



## Rembaum's Association Roundup

*The community association legal news that you can use!*

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# 2024 LEGISLATIVE GUIDE

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# COMMUNITY ASSOCIATION MANAGERS AND MANAGEMENT COMPANIES

*For purposes of this Section, the term “LCAM” shall mean a “Licensed Community Association Manager” and the term “CAM” shall mean both the LCAM and a community association management firm/company, as such content may require.*

## House Bill 1203, Chapter 468, Florida Statutes

1. **Meeting Attendance.** LCAM must attend at least one (1) member meeting or board meeting of the Association, annually. At this time, this only applies to a Homeowners Association, not a Condominium or Cooperative Association.
2. **Availability of Manager.** At this time, this only applies to a Homeowners Association, not a Condominium or Cooperative Association.
  - **Contact Info.** Provide to community association members certain information, including the name of contact person, their contact information, and their hours of availability; provide to the members of the homeowners' association the name and contact information for each community association manager or representative of a community association management firm assigned to the homeowners' association, the manager's, or representative's, hours of availability.
  - **Summary of Duties.** Provide the members with a summary of the duties for which the manager or representative is responsible.
  - **Posting on Website.** The homeowners' association shall also post the above required information on the Association's website or app. as now required under Section 720.303(4)(b), F.S.
  - **Required Updates.** The community association manager or community association management firm shall update the homeowners' association and its members within fourteen (14) business days after any change to such information.
3. **CAM Contract Availability.** The CAM shall provide to any member, upon request, a copy of the contract between CAM and the homeowners' association and include such contract with the Association's official records. At this time, this only applies to a Homeowners Association, not a Condominium or Cooperative Association.
4. **New Continuing Education Requirements for Managers.**
  - The DBPR can require not more than ten (10) hours of continuing education, annually;

Biennially (every 2 years), each LCAM must complete at least five (5) hours of continuing education that pertains to homeowners' associations, three (3) hours of which must relate to record keeping. At this time, this only applies to a Homeowners Association, not a Condominium or Cooperative Association.

## **House Bill 1021, Chapter 468, Florida Statutes**

5. **Returning of Records.** (Section 468.4334(3) was added)
- CAM/CAM Firm must return all association records within its possession within twenty (20) business days after termination of a contractual agreement or receipt of a written request for return of the records, whichever occurs first.
  - A CAM may retain records necessary to complete an ending financial report or statement for up twenty (20) business days but however if the association has the records needed to complete the financial report and refuses to provide them then the CAM is off the hook and does not need to provide the financial report.
  - Failure to return the records within twenty (20) business days after termination or after written request from the association creates a rebuttable presumption that the CAM willfully failed to comply with returning the records and is thus subject to suspension of its license and a civil penalty of \$1000 per day up to ten (10) business days assessed to begin on the 21st business day after termination of the contractual agreement or receipt of the written request from the association for return of the records, whichever comes first.
6. **New Financial Interest Disclosures.** Section 468.4335 was created)
- CAMs, including directors, officers, and persons with a financial interest in a Community Association management firm, or a relative of such persons, must disclose to the board of the association any activity that may be reasonably construed to be a conflict of interest. **A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:**
    - (i) CAMs, including directors, officers, and persons with a financial interest in a Community Association management firm, or a relative of such persons, enters into a contract for goods or services with the association.
    - (ii) CAMs, including directors, officers, and persons with a financial interest in a Community Association management firm, or a relative of such persons, holds an interest in, or receives compensation or anything of value from, a corporation, limited liability corporation, partnership including a limited liability partnership or any other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.
  - **Bids from a CAM.** If the association receives a bid that exceeds \$2500 to provide a good or service other than Community Association management services, from a CAM, including directors, officers, and persons with a financial interest in a CAM or relative of such persons, the association must solicit multiple bids from other third-party providers of such goods and services.

- **Required Disclosures.** If a CAM, including directors, officers, and persons with a financial interest in a Community Association management firm, or relative of such persons, proposes to engage in an activity that is a conflict of interest, then the proposed activity must be listed on all contracts and transactional documents related to the proposed activity and must be attached to the meeting agenda of the next board meeting. The disclosures of such possible conflict of interest must be included in the minutes. Approval of such contract requires 2/3 of all of the association's directors then, at the next meeting of the members, the existence of the potential conflict must be disclosed to the membership.
- **Failing To Disclose.** If there is a violation of the foregoing conflict of interest rules, then the association may cancel its Community Association management contract and the association is only liable for the reasonable value of the management services provided up to the time of cancellation, and is not liable for any termination fees, liquidated damages, or other form of penalty. Also, failing to disclose the conflict of interest can lead to disciplinary proceedings by the Florida Department of Business and Professional Regulation.
- **When Contract May Be Voidable.** If an association enters into a contract with a CAM, including directors, officers and persons with a financial interest in a CAM, which is a party to, or has an interest in, an activity that is a possible conflict of interest and such conflict of interest has not been properly disclosed, then the contract is voidable and terminates upon the association filing a written notice terminating the contract which written notice provides therein that at least 20% of the voting interests of the association concur and voted in favor thereof.
- **CAM Contract Cancellation.** The Association must provide notice of cancellation by Certified U.S. Mail, Return Receipt Requested, unless the contract provides for an alternative notice requirement.
- **The Term “Relative”.** “Relative” means a relative within the 3rd degree of consanguinity by blood or marriage.

## **Senate Bill 382, Chapter 455, Florida Statutes**

7. The Department of Business and Professional Regulations (DBPR) shall exempt an individual from completing the continuing education required for renewal of a license for a renewal period if the individual holds an active license issued by the board or department to practice the profession; the individual has continuously held the license for at least ten (10) years; or no disciplinary action is imposed on the individual's license.

This does not apply to engineers, certified public accountants, brokers, broker associates, sales associates, appraisers, architects, interior designers, or landscape architects.

While this new law takes effect on July 1, 2024, it expires on January 1, 2026. Therefore, unless later extended, this exemption will last for eighteen (18) months.



# HOMEOWNERS' ASSOCIATIONS

## House Bill 1203, Chapter 720, Florida Statutes

### 1. FIDUCIARY DUTY

- The officers and directors of an association are subject to Section 617.0830, Florida Statutes, and have a fiduciary relationship to its members who are served by the association.

#### **617.0830, Fla. Stat. General standards for directors.** — (as of 4.5.24)

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

### 2. ASSOCIATION POWERS AND DUTIES; MEETINGS OF THE BOARD; OFFICIAL RECORDS; BUDGETS; FINANCIAL REPORTING; ASSOCIATION 155 FUNDS; RECALLS — SECTION 720.303, FLORIDA STATUTES

- **Official Records Retention.** The Association shall maintain each of the following items (referring to all of the official records), when applicable, **for at least seven (7) years**, unless the governing documents of the Association require a longer period of time, which constitutes the official records of the Association:

(i) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair, or replace.

(ii) A copy of the bylaws of the Association and of each amendment to the bylaws.

- (iii) A copy of the articles of incorporation of the Association and of each amendment thereto.
- (iv) A copy of the declaration of covenants and a copy of each amendment thereto.
- (v) A copy of the current rules of the homeowners' association.
- (vi) The minutes of all meetings of the board of directors and of the members.
- (vii) A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the Association requesting that a different mailing address be used for all required notices. The Association shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting, in writing, to receive notice by electronic transmission, unless the member has sent written notice to the Association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from Association records when the member revokes consent to receive notice by electronic transmission. However, the Association is not liable for an erroneous disclosure of the e-mail address or the facsimile number for receiving electronic transmission of notices.
- (viii) All of the Association's insurance policies or a copy thereof.
- (ix) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has any obligation or responsibility.
- (x) Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of one (1) year.
- (xi) The financial and accounting records of the Association, kept according to good accounting practices. The financial and accounting records must include accurate, itemized, and detailed records of all receipts and expenditures.
- (xii) A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each

assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

- (xiii) All tax returns, financial statements, and financial reports of the Association.
- (xiv) Any other records that identify, measure, record, or communicate financial information.
- (xv) A copy of the disclosure summary described in Section 720.401(1), Florida Statutes.
- (xvi) Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least one (1) year after the date of the election, vote, or meeting.
- (xvii) All affirmative acknowledgments made pursuant to Section 720.3085(3)(c)3, Florida Statutes. (how assessment delinquency notices are delivered)
- (xviii) All other written records of the Association not specifically included in this subsection which are related to the operation of the Association.

- **Website For Associations with 100 Or More Parcels.**

- (i) **HOA Website Requirements**

- (a) **Website and Application Privacy.** The Association's website or application must be accessible through the internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to parcel owners.
    - (b) **Username and Passwords.** Upon written request by a parcel owner, the Association must provide the parcel owner with a username and password and access to the protected sections of the Association's website or application which contains the official documents of the Association.
    - (c) **Protected Information.** The Association shall ensure that the information and records listed below, which are not allowed to be accessible to parcel owners, are not posted on the Association's website or app. If protected information, or information restricted from being accessible to parcel owners, is included in documents that are required to be posted on the Association's website or application, the Association must ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the Association, or its authorized agent, is not liable for disclosing



information that is protected or restricted unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information. The protected information follows:

- A. attorney client privileged information;
  - B. information obtained in connection with the approval of a lease, sale, other transfer of parcel;
  - C. information the Association obtains in a gated community in connection with guest visits to the parcel owners or community residents;
  - D. personnel records of the Association or management company employees;
  - E. medical records of parcel owners or community residents;
  - F. social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any address for a parcel owner other than is provided for Association notice requirements and other personal identifying information of any person excluding the person's name, parcel designation, mailing address and property address.
- (ii) By January 1, 2025, an association that has one hundred (100) or more parcels shall post the following documents on its website or make available such documents through an application that can be downloaded on a mobile device:
- (a) The articles of incorporation of the Association and each amendment thereto.
  - (b) The recorded bylaws of the Association and each amendment thereto.
  - (c) The declaration of covenants and a copy of each amendment thereto.
  - (d) The current rules of the Association.
  - (e) A list of all current executory contracts or documents to which the Association is a party or under which the Association or the parcel owners have an obligation or responsibility and, after bidding for the

related materials, equipment, or services has closed, a list of bids received by the Association within the past year.

- (f) The annual budget and any proposed budget to be considered at the annual meeting.
  - (g) The financial report and any monthly income or expense statement to be considered at a meeting.
  - (h) The Association's current insurance policies.
  - (i) The certification of each director as required by Section 720.3033(1)(a), Florida Statutes.
  - (j) All contracts or transactions between the Association and any director, officer, corporation, firm, or association that is not an affiliated homeowners' association or any other entity in which a director of an Association is also a director or an officer and has a financial interest.
  - (k) Any contract or document regarding a conflict of interest, or possible conflict of interest, as provided in Sections 468.436(2)(b)6. and 720.3033(2), Florida Statutes.
- **New Website Posting Requirement for Members' Meetings.** Notice of any scheduled meeting of the members and the agenda for the meeting, as required by Section 720.306, Florida Statutes, at least fourteen (14) days before such meeting.
    - (i) The notice must be posted in plain view on the homepage of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the homepage.
    - (ii) The Association shall also post on its website or application, any document to be considered and voted on by the members during the meeting, or any document listed on the meeting agenda, at least seven (7) days before the meeting at which such document or information within the document will be considered.
  - **New Website Posting Requirement for Board Meetings.** Notice of any board meeting, the agenda, and any other document required for such meeting which must be posted on the website or app no later than the date required for such notice.

- **Retention Policy.** The Association shall adopt written rules governing the method or policy by which the official records of the Association are to be retained and the time period such records must be retained. Such information must be made available to the parcel owners through the association's website or app.
- **Law Enforcement Subpoenas and Assisting Law-Enforcement Agencies.** If an Association receives a subpoena for records from a law enforcement agency, the Association must provide a copy of such records or otherwise make the records available for inspection and copying to a law enforcement agency within five (5) business days after receipt of the subpoena, unless otherwise specified by the law enforcement agency or subpoena. An Association must assist a law enforcement agency in its investigation to the extent permissible by law.
- **Financial Reporting.**
  - (i) **Existing:** The financial statements shall be based upon the Association's total annual revenues, as follows:
    - (a) An Association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.
    - (b) An Association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.
    - (c) An Association with total annual revenues of \$500,000 or more shall prepare audited financial statements.
    - (d) An Association with at least 1,000 parcels shall prepare audited financial statements notwithstanding the Association's total annual revenues.
  - (ii) **Existing: Lesser Report Options.** If approved by a majority of the voting interests present at a properly called meeting of the Association, an Association may prepare or cause to be prepared:
    - (a) A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
    - (b) A report of cash receipts and expenditures, or a compiled financial statement in lieu of a reviewed or audited financial statement; or
    - (c) A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

- (iii) **New Requirement:** An association with 1000 or more parcels must cause to be prepared audited financials each year notwithstanding the amount of total annual revenues.
- (iv) **New Requirement:** An association may NOT prepare a lesser financial statement for consecutive fiscal years.
- **Debit Cards.**
  - (i) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expenses.
  - (ii) A person who uses a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft as provided under Section 812.014, Florida Statutes.
  - (iii) For the purposes of this subsection, the term "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.
- **Requirement to Provide Financial Accounting.** A parcel owner may make a written request to the board for a detailed accounting of any amounts he or she owes to the Association related to the parcel, and the board shall provide such information within fifteen (15) business days after receipt of the written request.
  - (i) After a parcel owner makes such written request to the board, he or she may not request another detailed accounting for at least ninety (90) calendar days.
  - (ii) Failure by the board to respond, within fifteen (15) business days, to a written request for a detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested such accounting which are more than thirty (30) days past due and for which the Association has not given prior written notice of the imposition of the fines.

3. **BOARD MEMBER CERTIFICATION – SECTION 720.3033, FLORIDA STATUTES**

- A newly elected or appointed director must complete the department-approved education for newly elected or appointed directors within ninety (90) days after being elected or appointed. A written acknowledgment affirming that you read your Governing Documents and will uphold them is no longer sufficient for the certification requirement.
- The certificate of completion is valid for up to four (4) years.

- A director must complete the education specific to newly elected or appointed directors at least every four (4) years.
- The department-approved educational curriculum specific to newly elected or appointed directors must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.
- New Continuing Education Requirements:
  - (i) A director of an Association that has fewer than 2,500 parcels must complete at least four (4) hours of continuing education annually.
  - (ii) A director of an Association that has at least 2,500 parcels must complete at least eight (8) hours of continuing education annually.
  - (iii) A director who does not timely file the educational certificate for newly elected or appointed directors is suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.
  - (iv) The Association is to retain the educational certificate for newly elected or appointed directors for five (5) years. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.

4. **KICKBACKS AND OTHER ILLEGAL ACTS - SECTION 720.303, FLORIDA STATUTES**

- An officer, director, or manager may not solicit, offer to accept, or accept a kickback. As used in this subsection, the term "kickback" means any thing or service of value for which consideration has not been provided for an officer's, director's, or manager's benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the Association.
- An officer, director, or manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback commits a felony of the third degree, punishable as provided in Sections 775.082, 775.083, or 775.084, Florida Statutes, and is subject to monetary damages under Section 617.0834, Florida Statutes.
- If the board finds that an officer or director has violated this subsection, the board must immediately remove the officer or director from office. The vacancy shall be filled according to law until the end of the officer's or director's term of office.

- However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs.
- A director or an officer charged by information or indictment with any of the following crimes must be removed from office and a vacancy declared:
  - (i) Forgery of a ballot envelope or voting certificate used in a homeowners' association election as provided in Section 831.01, Florida Statutes.
  - (ii) Theft or embezzlement involving the Association's funds or property as provided in Section 812.014, Florida Statutes.
  - (iii) Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association which is accessible to parcel owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence.
  - (iv) Obstruction of justice as provided in Chapter 843, Florida Statutes.
  - (v) Any criminal violation under this chapter.

5. **ARCHITECTURAL CONTROL COVENANTS - SECTION 720.3035, FLORIDA STATUTES**

- **Existing Text Which Remains:** The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, shall be permitted only to the extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.
- **New Prohibitions.** An association or any architectural, construction improvement, or similar committee of an association must reasonably and equitably apply and enforce on all parcel owners the architectural and construction improvement standards authorized by the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants. An association or any architectural, construction improvement, or other such similar committee of an association may not enforce or adopt a covenant, rule, or guideline that:
  - (i) Limits or places requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel, an adjacent common area, or a community golf course.



- (ii) Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the association or any architectural, construction improvement, or other such similar committee of an association, if such system is not visible from the parcel's frontage, an adjacent parcel, an adjacent common area, or a community golf course and is substantially similar to a system that is approved or recommended by the association or a committee thereof.
- **Denial of ARC Request.** If the Association or any architectural, construction improvement, or other such similar committee of the Association denies a parcel owner's request or application for the construction of a structure or other improvement on a parcel, the Association or committee must provide written notice to the parcel owner stating with specificity the rule or covenant on which the Association or committee relied when denying the request or application and the specific aspect or part of the proposed improvement that does not conform to such rule or covenant.

6. **INSTALLATION, DISPLAY, AND STORAGE OF ITEMS. - SECTION 720.3045, FLORIDA STATUTES**

- Regardless of any covenant, restriction, bylaw, rule, or requirement of an association, and unless prohibited by general law or local ordinance, an association may not restrict parcel owners or their tenants from installing, displaying, or storing any items on a parcel which are not visible from the parcel's frontage or an adjacent parcel, an adjacent common area, or a community golf course, including, but not limited to, artificial turf, boats, flags, *vegetable gardens*, *clotheslines*, and recreational vehicles.

7. **HOLIDAY DECORATIONS AND GARBAGE CANS. – SECTION 720.305(7), FLORIDA STATUTES added:**

- **Fining and Suspension Prohibitions.** Notwithstanding any provision to the contrary in an association's governing documents, an association may not levy a fine or impose a suspension for any of the following:
  - (i) **Garbage Cans.** Leaving garbage cans at the curb or end of the driveway within twenty-four (24) hours before, or after, the designated garbage collection day or time.
  - (ii) **Holiday Decorations.** Leaving holiday decorations or lights on a structure or other improvement on a parcel longer than indicated in the governing documents, unless such decorations or lights are left up for longer than 1 week after the association provides written notice of the violation to the parcel owner.



8. **PROHIBITED CLAUSES IN ASSOCIATION DOCUMENTS. – SECTION 720.3075, FLORIDA STATUTES, THE FOLLOWING ARE PROHIBITED:**

- **Pick-up trucks.** The governing documents may not prohibit a property owner or a tenant, a guest, or an invitee of the property owner from parking his or her personal vehicle, including a pick-up truck, in the property owner's driveway, or in any other area at which the property owner or the property owner's tenant, guest, or invitee has a right to park as governed by state, county, and municipal regulations.
- **Work Vehicle.** Regardless of any official insignia or visible designation on the vehicle, the governing documents, including the declarations of covenants, articles of incorporation, or bylaws, may not prohibit a property owner or a tenant, a guest, or an invitee of the property owner from parking his or her work vehicle, which is not a “commercial motor vehicle” as defined in Section 320.01(25), Florida Statutes, in the property owner's driveway.
- **Contractors.** The governing documents may not prohibit a property owner from inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor list of the association. Additionally, homeowners' association documents may not preclude a property owner from inviting, hiring, or allowing entry to a contractor or worker on his or her parcel solely because the contractor or worker does not have a professional or an occupational license. The association may not require a contractor or worker to present or prove possession of a professional or an occupational license to be allowed entry onto a property owner's parcel.
- **Prohibition on Vehicle Prohibition.** The governing documents may not prohibit operating a vehicle that is not a commercial motor vehicle as defined in Section 320.01(25), Florida Statutes, in conformance with state traffic laws, on public roads or rights-of-way or the property owner's parcel.
  - (i) Section 320.01(25), Florida Statutes, “**commercial motor vehicle**” means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight. A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09(1)(a), is not a commercial motor vehicle if the use is not for profit and corporate sponsorship is not involved. As used in this subsection, the term “corporate sponsorship” means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

9. **FINING / GRIEVANCE COMMITTEES – SECTION 720.305, FLORIDA STATUTES**

- **Grievance Hearing Timing.** After a fine or suspension is levied by the board and the fourteen (14) day advance written notice of the parcel owner's right to a hearing takes place, then the hearing must be held within ninety (90) days after issuance of the notice before the committee of at least three (3) members appointed by the board who are not officers, directors, or employees of the association, with a spouse, parent, child, brother, or sister of an officer, director or employee.
- **Electronic Hearings.** Such committee may hold the hearing by telephone or other electronic means. Access information to join the telephone or electronic meeting must be provided to the offending owner.
- **Notice to Owner after Hearing.** Within 7 days after the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable, or fulfill a suspension, or the date by which a fine must be paid.
- **Curing the Violation.**
  - (i) If a violation has been cured before the hearing, or in the manner specified in the written notice, a fine or suspension may not be imposed.
  - (ii) If a violation is not cured and the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the committee must set a date by which the fine must be paid, which date must be at least thirty (30) days after delivery of the written notice of the hearing results.
  - (iii) Attorneys' fees and costs may not be awarded against the parcel owner based on actions taken by the board before the date set for the fine to be paid.
- **Failure to Cure the Violation.** If a violation and the proposed fine or suspension levied by the board is approved by the committee and the violation is not cured or the fine is not paid per the written notice, reasonable attorneys' fees and costs may be awarded to the Association. Attorneys' fees and costs may not begin to accrue until after the date noticed for payment and the time for an appeal has expired.

10. **FRAUDULENT VOTING ACTIVITIES RELATING TO ASSOCIATION ELECTIONS; PENALTIES. - SECTION 720.3065, FLORIDA STATUTES**

- A person who engages in any of the following acts of a fraudulent voting activity relating to association elections, commits and constitutes a misdemeanor of the first degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes:

**Existing Text:**

- (i) Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- (ii) Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- (iii) Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- (iv) Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.
- (v) Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote.

This paragraph subsection does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

- (vi) Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

- **New Criminal Penalties.** Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in Sections 775.082 and 775.083, Florida Statutes:
  - (i) Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
  - (ii) Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
  - (iii) Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid, or escape, detection, arrest, trial, or punishment. **\*\*\* However, this does not apply to a licensed attorney giving legal advice to a client.**

11. **PAYMENT FOR ASSESSMENTS; LIEN CLAIMS. – SECTION 720.3085, FLORIDA STATUTES**

- **Interest.** If no rate is provided in the declaration or bylaws, *simple* interest accrues at the rate of eighteen (18%) percent per year.
- **Compound Interest.** Notwithstanding the declaration or bylaws, compound interest may not accrue on assessments and installments on assessments that are not paid when due.

12. **ELECTRONIC VOTING - SECTION 720.317, FLORIDA STATUTES**

- The association may conduct elections and other membership votes through an internet-based online voting system if a member consents, *electronically* or in writing, to online voting and if the following requirements are met. Therefore, a member can sign up via email notification or via the electronic voting website. The association provides each member with:
  - (i) A method to authenticate the member's identity to the online voting system.
  - (ii) A method to confirm, at least 14 days before the voting deadline, that the member's electronic device can successfully communicate with the online voting system..
  - (iii) A method that is consistent with the election and voting procedures in the association's bylaws.



13. **FIRST RESPONDER VEHICLES. - SECTION 720.318, FLORIDA STATUTES**

- An association may not prohibit a first responder (changed from “law enforcement officer”), as defined in Section 112.1815(1), Florida Statutes, who is a parcel owner, or who is a tenant, guest, or invitee of a parcel owner, from parking his or her assigned first responder vehicle in an area where the parcel owner, or the tenant, guest, or invitee of the parcel owner, otherwise has a right to park, including on public roads or rights-of-way.
- **Who is a first Responder as per Section 112.1815(1), Florida Statutes?** The term “first responder” as used in this section means a law enforcement officer as defined in Section 943.10, Florida Statutes, a firefighter as defined in Section 633.102, Florida Statutes, or an emergency medical technician or paramedic as defined in Section 401.23, Florida employed by state or local government. A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government for purposes of this section.

# HOMEOWNERS' ASSOCIATIONS

## House Bill 59

Section 720.303, Florida Statutes - Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

1. **REQUIREMENT TO PROVIDE COPIES OF RULES AND COVENANTS.** Before October 1, 2024, an association shall provide a physical or digital copy of the association's rules and covenants to every member of the association.
  - An association shall provide a physical or digital copy of the association's rules and covenants to every new member of the association.
  - If an association's rules or covenants are amended, the association must provide every member of the association with an updated copy of the amended rules or covenants.
  - An association may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.
  - The requirements of this subsection may be met by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website if such website is accessible to the members of the association and the association sends notice to each member of the association of its intent to utilize the website for this purpose. Such notice must be sent in both of the following ways:
    - (i) By electronic mail to any member of the association who has consented to receive notices by electronic transmission and provided an electronic mailing address to the association for that purpose.
    - (ii) By mail to all other members of the association at the address identified as the member's mailing address in the official records of the association.

# HOMEOWNERS' ASSOCIATIONS

## House Bill 293

**This Bill applies to all homeowners' associations regardless of date created.**

The board or any architectural, construction improvement, or other similar committee of an association must adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the association.

The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code.

Notwithstanding any other provision in the governing documents of the association, the board or any architectural, construction improvement, or other such similar committee may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the board or committee.

The board or committee may require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

The term "hurricane protection" includes, but is not limited to, roof systems recognized by the Florida Building Code which meet ASCE 7-22 standards, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, exterior fixed generators, fuel storage tanks, and other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the association.

This act took effect upon becoming a law on May 28, 2024.

# CONDOMINIUM ASSOCIATIONS

## House Bill 1029

### My Safe Florida Condominium Pilot Program

### Chapter 215, Florida Statutes

An act relating to the My Safe Florida Condominium Pilot Program creating Section 215.5587, Florida Statutes.

**APPLICATION FOR INSPECTION & GRANT:** In order to apply for an inspection or a grant for association property or condominium property, an association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in the pilot program.

In order to apply for a grant which improves one or more units within a condominium, an association must receive both of the following:

- Approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in a mitigation inspection, and
- A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

A unit owner may participate in the pilot program through a mitigation grant awarded to the association but may not participate individually in the pilot program.

Before a vote of the unit owners may be taken, the association must provide to the unit owners a clear disclosure of the pilot program on a form created by the department. The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association.

The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the pilot program must be maintained as part of the official records of the association. Within fourteen (14) days after an affirmative vote to participate in the pilot program, the association must provide written notice to all unit owners of the decision to participate in the pilot program.

**REQUESTS FOR ADDITIONAL INFORMATION:** The department may request that an applicant provide additional information. An application is deemed withdrawn by the applicant if the department does not receive a response to its request for additional information within sixty (60) days after it notifies the applicant of any apparent errors or omissions in the application.

**HURRICANE MITIGATION INSPECTORS:** Licensed inspectors are to provide inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage.

The department shall contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections.

**HURRICANE MITIGATION INSPECTIONS:** The inspections provided to an association under this section must, at a minimum, include all of the following:

- An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage.
- A range of cost estimates regarding the recommended mitigation improvements. Information regarding estimated insurance premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.
- An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains.
- An association may apply for and receive an inspection without also applying for a mitigation grant.

**MITIGATION GRANTS:** Financial grants may be used by associations to make improvements recommended in a hurricane mitigation inspection report which increases the condominium's resistance to hurricane damage. An application for a mitigation grant must conform to statutory requirements for same.

**CONTRACTORS:** An association may select its own contractors for the mitigation project as long as each contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project.

**AFTER RECEIVING A GRANT:** An association awarded a grant must complete the entire mitigation project in order to receive the final grant award and must agree to make the property available for a final inspection once the mitigation project is finished to ensure the mitigation improvements are completed in a matter consistent with the intent of the pilot program and meet or exceed the applicable Florida Building Code requirements. Construction must be complete and the association must submit a request to the department for a final inspection, or request an extension of time, within one (1) year after receiving grant approval. If the association fails to comply with this paragraph, the application is deemed abandoned, and the grant money reverts back to the department.

**GRANT FUNDING:** All grants must be matched on the basis of \$1 provided by the association for \$2 provided by the state.

- For roof-related projects, the grant contribution is \$11 per square foot multiplied by the square footage of the replacement roof, not to exceed \$1,000 per unit, with a maximum grant award of fifty percent of the cost of the project.

- For opening protection-related projects, the grant contribution is a maximum of \$750 per replacement window or door, not to exceed \$1,500 per unit, with a maximum grant award of 50 percent (50%) of the cost of the project.
- An association may receive grant funds for both roof related and opening protection-related projects, but the maximum total grant award may not exceed \$175,000 per association.

**AFTER GRANT MONEY RUNS OUT:** The department may not accept grant applications or maintain a waiting list for grants after the cumulative value of the grants awarded have fully obligated the appropriation, unless otherwise expressly authorized by the Legislature.

**GRANT MONEY MAY BE USED FOR THE FOLLOWING:**

- Opening protection, including exterior doors, garage doors, windows, and skylights.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Secondary water resistance for roof.
- Grants may be used for a previously inspected existing structure on the property.

If improvements to protect the property, which complied with the current applicable building code at the time, have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

- Comply with or exceed the applicable building code in effect at the time the association applied for the grant, and
- Provide more hurricane protection than the improvements that the association previously installed.

**GRANT MONEY MAY NOT BE USED FOR THE FOLLOWING:**

- To install the same type of improvements that were previously installed; or
- To pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received.

**DEPARTMENT OF FINANCIAL SERVICES OBLIGATIONS:**

- Create the clear disclosure form that the board must complete and provide to all owners.
- The department shall adopt rules to implement this new legislation to govern the program; to govern hurricane mitigation inspections and grants, mitigation contractors, and training of inspectors and contractors; and to carry out the duties of the department under this section.



- The department shall develop a process that ensures the most efficient means to collect and verify inspection and grant applications to determine eligibility. The department may direct hurricane mitigation inspectors to collect and verify inspection and grant application information or use the Internet or other electronic means to collect information and determine eligibility.
- The department may contract with third parties for grants management, inspection services, contractor services, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the pilot program and are not subject to administrative cost limits.
- The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.
- The department shall implement a quality assurance and reinspection program that determines whether initial inspections and mitigation improvements are completed in a manner consistent with the intent of the pilot program. The department may use a valid random sampling in order to perform the quality assurance portion of the pilot program.
- In addition, the department is required to submit reports to the president of the senate and Speaker of the House of representative on a variety of items pertaining to the inspections and grants.

# CONDOMINIUM ASSOCIATIONS

## House Bill 1021

### Chapter 718, Florida Statutes

1. **MANDATORY STRUCTURAL INSPECTIONS FOR CONDOMINIUM AND COOPERATIVE BUILDINGS (a/k/a MILESTONE INSPECTIONS), Section 553.899, Florida Statutes**

- Until now, the milestone inspections did not apply to a single family, two family or three family dwelling with three or fewer habitable stories above ground, but now includes four family dwellings such that the milestone inspection does not apply to single family, two family, three family, or four family dwellings with three or fewer habitable stories above ground.

2. **SECTION 718.103, FLORIDA STATUTES – NEW DEFINITIONS**

- The definition of “condominium property” that was great is edited to include lands, leaseholds and improvements, personal property, and all easements and rights appurtenant thereto regardless of whether contiguous, which are subjected to condominium ownership.
- A definition of “Hurricane protection” was added and includes hurricane shutters, impact glass, code compliant windows or doors, or other code compliant hurricane protection products used to preserve and protect condominium property or association property.
- “Kickback” means anything of service or value for which consideration is not provided, for an officers’, directors’, or managers’ own benefit, or that of his or her immediate family, from any person providing, or proposing to provide, goods or services to the association.

3. **CONDOMINIUM IN A BUILDING, SECTION 718.104, FLORIDA STATUTES**

- Pertains to creation of condominiums where provisions are made for a condominium within a portion of a building requiring an identifier that it is a condominium within a portion of a building or within a multiple parcel building.
- For both residential and mixed-use condominiums, the declaration must include a statement that specifies whether the unit owner, or the association, is responsible for the installation, maintenance, repair, or replacement of hurricane protection that

is for the preservation and protection of the condominium property and association property.

4. **ELECTRONIC VOTING, SECTION 718.128, FLORIDA STATUTES (also applies to Cooperatives under 719.129(4), F.S.)**

- If the association opted into electronic voting and then subsequently the member opted in to vote electronically, then the board must honor a unit owner's request to vote electronically at all subsequent elections, unless the owner later opts out of electronic voting. In other words, once the association has provided the opportunity to the membership for electronic voting, and the member wants to vote electronically, the association cannot refuse such request. Additionally, the law was clarified to provide that an owner may consent to using on-line voting by e-mail.

5. **THE ASSOCIATION, SECTION 718.111, FLORIDA STATUTES**

- **Kickbacks.** An officer, director, or manager who knowingly solicits offers to accept, or accepts, a kickback commits a felony of the 3<sup>rd</sup> degree and must be removed from office and a vacancy declared (a felony of the 3<sup>rd</sup> degree is punishable up to five years in prison along with monetary penalties up to \$5000.00).
- **Proper Insurance.** Upon receipt of a complaint that the association does not maintain proper insurance or fidelity bonding, the division must monitor the association for compliance and may issue fines and penalties.
- **Official Records.** By January 1, 2026, an association managing a condominium with twenty-five (25) or more units which does not contain timeshare units, shall post copies of its official records on its website or app. (the current website threshold requirement of 150 or more units remains in effect until 1/1/2026).
  - (i) **Official Records, E-mail Addresses, and Fax Numbers.** Clarification is provided in regard to official records that e-mail addresses and facsimile numbers are only accessible to unit owners if such owner has consented to receive their official notices by electronic transmission or has personally and expressly indicated that such personal information can be shared with other unit owners. The association has an obligation to ensure that the e-mail addresses and fax numbers are only used for business operation of the association and may not be sold or shared with outside third parties. If such personal information is included in documents that are released to third parties, other than unit owners, the association must redact such personal information before the document is disseminated. The association is not liable for inadvertent disclosures of e-mail addresses and fax numbers unless the disclosure was made with a knowing, or intentional, disregard of the protected nature of such information.

- (ii) **Official Records Now Also Includes:** All invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association, a copy of building permits, and copies of all satisfactory completed board member educational certificates.
- (iii) **Manner to Maintain Official Records.** The official records must be maintained in an organized manner that facilitates inspection of the records by a unit owner. In the event the official records are lost, destroyed or otherwise unavailable, the obligation to maintain the official records includes a good faith obligation to obtain and recover those records as is reasonably possible.
- (iv) **Fulfilling Official Record Requests Electronically.** Regarding official record requests, if the requested records are posted on the association's website, or are available for download through an app on a mobile device, the association may fulfill its obligations to provide access to official records to requesting members, by directing such member or their authorized representative, to the website, or app.
- (v) **Official Records, Required Checklist.** In response to a written request to inspect records, the association must simultaneously provide to the requesting member a checklist of all records made available for inspection and copying. The checklist must also identify any of the association's official records that were not made available to the requesting party. The association must maintain a checklist provided to every requesting member for official records for at least seven years. An association creating such checklist creates a rebuttable presumption that the association has complied with the official records request.
- (vi) **Failing to Produce Official Records - Misdemeanor.** A director or member of the board, or a manager, who knowingly, willfully, and repeatedly fails to provide such official records commits a misdemeanor of the second degree. The term "repeatedly" refers to two or more violations within a twelve-month period.
- (vii) **Failing to Produce Official Records - Felony.** If a person willfully and knowingly refuses to release official records with the intent to avoid or escape detection, arrest, trial, or punishment, then it is the equivalent of a felony of the third degree.
- (viii) **Accounting Records.** Any person who knowingly or intentionally defaces or destroys accounting records that are required to be maintained or who knowingly and intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing

harm to the association or one or more of its members commits a misdemeanor of the first degree.

- **Required Financial Reports.** Financial reports: while the membership can vote to obtain a lesser financial report than otherwise required by law, it may not do so in consecutive fiscal years.
- **Debit Cards.** While the law already provides an association, its officers, directors, employees, and agents may not use a debit card issued in the name of the association or billed directly to the association for the payment of association expenses, any such person who uses a debit card in the name of the association for an expense that is not a lawful obligation of the association commits theft and is punishable under the criminal statutes based upon the amount of money expended.

6. **THE BYLAWS, SECTION 718.112, FLORIDA STATUTES**

- **New Required Quarterly Meetings.** A residential condominium association with more than ten (10) units must meet at least once each quarter. At least four (4) times a year, the meeting agenda must include an opportunity for members to ask questions of the board.
- **Right to Ask Questions.** The right of a member to attend meetings and the right to speak at such meetings, with respect to designated agenda items, now also includes the right to ask questions relating to reports on the status of construction or repair projects, the status of revenues and expenditures during the current fiscal year and other issues affecting the condominium. (Note that there is still not necessarily an obligation to answer such questions).
- **Contract Consideration on Agenda Requirement.** If the condominium association board meeting agenda item relates to the approval of a contract for goods or services, then a copy of the contract must be provided with the meeting notice and be made available for inspection and copying upon a written request from a unit owner or made available on the association's website or through an app.
- **Board Member Certification Requirements.**
  - (i) **In General:** Board member certification now requires:
    - (a) Written certification that the director has read the governing documents and will uphold them and meet their fiduciary duty; and
    - (b) Attendance at a division-approved educational course.

- (ii) All board members must be certified within 90 days of being elected or appointed to the board but can receive their written certification and education certificate up to one year prior to being elected or appointed to the Board.
- (iii) **Valid for Seven Years:** The certification is valid for seven years after the date of issuance so long as the director serves on the board without interruption.
- (iv) **New Certification Course Requirements:** The board member certification course must be at least four hours long and provide instructions on milestone inspections, structural integrity reserve studies, elections, record keeping, financial literacy and transparency, levying of fines, and notice and meeting requirements.
- (v) A director of an association of a residential condominium who was elected or appointed before July 1, 2024, must comply with the written certification and educational certificate requirements in this sub-subparagraph by June 30, 2025.
- (vi) **Developer Appointed Board Member Certification Requirements:** A developer-appointed board member may be certified, and such certification is valid for seven years including any interruption of service on the board so that the developer-appointed board member can be appointed to additional project association boards thereafter without having to be recertified.
- (vii) **New Continuing Education Requirements:** Each year after being certified, all board members must take continuing education courses and provide a certificate of having satisfactorily completed at least one hour of continuing education relating to recent changes to Chapter 718, Florida Statutes, and related administrative rules during the past year.
- (viii) **Proof of Certification:** The association must maintain proof of the written certification and education certificate for seven years after the director's election or the duration of the directors uninterrupted tenure, whichever is longer, however, failure of the association to have the proof of board member certification and proof of educational one hour course certificate on file does not affect the validity of board actions taken.
- (ix) **Reserves with Uninhabitable Building:** If the local building official determines the entire condominium building is uninhabitable due to natural emergency, then the board, upon the approval of a majority of the members, may pause contribution to the reserves or reduce reserve funding until the local building official determines that the condominium building is habitable. Any reserve account funds held by the association

may be expended pursuant to the board's determination to make the condominium building and its structures habitable (meaning the reserves can be used for a different purpose without a vote of the members) upon the determination by the local building official that the condominium building is habitable, the association must immediately resume contributing funds to its reserves.

7. **Structural Integrity Reserve Studies (SIRS): (these also apply to Cooperatives under 719.106(k), F.S.**

- Within forty-five (45) days after receiving the structural integrity reserve study the association must distribute a copy of the study to each owner or deliver to each unit owner a notice that the completed study is available for inspection (and copying) and provide the division with a statement indicating the study was completed and that the association provided or made available such study to each owner.

8. **Director and Officer Offenses / Guilty Until Proven Innocent:** If a director or officer is charged by information or indictment with any of the following crimes they must be removed from office:

- (i) forgery of a ballot envelope or voting certificate;
  - (ii) theft or embezzlement of funds;
  - (iii) destruction of or refusal to allow inspection or copy or copying of official record of the association which is accessible to owners within the time periods required by law in the furtherance of a crime and as such act constitutes tampering with physical evidence, obstruction of justice, any criminal violation set out within Chapter 718, Florida Statutes.
- While the charges are pending, the director or officer may not be appointed or elected as a director or officer to any association and may not have access to official records of the association except pursuant to court order.

9. **Fraudulent Voting Activity.** A person who engages in any of the following fraudulent voting activities is punishable as a misdemeanor of the first degree which equals up to one year in jail:

- Willfully and falsely swearing to, or affirming, an oath or affirmation, or willfully procuring another person to falsely swear to, or affirm, an oath or affirmation in connection with, or arising out of, voting activities.
- Perpetrating or attempting to perpetrate or aiding someone else in perpetration of fraud in connection with a vote cast or to be cast or attempted to be cast.
- Preventing a member from voting as they intended by fraudulently changing or attempting to change a ballot, ballot envelope, etc.



- Menacing, threatening or using bribery or other corruption to attempt to directly or indirectly influence, deceive, or deter a member when the member is voting.
- Giving or promising directly, or indirectly, anything of value to another member with the intent to buy a vote, however, this requirement does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement including a campaign message to be worn by a member.
- Using, or threatening to use, direct or indirect force, violence, or intimidation of any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.
- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with the intent that the offender avoids or escapes detection, arrest, trial or punishment, however, this does not apply to a licensed attorney giving legal advice to a client.

10. **MAINTENANCE AND HURRICANE PROTECTION, SECTION 718.113, FLORIDA STATUTES**

- **In General.** The term “hurricane shutter” is replaced with “hurricane protection”. It is important to note that, to protect the health, safety, and welfare of the people of the state of Florida and to ensure uniformity and consistency in hurricane protections installed by condominium associations, and unit owners, these provisions apply to all residential and mixed used condominiums in the state, regardless of when the condominium is created pursuant to its declaration of condominium.
- **Hurricane Protection Specifications.** Each board of a residential condominium or mixed used condominium must adopt hurricane protection specifications for each building within the condominium operated by the association which may include color, style, and other factors deemed relevant by the board (please note that this provision used to apply to hurricane shutters but now applies to hurricane protection).

- **Not a Material Alteration.** The installation, maintenance, repair, replacement, and operation of hurricane protection is not considered a material alteration or substantial addition to the common elements or association property.
- **Board Required Installation.** The board may, with the approval of a majority of the voting interests of the condominium, install or require that unit owners install hurricane protection that complies with or exceeds the applicable building code. A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such membership vote and include the date by which the hurricane protection must be installed. Such certificate must be recorded in the public records of the county. Once it is recorded, the board must mail or hand-deliver a copy of the recorded certificate to the unit owners at their official addresses. Notwithstanding the foregoing, the failure to record the certificate in the county's records or to send a copy of the recorded certificate to the unit owners does not affect the validity or the enforceability of the vote of the unit owners.
- **When Hurricane Protection is the Responsibility of the Association.** A vote of the unit owners is not required if the installation, maintenance, repair, or replacement, of the hurricane protection or any exterior windows, doors, or other apertures protected by hurricane protection, is the responsibility of the association pursuant to the declaration of condominium, or if the unit owners are required to install hurricane protection pursuant to the declaration of condominium.
- **Existing Hurricane Protection.** If the hurricane protection complies with, or exceeds, current applicable building code and it has been previously installed, the board may not install the same type of hurricane protection or require that the unit owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit.
- **Operation Of Hurricane Protection.** The board may operate hurricane protection without the permission of the unit owners if such operation is necessary to preserve or protect the condominium property or association property.
- **Board Approval of Hurricane Protection.** The board cannot refuse to approve the installation and replacement of hurricane protection by a unit owner which conforms to the specifications adopted by the board but, however, the board may require the unit owner to adhere to an existing unified building scheme regarding the external appearance of the condominium.
- **Unit Owner Financial Responsibility When Hurricane Protection Removal is Required for Maintenance.** A unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection including exterior windows, doors, or other apertures, if its removal is necessary for the maintenance, repair, or replacement of other condominium or association property for which the

association is responsible. The board shall determine if the removal or reinstallation of hurricane protection must be completed by a unit owner or the association. If such removal and reinstallation is completed by the association, the costs incurred by the association may not be charged to the unit owner. If the removal and reinstallation is completed by the unit owner, the association must reimburse the unit owner for the cost of the removal and reinstallation or the association must apply a credit towards future assessments in the amount of the unit owner's cost to remove and reinstall the protection.

- **When the Cost of Removal and Reinstallation of Hurricane Protection is the Financial Responsibility of the Owner Who Refuses to Pay.** If the removal and reinstallation of hurricane protection including exterior windows, doors, and other apertures, is the responsibility of the unit owner and the association completes such removal and reinstallation and then charges the unit owner for such removal and reinstallation, such charges are enforceable as an assessment and may be collected in accordance with Section 718.116, Florida Statutes (meaning if unpaid the unit can be foreclosed).
- **When Hurricane Protection is the Financial Responsibility of Unit Owners.** If the installation of hurricane protection is the responsibility of the unit owners pursuant to the declaration of condominium or the vote of the unit owners, then the cost of the installation of the hurricane protection is not a common expense and must be charged individually to the unit owners based on the cost of installation. Such costs of installation are enforceable as an assessment.
- **When Unit Owner Has Hurricane Protection that Complies with Current Building Code.** Regardless of whether the declaration requires the association, or the owners, to install and maintain, repair, and replace, hurricane protection, the owner of a unit, in which hurricane protection that complies with current building code has been installed, is excused from any assessment levied by the association or shall receive a credit if the same type of hurricane protection is installed by the association. Such credit must be equal to the amount the owner would have been assessed to install the hurricane protection.

11. **STATUTE OF REPOSE, Section 718.124, Florida Statutes**

- This change is monumental and so very important to newly turned over condominium associations. The statute of limitations, and now including the statute of repose, does not begin to run until turnover when the unit owners elect a majority of the members to the board. In the past, construction defect claims were limited to seven years from the date of the certificate of occupancy and now it is seven years from turnover. This is a huge consumer protection win.

12. **SLAPP SUITS, Section 718.1224, Florida Statutes**

- **In General.** A SLAPP suit is a retaliatory action by the association when an owner complains to local government and then the association sues the owner. Now, apparently, there are SLAPP suit prohibitions such that the association cannot file an action against a member in retaliation for when such member sues the condominium association. In other words, no retaliatory lawsuits, which does not mean there cannot be counterclaims, but such counterclaim cannot be retaliatory in nature.
  
- **Good Faith.** In order for a unit owner to raise the defense of retaliatory conduct taken by the association, the unit owner must have acted in good faith and not for improper purposes such as to harass or to cause unnecessary delay or for frivolous purposes or needless increase in the cost of litigation.
  
- **Unlawful SLAPP Suits.** It is unlawful for a condominium association to enact discriminatory increases in owner's assessments, discriminatorily decreased services to a unit owner, or bring or threaten to bring an action for possession or other civil action including defamation, libel, slander or tortious interference based on conduct of the unit owner as follows:
  - (i) the unit owner has complained in good faith to a governmental agency charged with responsibility for enforcement of a building housing or health code violation;
  - (ii) the unit owner has organized, encouraged, or participated in, a unit owner's organization;
  - (iii) the unit owner submitted information or filed a complaint alleging criminal violations or violations of Chapter 718, Florida Statutes, or rules of the division of condominium, the office of the condominium ombudsman, a law enforcement agency, state attorney, attorney general, or other governmental agency;
  - (iv) if the unit owner exercised their rights pursuant to Chapter 718, Florida Statutes;
  - (v) if the unit owner complained to the association, or any of the association's representatives, for failure to comply with Chapters 718 or 617, Florida Statutes;
  - (vi) the unit owner made public statements critical of operation or management of the association;
  - (vii) evidence of retaliatory conduct may be raised by the unit owner as a defense in any action brought against him or her for possession of their unit.

- **Expeditious Resolution.** A unit owner claiming that the association violated the aforementioned is entitled to a right of expeditious resolution of a claim that the suit is in violation of the aforementioned and the unit owner may petition the court for an order dismissing the action or granting final summary judgment. Essentially, if the unit owner makes such accusations, then it is advanced in the court docket for the court to deal with on a prompt basis.
  - **Prohibition Against Expenditure of Association Funds.** In addition, a condominium association may not expend association funds in support of a defamation, libel, slander, or tortious interference claim against an owner or other claim against an owner based on the aforementioned conduct.
13. **DEVELOPER TURNOVER INSPECTION REPORT REQUIREMENT, SECTION 718.301(P), FLORIDA STATUTES (applies to the cooperative under 719.301(p), F.S.)**
- the SIRS is added to what must be included in the developer turnover inspection report.
14. **CONFLICT OF INTEREST FOR DIRECTORS, SECTION 718.3027(4), FLORIDA STATUTES**
- clarifies that a director who has a conflict of interest can establish quorum at a board meeting to allow a vote to proceed in his or her absence from the vote due to the conflict.
15. **SUSPENSION OF VOTING RIGHTS, SECTION 718.303(5), FLORIDA STATUTES**
- requires that at least 90 days prior to an election, written notice must be provided to a unit owner that their voting rights may be suspended due to nonpayment of a monetary obligation to the association.
16. **JURISDICTION OF FLORIDA DIVISION OF CONDOMINIUMS, TIMESHARES, AND MOBILE HOMES, SECTION 718.501, FLORIDA STATUTES**
- The division has jurisdiction over:
    - (i) procedural aspects and records relating to financial issues including annual financial reporting, assessments, fines, commingling of reserves and operating funds, use of debit cards for unintended purposes, annual operating budget, allocation of reserve funds, financial records, any other record necessary to determine the revenues and expenses of the association;
    - (ii) elections, including election and voting requirements, recalls, electronic voting, and elections that occur during emergencies;
    - (iii) maintenance of, and unit owner access to, association records;

- (iv) procedural aspects of meetings, including unit owner meetings, quorums, voting requirements, proxies, board of administration meetings, and budget meetings;
  - (v) disclosure of conflict-of-interest requirements;
  - (vi) removal of directors and officers;
  - (vii) procedural completion of the structural integrity reserve study;
  - (viii) any written inquiries by unit owners to the association relating to such matters including written inquiries under Section 718.112, Florida Statutes.
- **Referral to Law Enforcement.** The division is obligated to refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity, or when the division has caused to believe that fraud, theft, embezzlement, or other criminal activity, has occurred.
  - **Right to Attend Meetings.** The division director or any officer or employee of the division and the condominium ombudsman or any employee of the office of the condominium ombudsman may attend and observe any meeting of the board or any unit owner meeting including subcommittees or special committees which are open to members of the association.

# THE FEDERAL CORPORATE TRANSPARENCY ACT

## Requirements Affecting all Community Associations – What Ever Board Member & Manager Must Know

1. In January 2021 the Corporate Transparency Act (CTA) was enacted by Congress. Registration is required by December 31, 2024, when its far-reaching requirements are planned to go into effect. The CTA was adopted by Congress to provide additional transparency in entity structures and ownership in an effort to combat tax fraud, money, laundering, and other illicit activities. It is designed to capture more information about the ownership of specific entities operating in or accessing the United States marketplace. The Small Business Administration recently reported that over 27 million small businesses are considered non-employer firms, meaning that they have no employees, and are subjected to this Act. Learning of the beneficial ownership of these entities, Congress hopes to crack down on their misuse. The CTA is particularly targeted to these types of small businesses operating as so called “shell companies.”
2. The CTA, amongst its other requirements, requires domestic reporting companies such as corporations, limited liability partnerships, and any other entity, created by the filing of a document with the secretary of state, or any similar office under the laws of the state, to comply with its reporting requirements. This includes community associations as they are organized as a business entity (i.e., a not-for-profit corporation). In addition to providing the information regarding the entity (meaning the association), the CTA requires certain information regarding the association’s “beneficial owners.” A “beneficial owner” is defined, in part, as a person who exercises substantial control of the reporting entity, such as board members and officers.
3. These beneficial owners must report their name, date of birth, address, unique identifier number, such as a driver’s license number or passport number, and a photocopy of the non-expired document that evidences such information, too.
4. In addition to the initial compliance requirements, which must be accomplished within 2024 for already existing corporations, reports must also be updated within 30 days of a change to the beneficial ownership, or within 30 days after becoming aware of or having reason to know of inaccurate information previously filed. Under a strict reading of these provisions, this means that every time there is a change in board members and officers, a report of the change must be made to FinCen within 30 days of the event. Failure to comply with all of the registration requirements of the CTA can lead to fines from \$500–\$10,000 per violation and jail time of up to two years.