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2024 LEGISLATIVE UPDATES FOR FLORIDA HOMEOWNERS' ASSOCIATIONS

By: Christopher L. Pope, Esq.
Board Certified by the Florida Bar in Construction Law;
Condominium and Planned Development Law; and Real Estate Law
with assistance from Andre Eaton and Vanessa Fernandez, Esq.

Staying informed about legislative changes is crucial in the ever-evolving landscape of laws pertaining to Florida Homeowners' Associations and Community Association Managers. The 2024 Florida legislative session has brought forth a wave of significant changes that directly impact Florida HOAs and CAMs that work closely with HOAs. This update is intended to highlight these changes in the Florida Statutes and should not be considered a substitute for reviewing the laws themselves.

Community Association Manager Requirements – Section 468.4334(3), F.S. (note, potential numbering conflict with HB 1021)

The manager or management company of an association must perform the following: (a) attend at least one Board or membership meeting, in person, each year; (b) provide to the members of the association the following: name and contact information for each manager or management company representative, such person's hours of availability, and the duties for which such person is responsible. Such information shall be posted on the association website and updated within 14 business days of any change; (c) provide any member of the association a copy of the contract between the manager or management firm and the association and include such contract with the association's official records.

Some of these requirements may impair existing contracts, but will apply to all contracts executed on or after July 1, 2024.

Continuing Education – Section 478.4337, F.S.

The existing continuing education requirement for CAMs, up to 10 hours of continuing education for license renewal, must now include that a community association manager who provides management services to a homeowners association must complete at least 5 hours of continuing education every 2 years that specifically pertains to homeowners associations, 3 hours of which must relate to record keeping.

Director Education – Section 720.3033(1), F.S.

Within 90 days of election or appointment, each director must submit a certificate of completion of department approved educational curriculum. The certificate is valid for up to 4 years and a director must complete the education requirements every 4 years. The program must include training related to financial literacy and transparency recordkeeping, levying of fines, and notes and meeting requirements. In addition to requirements for newly appointed directors, the director of an association with fewer than 2,500 parcels must complete at least 4 hours of continuing education each year, and a director of an association with more than 2,500 parcels must complete at least 8 hours of continuing education per year.

Non-Profit Director Duties – Section 720.303(1), F.S.

Directors must comply with the standards under Section 617.0830, which require that a director discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, in a manner he or she reasonably believes to be in the best interests of the corporation.

Association Records – Section 720.303(4), F.S.

Official Records must be retained for at least 7 years unless the governing documents provide a longer period. By January 1, 2025, an association with 100 or more parcels must post certain official records on its website or make them available through a mobile device app.

The website or mobile device app must contain a web portal or other protected section that is inaccessible to the general public and only accessible to parcel owners and employees of the association. Upon written request by the parcel owner, the association must provide access to the protected section that contains the official documents of the association.

The association shall ensure that information and records that are not allowed under Section 720.303(5)(c) to be accessible to the parcel owners are not posted on the website. If posted, the association must ensure the confidential information is redacted. The association and its agents are not liable for inadvertent disclosures of such documents or information.

- Section 720.303(5)(c) includes, but is not limited to, records protected by attorney client privilege; information obtained in connection with a sale, lease or transfer of a parcel; information obtained in connection with guests' visits; medical records of parcel owners or residents; personal information including, but not limited to, social security numbers, driver's license numbers, or addresses; electronic security data; the software and operating systems used by the association; and affirmative acknowledgments.

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 the law enforcement agency within 5 business days after receipt of the subpoena, unless otherwise specified by the law enforcement agency or subpoena.

Financial Reporting – Section 720.303(7), F.S.

In addition to previous financial reporting requirements, if an association has at least 1,000 parcels, an audit must be performed regardless of annual revenue. An association may no longer prepare a financial statement pursuant to Section 720.303(7)(d) for consecutive fiscal years.

Debit Cards – Section 720.303(13), F.S.

An association and its officers, directors, employees, and agents shall not use a debit card issued in the name of the association, or billed directly to the association, for the payment of association expenses. However, credit cards are not prohibited.

Rules and Covenants – Section 720.303(13), F.S. (note, potential numbering conflict between HB 1203 and HB 59)

Effective July 1, 2024, before October 1, 2024, (*by September 30, 2024*) an association shall provide a physical or digital copy of the association’s rules and covenants to every member of the association. The association shall also provide a physical or digital copy of the association’s rules and covenants to every *new* member of the association. When amended, the association must provide a copy of the amended rules or covenants to every member. The association may adopt rules establishing standards for the manner and timeframe of distribution of updated documents.

That said, the requirements of the new statutory language 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 a website is accessible to the members and notice is provided to the membership of the association’s intent to utilize the website for such purpose.

Notices for the purpose of this statutory language may be sent by email to members that have consented to receive notice by electronic transmission, or by mail to all other members at the address identified as the member’s mailing address in the official records of the association.

Requirement to Provide an Accounting – Section 720.303(14), F.S.

The association shall provide a detailed accounting to a parcel owner within 15 business days of a written request by a parcel owner. A parcel owner may only request another detailed accounting 90 calendar days after the previous request.

Failure by the board to respond within 15 business days of a detailed accounting request constitutes a complete waiver of outstanding fines that are more than 30 days past due and for which the association has not given prior written notice of the imposition of the fines.

Compounding Interest – Section 720.3085(3), F.S.

Compound interest may not accrue on assessments and installments on assessments that are not paid when due.

Electronic Voting – Section 720.317, F.S.

The owner of a parcel may consent to vote electronically through electronic consent.

Architectural Review – Section 720.3035, F.S.

An association must reasonably and equitably apply and enforce the architectural and construction standards authorized by the declaration of covenants or other published guidelines.

If the association or any associated committee denies a parcel owner’s request or application for the construction of a structure or other improvement, the association or committee must provide written notice stating with specificity the rule or covenant relied upon to deny the request and the specific aspect or part of the proposed improvement that does not conform to such rule or covenant.

An association may not enforce or adopt any rule or guideline that: (1) places limitation or 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; or (2) requires the review and approval of the association for plans and specifications of central air-conditioning, refrigeration, or heating or ventilating systems, if such system is not visible from the parcel’s frontage or an adjacent parcel, an adjacent common area, or a community golf course.

Storage of Items – Section 720.3045, F.S.

House Bill 1203 further limited the association’s ability to restrict parcel owners or tenants from displaying, installing, or storing any items on a parcel that are not visible from either the parcel’s frontage or an adjacent parcel, to also include from an adjacent common area or a community golf course. HB 1203 also expanded the list of permissible items to include vegetable gardens and clotheslines, in addition to the previously listed artificial turf, boats, flags, and recreational vehicles.

Prohibited Clauses in Association Documents – Section 720.3075, F.S.

The governing documents of an association may not prohibit any of the following:

- A property owner or a guest from parking their personal vehicle, including pickup trucks, in the property owner’s driveway, or in any other area at which the property owner or guest has the right to park. Furthermore, the association may not prohibit a property owner or guest from parking their work vehicle that is not a commercial vehicle, as defined in Section 320.01(25), in the property owner’s driveway.
 - Section 320.01(25) defines a commercial vehicle as “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 property owner from inviting, hiring, or allowing entry to a contractor or worker on the owner’s parcel solely because the contractor is not a preferred vendor of the association. Furthermore, the association may not preclude a property owner from inviting, hiring, or allowing entry to a contractor solely because the contractor or worker does not have a professional or occupational license.
- Operating a vehicle that is not a commercial vehicle as defined in Section 320.01(25) in conformance with state traffic laws, on public roads or rights-of-way or the property owner’s parcel.

First Responder Vehicles – Section 720.318

An association may not prohibit a first responder, as defined in Section 112.1815(1), who is a parcel owner, tenant, guest, or invitee from parking their first responder vehicle in an area where the parcel owner, tenant, guest, or invitee otherwise has the right to park, including public roads or rights-of way.

- Section 112.1815(1) defines a first responder as a law enforcement officer as defined in Section 943.10, a firefighter as defined in Section 633.102, or an emergency medical technician or paramedic as defined in Section 401.23, and 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.

Fines and Suspensions – Section 720.305, F.S.

The parcel owner’s 14-day notice of right to a hearing must be made in writing and with notice of the alleged violation. The hearing must be held within 90 days after issuance of the notice and may be held by telephone or other electronic means. The notice must include how the owner may cure the violation, if applicable.

If an owner cures the violation alleged in the notice before the hearing, a fine or suspension may not be imposed.

Within 7 days after the hearing, the association shall provide written notice to the parcel owner or occupant, licensee, or invitee, of the fining committee’s findings, any applicable fines or suspensions approved or rejected, information pertaining to the fulfillment procedure of a suspension, and the date by which a fine must be paid, which must be at least 30 days from the delivery of the notice delivered after the hearing.

If a violation is not cured or if the fine is not paid by the deadline established in the written notice, reasonable attorney fees and costs may be awarded to the association for pursuit of payment. Attorney fees and costs may not begin to accrue until after the date noticed for payment and the time for an appeal has expired.

Notwithstanding any provision to the contrary in an association's governing documents, an association may not levy a fine or impose a suspension for the following:

(a) Leaving garbage receptacles at the curb or end of the driveway within 24 hours before or after the designated garbage collection day or time.

(b) 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.

Criminal Penalties – Miscellaneous Sections

Section 720.3033(3): An officer, director, or manager who knowingly solicits, offers to accept, or accepts a kickback commits a felony of the third degree.

- Kickback as defined in Section 720.3033 means any thing or service of value for which consideration has not been provided for an officer's, a director's, or a 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.

Section 720.303(5)(d): Any director or member of the board or association or a community association manager who knowingly, willfully, and repeatedly violates Section 720.303(5)(a), with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the second degree.

- Section 720.303(5)(a) outlines the requirements for maintaining records and making them available upon request.
- "Repeatedly" is defined as two or more violations within a 12-month period.

Section 720.303(5)(e): Any person who knowingly and intentionally defaces or destroys accounting records during the period in which such records are required to be maintained, or who knowingly or 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.

Section 720.303(5)(f): Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree.

S. 720.3065(2): Each of the following acts constitutes a misdemeanor of the first degree:

- 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 intent that the offender avoids or escape detection, arrest, trial, or punishment.

Section 720.3065(2) does not apply to a licensed attorney giving legal advice to a client.

Conclusion

These changes to the law are significant and will impact how Homeowners' Associations operate in Florida. It is crucial that HOAs familiarize themselves with these changes and implement them as required by law. As always, it is recommended to consult with a legal professional for advice tailored to your specific circumstances.

We trust that this update has provided valuable information. Please stay tuned for further updates as we navigate the implementation of these legislative changes.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

Questions regarding the content of this article may be emailed to Christopher L. Pope at chrispope@paveselaw.com. To view past articles, please click "Publications" on our firm website. Mr. Pope is one of only two attorneys in Florida that is Board Certified by the Florida Bar in the three areas of Construction Law, Condominium and Planned Development Law, and Real Estate Law. He is a partner and an experienced construction and real estate attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195.

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