completion must be provided by the engineer performing a phase 2 Milestone Inspection.
- Association must provide the membership with a copy of the Milestone Inspection report within 45-days of receipt.
- Sets the ground for establishing a **Building Safety Program** to implement the statutory inspection requirements.



SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ The Condominium Act:

- **Definitions:**

- ✓ Provides a definition for “Alternative Funding Method” with regard to the funding of reserves for multicondo association that operates at least 25 condominiums.

- **Assessment Increase:**

- ✓ Provides that when determining whether a proposed annual assessment is more than 115% of the prior years assessment, payment of insurance premiums is not included.



WHYNOT LAW FIRM



SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ **The Condominium Act:**

• **Structural Integrity Reserve Study:**

- ✓ Funding of SIRS reserves must be based on a “structural integrity reserve study”. SIRS items that are not applicable to the community or buildings in issue do not have to be funded. Any element whose useful life is greater than 25 years only has to fund reserve as recommended by the study.
- ✓ Provides that a multicondo may vote to provide less reserves than recommended in the SIRS where the Division has approved of an “alternative funding method”.
- ✓ Applies only to residential condominiums.
- ✓ Must be performed by either a licensed engineer or architect or may be completed by a person certified by CAI or the Association of Professional Reserve Analysts.



SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ **The Condominium Act:**

• **Structural Integrity Reserve Study:**

- Provides parameters for the SIRS
 - ✓ SIRS is a visual inspection of the structural aspects identified in the statute.
 - ✓ If useful life and replacement cost cannot be determined, then reserves do not need to be maintained for that element.
- The SIRS requirements do not apply to:
 - ✓ Buildings less than 3 stories in height.
 - ✓ Single-family, two-family, or three family dwellings with “three or fewer habitable stories.”
 - ✓ Any portion that is not submitted to condominium ownership or control.
- A reserve study performed within the past 5 years that complies with the SIRS statute may be used.



SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ **The Condominium Act:**

- **Structural Integrity Reserve Study:**

- ✓ Officers or Directors who “willfully and knowingly” fail to obtain the Milestone Inspection Report are in breach of their fiduciary duty.
- ✓ Within 14 days of receipt, the Association must provide the membership with a copy of any written notice from the enforcement agency that requires the performance of a Milestone Inspection Report. The notice must state when the work is going to be performed and completed.

- **Non-binding Arbitration with the Division:**

- ✓ Identifies Milestone Inspection Reports and SIRS requirements as a “*dispute*” that is subject to non-binding arbitration with the Division of Condos.



SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ Documents for Developer Turnover:

- Amends subsection (p) to remove “milestone inspection report” and replace it with “Structural Integrity Reserve Study”.
- Provides that the Developer must include a SIRS report that includes the following elements:
 - ✓ Roof
 - ✓ Structure
 - ✓ Fireproofing and fire protection systems
 - ✓ Plumbing
 - ✓ Electrical Systems
 - ✓ Waterproofing and exterior painting
 - ✓ Windows and exterior door



SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ Documents for Developer Turnover:

- Although, the amendment further provides that a Developer's "Turnover Inspection Report" must address the following elements:
 - ✓ Elevators
 - ✓ Heating and Cooling Systems
 - ✓ Swimming pool or spa and equipment
 - ✓ Seawalls
 - ✓ Pavement and parking areas
 - ✓ Drainage system
 - ✓ Irrigation system



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SB 154: Building Safety (*fixes?*)

AMENDS and CLARIFIES many parts of SB-4D (2022)

➤ **Developer and Non-Developer Disclosures:**

- Includes any Milestone Inspection report and SIRS obtained by the developer.
- Must state in conspicuous type whether the developer was required, under the statute, to perform and provide a Milestone Inspection Report, a Turnover Inspection Report, or a SIRS.
- Provides for a buyer acknowledgment of receipt of any requires reports from the developer.
- Provides the buyer with a right to terminate the sale contract prior to closing within 15-days of receipt of a Milestone Inspection Report, Turnover Inspection Report, or SIRS from the developer.

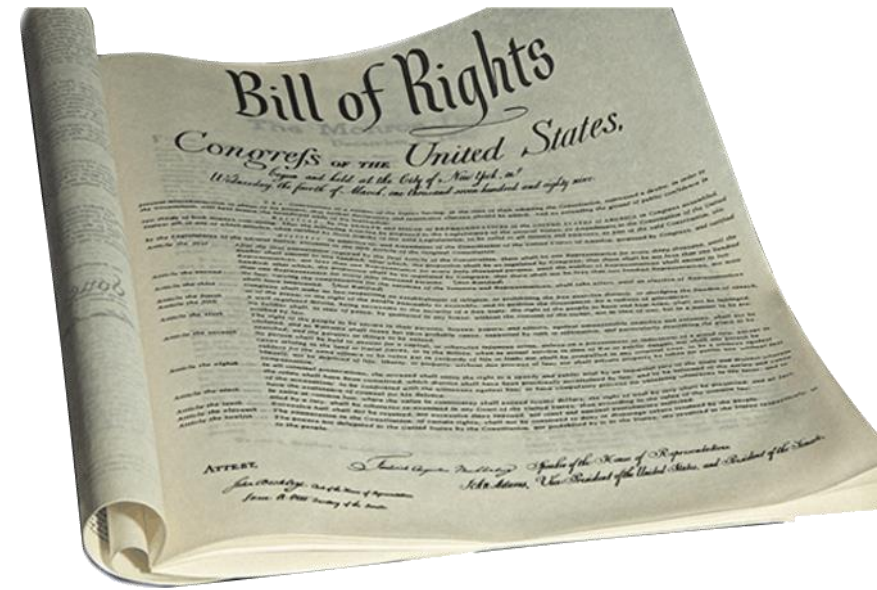


HB 919: HOA Act

AMENDS Chapter 720, Florida Statutes

➤ HOA Bill of Rights

- Agenda must now be stated in meeting notices.
- Any cost or damage deposits obtained by an Association cannot be comingled with other funds and provides time deadlines for use and return of such deposited funds to the owner.
- Civil Penalties for certain actions by a director
 - ✓ Kickbacks – Liable for damages under Chapter 617.
- May be removed from the board under the following circumstances:
 - ✓ Forgery of a ballot or voting certificate
 - ✓ Theft or embezzlement of Association funds.
 - ✓ Refusal to allow access to official records in furtherance of a crime.
 - ✓ Obstruction of justice per Chapter 843.



WHYNOT LAW FIRM



HB 919: HOA Act

AMENDS Chapter 720, Florida Statutes

➤ HOA Bill of Rights

• **Conflict of interest disclosure requirements**

- Appointment of Developer directors does not present a conflict of interest.
 - ✓ Must disclose relationship with developer each year that person serves on the board.
- Director must disclose “any activity that can be reasonable construed to be a conflict of interest at least 14 days before voting” on the issue. Rebuttable presumption of conflict exists in the following instances:
 - ✓ Where a director or relative of a director enters into a contract with the Association.
 - ✓ Where a director or relative holds any financial interest in the entity doing business with the Association.



HB 919: HOA Act

AMENDS Chapter 720, Florida Statutes

➤ HOA Bill of Rights

- **Covenant enforcement and fining.**
 - Fining Committee notice must contain:
 - ✓ A description of the violation.
 - ✓ The action needed to cure the violation
- **Fraudulent Voting Activities:**
 - It is a first-degree misdemeanor to do the following:
 - ✓ Falsely swearing or affirming an oath arising out of voting activities.
 - ✓ Perpetrating or attempting to perpetrate fraud regarding the casting of a vote.
 - ✓ Fraudulently changing the ballot, ballot envelope, vote, or voting certificate of a member.
 - ✓ Menacing, threatening, or bribing to influence, deceive, or deter a member from voting.
 - ✓ Attempting to buy a vote from a member.
 - ✓ Threatening or using intimidation to influence a members vote.



SB 360: Statute of Repose

AMENDS Chapter 95, Florida Statutes

- Reduces the statutory deadline for the Statute of Response from 10-years to 7-years.
 - Provides that the 7 years begins to run from the earliest of either:
 - ✓ Issuance of a Temporary Certificate of Occupancy;
 - ✓ Issuance of a Certificate of Occupancy;
 - ✓ Issuance of a Certificate of Completion, or;
 - ✓ Abandonment of the project.

AMENDS Chapter 553, Florida Statutes

- Provides that an Association may bring a claim for “material violations” of the Florida Building Code.
 - Defines “material violation” as building code violation which may reasonably result in physical harm to a person or significant damage to the building or the building’s systems.





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THANK

YOU

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