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2023 REVISIONS TO FLORIDA COMMUNITY ASSOCIATION LAW

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(Via e-mail)

Dear Client/Property Manager:

The 2023 legislative session is over, and as always, we are here to provide you with a summary of any new laws that may impact your Association. As you may recall, the 2022 legislative session was a busy one, with the implementation of Senate Bill 4D that added milestone inspections and altered reserve requirements for condominiums. The 2023 legislative session was almost just as busy, with changes/corrections to Senate Bill 4D, as well as other changes impacting condominiums and HOAs.

Please remember that the below is only a summary of some of the significant changes in these new laws and is not an exhaustive list of all changes that may affect your community. If you have any questions about a specific statutory provision or other laws that may or may not have passed, please contact our office.

Effective Immediately (Changes applicable to Condominiums):

- **Milestone Inspections:** The definition of “milestone inspection” was amended to mean a structural inspection of a building, including an inspection of the load bearing elements in the primary structural members and primary structural systems as those terms are defined in §627.706, Fla. Stat. by an architect licensed under Chapter 481, or engineer licensed under Chapter 471. The milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.
- **Substantial Structural Deterioration:** The definition of “Substantial structural deterioration” was amended to mean substantial structural distress or substantial structural weakness that negatively affects a building’s general structural condition and integrity.

- **Milestone Inspection Deadlines:** If a building reached 30 years of age before July 1, 2022, the building's initial milestone inspection must be performed before December 31, 2024. If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building's initial milestone inspection must be performed before December 31, 2025. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.
- **Proximity to Salt Water.** The previous requirement regarding buildings located within three (3) miles of the coastline has been replaced with the following: the local enforcement agency may determine that local circumstances, including environmental conditions such as proximity to saltwater as defined in §379.101, Fla. Stat., require that a milestone inspection must be performed by December 31st of the year in which the building reaches twenty-five (25) years of age based on the date the certificate of occupancy for the building was issued and every ten (10) years thereafter.
- **Extensions:** The local enforcement agency may extend the date by which a building's initial milestone inspection must be completed upon a showing of good cause by the owner or owners of the building that the inspection cannot be timely completed if the owner or owners have entered into a contract with an architect or engineer to perform the milestone inspection and the inspection cannot reasonably be completed before the deadline or other circumstance to justify an extension.
- **Inspections Performed Prior to July 1, 2022:** The local enforcement agency may accept an inspection report prepared by a licensed engineer or architect for a structural integrity and condition inspection of a building performed before July 1, 2022, if the inspection and report substantially comply with the requirements of the statute. The association must still comply with the unit owner notice requirements. If a previous inspection and report is accepted by the local enforcement agency under this paragraph, the deadline for the building's subsequent 10-year milestone inspection is based on the date of the accepted previous inspection.
- **Phase 2 Inspections:** If a phase two inspection is required, within 180 days after submitting a phase one inspection report the architect or engineer performing the phase two inspection must submit a phase two progress report to the local enforcement agency with a timeline for completion of the phase two inspection.
- **Distribution of Reports:** Within 45 days after receiving the applicable inspection report, the association must distribute a copy of the inspector-

prepared summary of the inspection report to each condominium unit owner, regardless of the findings or recommendations in the report.

- **Florida Building Commission:** By December 31, 2024, the Florida Building Commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 to establish a building safety program for the implementation of this section within the Florida Building Code: Existing Building. The building inspection program must, at minimum, include inspection criteria, testing protocols, standardized inspection and reporting forms that are adaptable to an electronic format, and record maintenance requirements for the local authority.
- **Structural Integrity Reserve Study:** The definition of “Structural integrity reserve study” was amended to mean a study of the reserve funds required for future major repairs and replacement of the condominium property performed as required under s. 718.112(2)(g).
- **Official Records Requests:** The official records of the association are open to inspection by any association member and any person authorized by an association member as a representative of such member at all reasonable times.
- **Reserves:** In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g) for which the association is responsible pursuant to the declaration of condominium, and the reserve amount for such items must be based on the findings and recommendations of the association’s most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items.
- **Waiving and Reducing Reserves:** The members of a unit owner controlled association may determine, by a majority vote of the total voting interests of the association to provide no reserves or less reserves than required by this subsection. However, for a budget adopted on or after December 31, 2024, the members of a unit owner controlled association that must obtain a structural integrity reserve study may NOT determine to provide no reserves or less reserves, than required by this subsection for the items listed in paragraph (g).
- **Using Reserves for Other Purposes:** Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use

for other purposes is approved in advance by a majority vote of all the total voting interests of the association. However, for a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (g) for any other purpose other than the replacement or deferred maintenance costs of the components listed in paragraph (g).

- **Structural Integrity Items:** The Items listed under paragraph (g) were amended to include:
 - a. Roof.
 - b. Structure, including load-bearing walls and or other primary structural members and primary structural systems as those terms are defined in 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 and the failure to replace or maintain such item negatively affects the items listed in sub-paragraphs a.-g. as determined by the visual inspection portion of the structural integrity reserve study.
- **Structural Integrity Reserve Study:** A structural integrity reserve study is based on a visual inspection of the condominium property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.
- **Exemptions:** The requirement to have a structural integrity reserve study does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the condominium form of ownership; or any portion or component of a building that is maintained by a party other than the association.
- **Deadlines:** In no event may the structural integrity reserve study be completed after December 31, 2026. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this

paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

- **Distribution to unit owners:** Within 14 days after receipt of a written notice from the local enforcement agency that a milestone inspection is required, the association must notify the unit owners of the required milestone inspection and provide the date by which the milestone inspection must be completed. Within 45 days after receiving a phase one or phase two milestone inspection report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report.
- **Definition of “Dispute”:** The term “dispute” has been amended to mean any disagreement between two or more parties that involves: The failure of a board of administration, when required to: 1. Obtain the milestone inspection required under s. 553.899. 2. Obtain a structural integrity reserve study required under s. 718.112(2)(g). 3. Fund reserves as required for an item identified in s. 718.112(2)(g). 4. Make or provide necessary maintenance or repairs of condominium property recommended by a milestone inspection or a structural integrity reserve study.

Effective as of July 1, 2023 (Changes applicable to Condominiums):

(1) §718.13 –

- **Flags:** Any unit owner may display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, Patriot Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.

Effective as of July 1, 2023 (Changes applicable to HOAs):

(1) §720.304 –

- **Flags:** Despite any covenant, restriction, bylaw, rule, or requirement of an association that prohibits a homeowner from displaying flags, any homeowner may display up to two of the following, portable, removable flags in a respectful manner, not larger than 4 1/2 feet by 6 feet:
 1. The United States flag.
 2. The official flag of the State of Florida.
 3. A flag that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.

4. A POW-MIA flag.
5. A first responder flag. A first responder flag may incorporate the design of any other flag permitted under this paragraph to form a combined flag. For purposes of this subsection, the term "first responder flag" means a flag that recognizes and honors the service of any of the following:
 - a. Law enforcement officers as defined in s. 943.10(1).
 - b. Firefighters as defined in s. 112.191(1).
 - c. Paramedics or emergency medical technicians as those terms are defined in s. 112.1911(1).
 - d. Correctional officers as defined in s. 943.10(2).
 - e. 911 public safety telecommunicators as defined in s. 401.465(1).
 - f. Advanced practice registered nurses, licensed practical nurses, or registered nurses as those terms are defined in s. 464.003.
 - g. Persons participating in a statewide urban search and rescue program developed by the Division of Emergency Management under s. 252.35.
 - h. Federal law enforcement officers as defined in 18 U.S.C. s. 115(c)(1)

- **Flagpoles:** Regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, a homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property as long as the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The homeowner may further display in a respectful manner from that flagpole, one official United States flag, not larger than 4 1/2 feet by 6 feet, and may additionally display one other official flag permitted under the above paragraph.

(2) §720.3045 –

- **Display/Storage of Items:** Regardless of any covenants, restrictions, bylaws, rules, or requirements 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, including, but not limited to, artificial turf, boats, flags, and recreational vehicles.

Effective as of October 1, 2023 (Changes applicable to HOAs):

Creation of the "Homeowners' Associations' Bill of Rights" including:

(1) §720.303 –

- **Meeting Notices:** Notices of all board meetings must specifically identify agenda items for the meetings.
- **Official Records:** 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.

- **E-Mail Addresses:** A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving 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.
- **Removal from records:** 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.
- **Deposits:** If an association collects a deposit from a member for any reason, including to pay for expenses that may be incurred as a result of construction on a member's parcel, such funds must be maintained separately and may not be commingled with any other association funds. Upon completion of the member's construction project or other reason for which the deposit was collected, the member may request an accounting from the association of his or her funds that were deposited, and the association must provide such accounting to the member within 7 days after receiving the member's request. An association must remit payment of any unused funds to the member within 30 days after receiving notice that the member's construction project, or other reason for which the deposit was collected, is complete.
- **Kickbacks:** An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association is subject to monetary damages.
- **Removal from Office:** A director or an officer charged by information or indictment with any of the following crimes must be removed from office: 1. Forgery of a ballot envelope or voting certificate used in a homeowners' association election; 2. Theft or embezzlement involving the association's funds or property; 3. 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; 4. Obstruction of justice as provided in chapter 843. If such criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order.

- **Conflicts:** Directors and officers must disclose to the association any activity that may be reasonably 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 the conflict. A rebuttable presumption of a conflict of interest exists if any of the following acts occur without prior disclosure to the association: 1. A director or an officer, or a relative of a director or an 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, limited liability company, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) §720.305 –

- **Violations:** An association may levy reasonable fines for violations of the declaration, association bylaws, or reasonable rules of the association.
- **Notice of Fine Hearing:** The notice must include a description of the alleged violation, the specific action required to cure such violation, if applicable, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means. The fine or suspension levied by the board must be approved by a majority of the committee. 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.

(3) §720.3065 -

- **Fraudulent Voting Activities:** Each of the following acts is considered a fraudulent voting activity and constitutes a misdemeanor of the first degree: (1) 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. (2) 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. (3) 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. (4) 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. (5) 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 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. (6) 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.

If there are any questions I can answer in this regard, please let me know. Please stay safe and well.

Sincerely,
E. Bachove (e-mail signature)
EVAN R. BACHOVE