



# 2024 Legislative Update

Condominium, Cooperative and Homeowner Associations

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## 2024 LEGISLATIVE UPDATE

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This year once again, the Florida Legislature took aim at associations along with community association managers (CAMs) during its regular session. Some of these laws went into effect July 1, 2024, but others take effect January 1, 2025, or may not even be applicable because as a general rule new substantive legislation may not be applied retroactively depending on your community's declaration. This can be a complicated area and counsel should be consulted before blindly considering adoption of these new laws. For the most part, however, these new laws will apply to your community.

### Part I: Homeowner Associations — Chapter 720, Florida Statutes

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#### ➤ Official Records.

This is an on-going topic as owners, unhappy with the board, seek review of official records. This process should be relatively straightforward but often we find associations with historically poor recordkeeping. This creates considerable anxiety for the board and management when a request for records is received, is time consuming, and further expense is incurred when legal counsel becomes involved.

As a general rule, consider all records involving the association as part of the official records. There are exceptions (attorney client privileged communications and work product by your counsel such as written opinions and strategies, background searches on prospective purchasers and tenants, guest visits in a gated community, personnel records, medical records and personal identifying information such as social security numbers, driver's license numbers and the like) but most records are accessible to members. **If there is concern or uncertainty about producing a particular record, consult with legal counsel before releasing any records.**

Before January 1, 2025, an association with one hundred (100) or more parcels must post the following documents on its website or make available such documents through an application that can be downloaded on a mobile device:

- (i) Articles of incorporation and each amendment thereto;
- (ii) Bylaws and each amendment thereto;
- (iii) Declaration of covenants and a copy of each amendment thereto;
- (iv) Rules;
- (v) 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;
- (vi) Annual budget and any proposed budget to be considered at a meeting;
- (vii) Financial reports and any monthly income or expense statement to be considered at a meeting;

- (viii) Insurance policies;
- (ix) The certification of each director;
- (x) 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; and
- (xi) 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.

### ➤ **Posting Requirements of Members' Meetings.**

Notice of any scheduled meeting of the members and the agenda for the meeting must be posted at least fourteen (14) days before such meeting, and must now also include the following:

- (i) Notice must be posted in plain view on the homepage of the website or application, or on a separate subpage of the website labeled "Notices," which is conspicuously visible and linked from the homepage; and
- (ii) 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.

### ➤ **Posting Requirement for Board Meetings.**

Notice of any board meeting, the agenda, and any other document required for such meeting to be posted on the website no later than the date required for such notice.

### ➤ **Retention Policy.**

The association must adopt written rules governing the policy by which the official records of the association are to be retained. Such information must be made available to the parcel owners through the association's website.

### ➤ **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. **Legal counsel should always be consulted regarding how to best respond to any subpoena before handing over any documents.**

### ➤ **Financial Reporting.**

- (i) An association with one thousand (1,000) or more parcels must prepare audited financials each year notwithstanding the amount of total annual revenues; and
- (ii) An association may NOT prepare a lesser financial statement (review or compilation) 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) 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 for a detailed accounting of any amounts owed to the association, and the board must provide such information within fifteen (15) business days after receipt of the request:

- (i) After a parcel owner makes such request to the board, he or she may not request another detailed accounting for at least ninety (90) calendar days; and
- (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.

## H0A Board Member Certification

- A newly elected or appointed director must complete an approved and updated course 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.
  - (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; and
  - (iv) The association is to retain the educational certificate for newly elected or appointed directors as part of the official records. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.

Dentons Cohen & Grigsby P.C. anticipates offering the new certification course during the 2024-2025 season.

- 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; and
  - (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.

## Kickbacks and Other Illegal Actions

- 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.

## Kickbacks

- An officer, director, or manager may not solicit, offer to accept, or accept a “kickback” which 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 and is subject to monetary damages.
- 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.
- 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; or
  - (v) Any related criminal violation.

## Architectural Control

### ➤ Architectural Improvements.

An association or any architectural or similar committee must reasonably and equitably apply and enforce on all parcel owners the architectural and construction improvement standards set forth in the declaration or other published guidelines and standards authorized by the declaration. An association or committee 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; or
- (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 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, written notice to the parcel owner must be given 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. This is why such rules must be updated from time to time and show sufficient detail and specificity.

## Installation, Display, and Storing of Items

- 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.

## Garbage Cans and Holiday Decorations

### ➤ **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; or
- (ii) **Holiday Decorations.** Leaving holiday decorations or lights on a structure or other improvement on a parcel longer than stated in the governing documents, unless such decorations or lights are left up for longer than one (1) week after the association provides written notice of the violation to the parcel owner.

## Prohibited Clauses in Association Documents

### ➤ **Prohibition on 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.

### ➤ **Prohibition on Work Vehicles.**

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.

### ➤ **Vehicle Prohibitions.**

The governing documents may not prohibit operating a vehicle that is not a "commercial motor vehicle" in conformance with state traffic laws on public roads, rights-of-way, or the property owner's parcel:

➤ **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 a professional or an occupational license to be allowed entry onto a property owner's parcel.

## Fining / Grievance Committees

➤ **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, 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.

➤ **Notice to Owner Post Hearing.**

Within seven (7) days after the hearing, the committee must 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; and
- (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.

## Fraudulent Voting Activities Relating to Elections; Penalties

- A person who engages in any of the following acts relating to association elections, commits and constitutes a misdemeanor of the first degree:
  - (i) 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; or
  - (ii) 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.

### ➤ **Criminal Penalties.**

Each of the following acts constitutes a misdemeanor of the first degree:

- (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; or
- (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.

## Electronic Voting

- 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 by the association:
  - (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; or
  - (iii) A method that is consistent with the election and voting procedures in the association's bylaws.

## First Responder Vehicles

- 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.

- The term “first responder” 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 Statutes, 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.

## Disclosure of Rules and Covenants

- One of the best ways to meet compliance of various laws is by the use of a comprehensive and up to date website. A website is an effective tool for storage of “official records” and a new law which requires compliance by October 1, 2024, mandates an association provide a physical or digital copy of the homeowner association’s rules and covenants to every member.
- The association must post 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 either 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 or regular U.S. Mail.

## Hurricane Protection

The association may not deny an owner’s application for the installation, enhancement or replacement of hurricane protection which conforms to the adopted specifications. The board was required to adopt such specifications before May 28, 2024. If this has not occurred, it should do so as a priority. “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.



## Part II: Condominium Associations — Chapter 718, Florida Statutes

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### ➤ Official Records.

By January 1, 2026, an association managing a condominium with twenty-five (25) or more units must post copies of its official records on its website or application on a mobile device:

- (i) 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) 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) Records are to 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) If the requested records are posted on the association's website, or are available for download through an app, the association may fulfill its obligations to provide access to official records by directing such member or their authorized representative to the website or app;
- (v) 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 (7) years. An association creating such a checklist creates a rebuttable presumption that the association has complied with the official records request;
- (vi) 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 first degree. The term "repeatedly" refers to two or more violations within a twelve-month period; and
- (vii) 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 a felony of the third degree.

Adoption of a policy on official records and procedures for access should be established by the board. Contact legal counsel for any assistance.

➤ **Electronic Voting.**

If the association provided the opportunity to vote electronically and an owner now wants to opt out, the association must allow it. Also, an owner may consent to online voting via e-mail.

➤ **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.

➤ **Kickbacks.**

An officer, director, or manager who knowingly solicits offers to accept, or accepts, a kickback commits a felony of the degree and must be removed from office.

➤ **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

➤ **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.

➤ **Director Certification.**

Serving as a director of a condominium association imposes an obligation to act in good faith; with the care an ordinary prudent person in a like position would exercise, and in a manner the director reasonably believes to be in the best interests of the association. For some time there has been an obligation to attend a Director Certification Course or sign a certification that the director has read the governing documents and will uphold them. Signing a certification is no longer sufficient. Now attendance at a new certification course is required. The course must be at least four (4) hours long. A director elected before July 1, 2024, must comply with the written certification and educational certificate requirements by June 30, 2025. The certification is valid for seven (7) years.

➤ **Quarterly Meetings.**

Condominiums with more than ten (10) units must meet at least quarterly.

➤ **Asking Questions.**

Members now may ask questions about the status of construction or repair projects, the status of revenues and expenditures during the current fiscal year even if not posted on the agenda. The statute does not state if the board is required to respond. In some cases, it may not be prepared to do so and probably the best strategy is to agree to take the item up at the next meeting or e-mail the response to all the members if the answer is not known at the time of the meeting.

➤ **Disclosure of Contracts.**

In conjunction with posting the agenda, a copy of any contract to be discussed at the meeting must be provided with the notice.

➤ **Hurricane Protection.**

The obligation to have in place specifications for hurricane shutters has been a part of the Florida Condominium Act for an exceptionally long time. That is now expanded to “Hurricane Protection” but other than the change of the term, nothing much else changes. A couple of points of clarification, however:

- (i) The board may operate hurricane protection without the owner’s permission if necessary to protect the condominium; and
- (ii) An owner is not responsible for the cost of removal or reinstallation of hurricane protection including exterior windows, doors, or other apertures, if the removal is necessary for maintenance for which the association is responsible. The board shall determine if the removal or reinstallation of hurricane protection must be 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.

➤ **Removal and Reinstallation of Hurricane Protection.**

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, and ultimately 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.

### ➤ **Director and Officer Offenses.**

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; or
- (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.

### ➤ **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:

- (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 someone else in perpetration of fraud in connection with a vote cast or to be cast or attempted to be cast;
- (iii) Preventing a member from voting as they intended by fraudulently changing or attempting to change a ballot, ballot envelope, etc.;
- (iv) 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;
- (v) 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;
- (vi) 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;
- (vii) Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections;
- (viii) Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections; or
- (ix) 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.



➤ **Statute of Repose.**

The statute of repose (Section 718.124, Florida Statute), now does not begin to run until turnover. Previously the expiration date was seven (7) years from the issuance of the certificate of occupancy. The statute of repose is not the same as the statute of limitations. If your association has recently turned over and may have construction defect claims, please contact legal counsel as soon as possible.

➤ **Turnover.**

The structural Integrity Reserve Study (SIRs) is now an additional document required to be provided by the developer at turnover.

➤ **Suspension of Voting Rights.**

In order to suspend the voting rights of a delinquent owner, written notice must have been sent at least ninety (90) days prior to the election. Every association should have a fining and suspension policy. Contact legal counsel to address revisions to the existing policy to include these new laws.

➤ **Mixed-Use Buildings.**

Greater disclosure for owners of mixed-use buildings is now required. A disclosure form is set forth in the statute which now becomes part of a contract for the sale of a condominium unit.

➤ **Timeshare Estoppels.**

Section 721.15, Florida Statutes, sets forth the information to be provided in an estoppel certificate.

➤ **The My Safe Florida Condominium Pilot Program.**

The My Safe Florida Condominium Pilot Program was created to assist eligible condominium associations by offering hurricane mitigation inspections to determine how to reduce a property's vulnerability to hurricane damage, along with mitigation grants for hardening the property to improve its resilience against hurricanes. The Program is expected to launch in fall 2024 according to its website. We suggest you review periodically the website [mysafehome.com](https://mysafehome.com) for more information and updates.

Grant funds cannot be used to install the same type of improvements that were installed previously or to pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being provided.



## Part III: Cooperative Associations — Chapter 719, Florida Statutes

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There are some new laws revising Chapter 719, Florida Statutes, regarding cooperatives.

Section 719.129(4), Florida Statutes, establishes the right to vote electronically in elections and for a member to consent to vote electronically.

Section 719.106(1)(k)(9), Florida Statutes, obligates the association to send the SIRS or notice that the study is available to all members. Similarly, Section 719.106(1)(k)(10), Florida Statutes, obligates the association to provide the Division of Florida Condominiums with notice of completion of the structural integrity reserve study.

As part of a turnover in a cooperative, the developer is required to furnish to the members a SIRS.

All of the foregoing provisions are already in the Florida Condominium Act and these provisions are now in the Florida Cooperative Act.



## Part IV: Community Association Managers — Chapter 468, Florida Statutes

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Changes applicable to community association managers (CAMs) are a bit confusing. Some apply when managing an HOA and not a condominium or cooperative.

- (i) Every two (2) years, a CAM must complete at least five (5) hours of continuing education, three (3) hours of which must be in recordkeeping. This applies to management of an HOA only;
- (ii) Annually, a CAM must attend at least one (1) member meeting or board meeting. Once against this applies to managing an HOA only;
- (iii) Any financial interest in a community association management firm, or a relative, must disclose to the board any activity that may reasonably be construed as a conflict of interest;
- (iv) Any bid in excess of \$2,500 to provide goods or services from a CAM, or relative, requires that the association solicit multiple bids from other providers;
- (v) Any violation of the conflict of interest rules allows the association to cancel a contract without any termination fees, penalties or liquidated damages. Non-disclosure of the conflict may result in disciplinary proceedings with the Florida Department of Business and Professional Regulations (DBPR);
- (vi) Certain contact information about the CAM, hours worked and a summary of duties must be posted on the HOA website. This information must be updated within fourteen (14) days of any changes;

- (vii) Upon receipt of notice of termination, the CAM/CAM Firm must return all records within twenty (20) business days. Failure to return the records timely creates a rebuttable presumption that a CAM willfully failed to comply and is subject to suspension of its license and a civil penalty of \$1,000 per day for up to ten (10) business days. Any time an association is considering cancelation of a CAM/CAM Firm Management Company, legal counsel should be consulted.



## Part V: Corporate Transparency Act — 31 U.S.C. § 5336

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The Corporate Transparency Act (CTA), effective January 1, 2024, and enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021 (#31 U.S.C. § 5336), requires certain entities including community associations that are reporting companies under the CTA (reporting companies) to report information, including specific beneficial ownership information, to the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) before December 31, 2024.

We have previously advised clients to wait until the fall to see if an exception for associations is created which is being pursued. But be advised that if that does not occur, completion by the end of the year will be required. In the meantime, FinCEN has published detailed Q&A materials. Regarding associations, it has stated the following:

A homeowners association (HOA) that meets the reporting company definition and does not qualify for any exemptions must report its beneficial owner(s). A beneficial owner is any individual who, directly or indirectly, exercises substantial control over a reporting company, or owns or controls at least 25 percent of the ownership interests of a reporting company.

There may be instances in which no individuals own or control at least 25 percent of the ownership interests of an HOA that is a reporting company. However, FinCEN expects that at least one individual exercises substantial control over each reporting company. Individuals who meet one of the following criteria are considered to exercise substantial control over the HOA:

- (i) the individual is a senior officer;
- (ii) the individual has authority to appoint or remove certain officers or a majority of directors of the HOA;
- (iii) the individual is an important decision-maker; or
- (iv) the individual has any other form of substantial control over the HOA.

Contact legal counsel for further information well before the end of the year.

## ABOUT DENTONS

Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you.

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