



**2023 STATUTORY CHANGES
AFFECTING CONDOMINIUM ASSOCIATIONS, COOPERATIVE
ASSOCIATIONS, HOMEOWNERS ASSOCIATIONS
AND ALL COMMUNITY ASSOCIATIONS**

This memorandum is furnished without charge to our community association clients.

The information in this update is a summary of recent changes in Florida Statutes. It is intended to provide general information and is not intended as legal advice to your particular community association. You are urged to contact your association's attorney regarding the specific applicability of this information to your association.

Prepared by Robert Burr, Esq., Florida Bar Board Certified in Condominium and Planned Development Law. References to the "Statute" refer to the applicable Statute(s) being amended. References to the "Division" refer to the Division of Florida Condominiums, Timeshares and Mobile Homes. At the end of each area, we state in brackets [] the effective date, the applicable Statutes being changed or created, and the Senate Bill or House Bill creating the changes.

I. CHANGES SPECIFICALLY AFFECTING CONDOMINIUM ASSOCIATIONS: In 2022, the Florida Legislature in response to the Surfside tragedy, imposed requirements to help ensure the structural integrity of certain condominium buildings. This mainly consisted of requiring "milestone inspections" and requiring a "structural integrity reserve study" and "structural integrity reserves." In 2023, the Legislature adopted Senate Bill 154, referred to as a "glitch bill" and which revises these requirements. The major changes in Senate Bill 154 and other Bills are as follows:

Milestone Inspections: Condominium associations operating buildings 3 stories in height or greater are still required to have "milestone inspections" performed.

Deadline: A building (3 stories high or higher) reaching 30 years of age before July 1, 2022 must have the initial Phase 1 "milestone inspection" performed before December

31, 2024. If the building reaches 30 years of age between July 1, 2022 and December 31, 2024, the deadline is December 31, 2025.

If a Phase 2 "milestone inspection" is required (because of substantial structural deterioration), the milestone inspector must submit a Phase 2 progress report to the local enforcement agency within 180 days of submitting the Phase 1 inspection report.

Buildings within 3 miles of coastline: Previously, if a building was located within 3 miles of the coastline, the association was required to perform a "milestone inspection" before the building reaches 25 years of age. The 25 year requirement for those condominiums was deleted.

However, a local enforcement agency has the option to set the 25 year inspection requirement if justified by local environmental conditions including proximity to saltwater.

Local agency extension of deadline: Further, the local enforcement agency may extend the date which the initial "milestone inspection" must be performed upon a showing of "good cause" that the inspection cannot be timely completed. The condominium association's showing of good cause includes the association having entered into a contract with an architect or engineer to perform the "milestone inspection" and that the inspection cannot be reasonably completed by the deadline or other circumstances to justify an extension.

Report prepared earlier: The new law allows local enforcement agencies to accept an inspection report that was completed before July 31, 2022, if the report substantially complies with the "milestone inspection" requirements.

Expand who can perform Milestone Inspections: The Statute allow milestone inspections to be performed by a "team" of professionals, with an architect or engineer in responsible charge. This addressed a problem because of the lack of architects or engineers being available to perform the "milestone inspections."

Association must notify unit owners if association receives notice from local enforcement agency: If a local enforcement agency requires a building to have a "milestone inspection", the association is required to notify unit owners within 14 days after the association receives an initial "milestone inspection" notice from a local enforcement agency. This notice can be provided electronically to those owners who consent to such notice or by posting on the association's website.

Distribution of inspection report: An association must distribute to unit owners a copy of the summary of the "milestone inspection" reports within 45 days of the association's receipt of the reports.

Florida Building Commission Rule to be established: The State of Florida Building Commission is required to establish a rule to implement “milestone inspection” safety requirements within the Florida Building Code.

Structural Integrity Reserve Study and requirements -- what condominiums are required to comply: The new Statute clarifies that the Structural Integrity Reserve Study ("SIRS") and Structural Integrity Reserve requirements apply to buildings 3 stories in height or higher -- and do not apply to buildings less than 3 stories high.

Remember that condominium associations existing before July 1, 2022 (and operating buildings 3 stories high or higher) must have the Structural Integrity Reserve study completed by December 31, 2024.

Time when Structural Integrity Reserves required to be incorporated into budget: Condominium associations that are subject to the SIRS requirements, are required to base a budget adopted on or after December 31, 2024, on the most recent Structural Integrity Reserve Study (SIRS). This means that if the condominium is subject to the SIRS requirements, the budget must include funding in accordance with the SIRS.

Structural Integrity Reserves for large multi-condominium associations: If there is a multi-condominium association operating at least 25 condominiums, the new law opens the door for having an alternative funding method for reserves which would need to be approved by the Division. This would seem to apply to very few multi-condominium associations.

Items within Structural Integrity Reserve Study under 2023 Statute: The 2023 Statute requires the following items to be included within the Structural Integrity Reserve Study (SIRS):

- (a) roof
- (b) Structure including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in F.S. 627.706
- (c) fireproofing and fire protection systems
- (d) plumbing
- (e) electrical systems
- (f) waterproofing and exterior painting
- (g) windows and exterior doors
- (h) any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.00 and the failure to maintain or replace such item negatively affects the items listed in subparagraphs (a) through (g), as determined by the visual inspection portion of the structural integrity reserve study.

Association not required to maintain Structural Integrity Reserves for component association not responsible to maintain: The Statute is amended to provide that the association is not responsible to maintain "Structural Integrity Reserves" for any portion or component of a building that the association is not responsible to maintain. This would appear to address the issue of windows and doors. Under many declarations of condominium, the association is not responsible to maintain windows and doors.

Association NOT required to maintain Structural Integrity Reserves for the floor and foundation: The association does not have to maintain "Structural Integrity Reserves" for the "floor" and "foundation".

Association IS required to maintain Structural Integrity Reserves for exterior doors: The association is required to maintain "Structural Integrity Reserves" for "exterior doors" -- provided the association is responsible under the governing documents to maintain exterior doors.

Amount of Reserves which must be maintained pursuant to Structural Integrity Reserve Study: An important concern has been addressed -- if an SIRS is required, what amount of reserve must be funded for primary structural components of a building.

With respect to items where the estimated useful life is not readily ascertainable or which have an estimated useful life of greater than 25 years, the association is not required to reserve for replacement cost. However, the association must reserve the amount of "deferred maintenance expense" recommended in the SIRS.

Expand who can perform Structural Integrity Reserve Study: The new law provides that a SIRS to be performed by any person qualified to perform such study, however the visual inspection portion of the SIRS must be performed or verified by a licensed engineer, licensed architect, certified reserve analyst or certified reserve specialist.

Use of existing Milestone Inspection of government required inspection: If the association, within the last 5 years, had a "milestone inspection" completed or a similar government required inspection completed, and the inspection meets the requirements of the SIRS, the existing inspection can be used for the inspection portion of the SIRS.

Waiver of reserves and approval for different use of reserves OTHER than Structural Integrity Reserves: If an association is not subject to the "Structural Integrity Reserve" requirement, the association can waive those reserves if approved by a majority of the total voting interests. Further, if an association is not subject to the "Structural Integrity Reserve" requirement, the association may approve a different use of those reserves if approved by a majority of the total voting interests.

This increases the percentage needed from the prior Statute -- the prior Statute required approval by a majority of those owners present at an owners' meeting where a quorum is obtained.

Please note that if an association is required to keep "Structural Integrity Reserves", the association cannot waive the "Structural Integrity Reserves" or approve a different use of "Structural Integrity Reserves".

Disputes regarding Milestone Inspections or a SIRS: The Statute addresses how to handle disputes regarding the association obtaining a "milestone inspection" or a SIRS, funding requirements for "structural integrity reserves" or providing necessary maintenance or repairs recommended by a "milestone inspection". Effective July 1, 2027, the pre-suit mediation requirements appear to apply. However, the Statute is awkwardly worded, and this aspect will need to be clarified.

Non-Developer disclosure: When a condominium unit owner is selling a unit, the new law imposes disclosure requirements regarding "milestone inspections" and the "structural integrity reserve study."

Budget increases above 115% of last year's budget: Florida Statute Section 718.1122(e) has for many years provided that if the budget exceeds 115% of last year's budget excluding reserves, the unit owners can petition the board, the board would be required to call an owners' meeting, and the unit owners can vote to adopt an alternate budget. The Statute is amended to provide that when computing the 115%, increases in insurance are excluded from that calculation.

Developer turnover inspection report: The Statute was revised to require a developer turning over control of a condominium association to provide a turnover inspection report. The required items in the turnover inspection report are set forth in the Statute.

Official records: The official records Statute was changed to provide that "any person authorized by an association member as a representative has the right to inspection of records." This clarified the matter regarding who can inspect records.

[Effective date July 1, 2023; applicable Statutes F.S. 553.899, 627.351, 718.103, 718.111, 718.112, 718.113, 718.1255, 718.503, 718.504 and other Statutes; Bill reference SB 154]

Display of flags: The law expands the particular days when condominium unit owners may display certain military flags. The law provides that a unit owner may display flags that represent the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, U.S. Space Force or U.S. Coast Guard on Armed Forces Day, Memorial Day, Flag Day, Independence Day, Patriot Day and Veterans Day. Patriotic Day was added as a day

when such flags may be displayed. [Effective July 1, 2023; applicable Statute F.S. 718.113(4); Bill reference HB 437]

II. CHANGES SPECIFICALLY AFFECTING COOPERATIVE ASSOCIATIONS: The above requirements in Senate Bill 154 involving "Milestone Inspections", "Structural Integrity Reserves", reserves in general, budget increases, disclosures, and official records are mostly incorporated into Chapter 719 governing cooperative associations. The applicable Statutes are 553.899, 627.351, 719.103, 719.104, 719.106, 719.301, 719.503, 719.504, 719.1255 and 719.501.

III. CHANGES SPECIFICALLY AFFECTING HOMEOWNERS ASSOCIATIONS: There are several changes to Chapter 720 governing homeowners associations.

Installing, displaying and storing items on lot: The Legislature created a new Statute 720.3045 which may have great impact on HOAs. The Statute provides that unless prohibited by ordinance or statute, an HOA may not restrict lot owners or their tenants from installing, displaying or storing any items on a lot which are not visible from the lot's frontage or an adjacent lot, including but not limited to, artificial turf, boats, flags and recreational vehicles. [Effective July 1, 2023; applicable Statute F.S. 720.3045; Bill reference HB 437]

Fines and Procedures for HOA imposing fines and suspensions:

The law was clarified that an HOA may levy reasonable fines for a violation of the declaration of covenants, bylaws or reasonable rules and regulations of the association.

Procedure: In order for an HOA to impose a fine or suspension of use rights (for use violations), the HOA must send the lot owner a notice of the committee hearing at least 14 days before the meeting. The term "committee" refers to the committee of lot owners (appointed by the board) to conduct hearings for fines and suspension of use rights. The new law requires that the notice to the lot owner must include a description of the alleged violation, the specific action required to cure the violation if applicable, and the date and location of the committee hearing. The lot owner has a right to attend the hearing by telephone or other electronic means. After the committee hearing, the committee is required to provide written notice to the lot owner of the committee's findings, the fines and suspensions approved or rejected, and how the lot owner or occupant or other person may cure the violation if applicable.

Flags: The legislature has expanded the number and types of flags which a lot owner in an HOA may display. A lot owner in an HOA may display up to two (2) of the following types of flags:

1. United States flag.
2. Official flag of the State of Florida.

3. Flag that represents the United States Army, Navy, Air Force, Marine Corps, Space Force or Coast Guard.
4. POW/MIA flag.
5. First responder flag. The term first responder flag means a flag that recognizes and honors the service of any of the following:
 - (a) Law enforcement officers
 - (b) Firefighters
 - (c) Paramedics or emergency medical technicians.
 - (d) Correctional officers.
 - (e) 911 public safety telecommunicators.
 - (f) Advanced practice registered nurses, licensed practical nurses, or registered nurses.
 - (g) Persons participating in a statewide urban search and rescue program developed by the State of Florida.
 - (h) Federal law enforcement officers.

[Effective July 1, 2023; applicable Statute F.S. 720.3045; Bill reference HB 437]

HOA board meetings: Notice of HOA board of directors meetings must specifically identify agenda items for the meeting.

HOA official records: An HOA is required to maintain a roster of all association members and their “designated” mailing addresses. The term designated mailing address is clarified to refer to the lot address, unless the lot owner has sent written notice to the association requesting that a different mailing address be used for all required notices. The law requires that an HOA must maintain email addresses and fax numbers designated by lot owners for receiving notice by email or fax. The law clarifies that the lot owner's email address is the email address the owner provided in consenting to receive electronic notice unless a different email address is provided.

Association maintaining deposits by lot owners: If an HOA collects a deposit from a lot owner for any reason including a deposit for expenses occurred in connection with construction on the lot, the association must separately maintain the deposits and may not commingle the deposit with other funds. Upon completion of the construction project or other reason for the deposit, the HOA must, upon request, provide the lot owner an accounting of the funds within 7 days of the request. An HOA must remit payment of any unused deposit funds within 30 days after the lot owner provides notice that the construction project or other reason for the deposit is completed.

Prohibition on officer, director or association manager accepting things or services of value or kickback: An officer, director or association manager that knowingly solicits, offers to accept or accepts anything or service of value or kickback for which consideration has not been provided, is subject to an action for monetary damages.

Removal of director or officer in connection with certain criminal activity: A director or an officer of an HOA charged with any of the following crimes must be removed from office:

1. Forgery of a ballot, envelope or voting certificate in connection with an HOA election.
2. Theft or embezzlement involving association funds or property.
3. Destruction of or refusal to allow inspection or copying of an HOA official record.
4. Obstruction of justice.

If such criminal charges pending against the officer or director he or she may not be appointed or elected to any position and may not have access to official records of the association except pursuant to court order.

Directors appointed by the developer: Directors and officers appointed by the developer must, each calendar year, disclose their relationship to the developer.

Disclosure of conflict of interest: All directors and officers must disclose to the association any activity which may reasonably be construed to be a conflict of interest, at least 14 days before voting on an issue or entering into a contract that is the subject of a conflict. A rebuttal presumption of a conflict of interest exists if any of the following acts occur without prior disclosure to the HOA:

1. A director, officers or relative of a director or officer enters into a contract for goods or services with the association.
2. A director or an officer or a relative of a director or an officer holds an interest in a corporation, LLC, partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

Fraudulent voting activities -- criminal penalties: Certain fraudulent voting activities relating to HOA elections are defined as a first degree misdemeanor:

1. Willfully and falsely swearing an oath or affirmation regarding voting activities.
2. Fraud in connection with voting.
3. Preventing an association member from voting or changing a vote.
4. Menacing, threatening or using bribery or other corruption to influence, deceive or deter a member from voting.
5. Giving or promising things of value to another member to buy the vote of a member or improperly influence.
6. Use or threatening use of forced violence or intimidation.

[Effective October 1, 2023; applicable Statutes F.S. 720.303, 720.3033, 720.305, 720.3065; Bill reference HB 919]

IV. CHANGES AFFECTING ALL TYPES OF COMMUNITY ASSOCIATIONS:

Statute of limitations for filing construction defect lawsuit: The basic statute of limitations period for filing a lawsuit based on construction defects is 4 years. However, sometimes the statute of limitations could be extended up to 10 years from issuance of the certificate of occupancy, if the defect was not reasonably discoverable. This outside limit was shortened to 7 years. [Effective April 13, 2023; applicable Statute F.S. 95.11; Bill reference SB 360]

Liability for criminal activity in multifamily residential property: The Legislature adopted Florida Statute Section 768.0706 which appears intended to operate a multifamily residential community to reduce liability for criminal activity. The Statute applies to “multifamily residential property” which includes a residential building, a group of residential buildings, such as apartments, townhouses or condominiums consisting of at least 5 dwelling units on a particular parcel. The law provides that the operator can create a “presumption against liability in connection with criminal acts” if the operator takes certain measures. This includes security camera requirements, lighting requirements, deadbolts on doors requirements, locking requirements, peep holes and other matters. There are also other measures the association can meet including an assessment of a crime protection evaluated by a law enforcement agency or certain individuals.

How this will affect community associations is not determined. Associations are often hesitant to provide “measures identified as security” for concern of the association absorbing or creating a "duty" to provide security. [Effective March 24, 2023; applicable Statute F.S. 768.0706; Bill reference HB 837]

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