

educational certificate, a director must submit a certificate of having satisfactorily completed at least 1 hour of continuing education administered by the division or division-approved condominium education provider, relating to any recent changes to the Condo Act and the related administrative rules during the past year. This is required on an annual basis. A director who does not timely file the written certification and educational certificate is suspended from the board until he/she complies with the requirements.

Structural Integrity Reserve Study “SIRS” (Fla. Stat. §718.112(2)(g)). The SIRS is a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. Within 45 days after receiving the SIRS, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. In addition, within 45 days after receiving the structural integrity reserve study, the association must provide the Division with a statement indicating that the study was completed, and that the association provided or made available such study to each unit owner. By January 1, 2025, the Division must create a database of associations that have completed the SIRS.

Budgets, Financial Reporting, and Reserves Funding (Fla. Stat. 718.113(d) and Fla. Stat. §718.11(13)). Condominium associations are prohibited from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for a consecutive fiscal year (i.e., such approval must occur during that same fiscal year). Associations are allowed to temporarily pause or reduce reserve funding if the entire condominium building is uninhabitable, upon majority approval of the members. Once the local building official determines that the condominium building is habitable, the association must immediately resume contributing funds to its reserves.

Hurricane Protections (Fla. Stat. §718.113(5)). The Condo Act has new requirements for the installation of hurricane protection in a condominium building, including: creating a uniform definition for “hurricane protection”; requiring condominium declarations to delineate the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections, exterior doors, windows, and glass apertures; providing a uniform procedure for approval of hurricane protection; and providing that unit owners are not responsible for the cost of removal and reinstallation of hurricane protection if the removal is necessary to repair condominium property.

The board may, subject to the approval of a majority of the voting interests of the residential or mixed-use condominium install or require that unit owners install hurricane protection that complies with or exceeds the applicable building code. A vote of the unit owners to require the installation of hurricane protection must be documented in a certificate attesting to the vote and include a date by which the hurricane protection must be installed. The board is required to record the certificate in the public records of the county where the condominium is located. The board must then mail a copy of the certificate to the unit owners. A vote of the owners is not required if the installation, maintenance, repair and replacement of the hurricane protection or any exterior



windows, doors, or other apertures protected by the hurricane protection is the responsibility of the association per the declaration or if unit owners are required to install hurricane protection pursuant to the declaration. If hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install the same type of hurricane protection or require that unit owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit. The installation, maintenance, repair, replacement and operation of hurricane protection is not considered a material alteration or substantial addition to the common elements or association property.

New Criminal Violations for Condo Act Violations. The Condo Act now provides the following criminal penalties related to condominium associations, and the official records of the association:

Fla. Stat. §718.111(12)(c)1.b.2.)...Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association;

Fla. Stat. §718.111(12)(c)1.b.3.)...First degree misdemeanor for any person who knowingly and intentionally defacing or destroying required accounting records, or failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;

Fla. Stat. §718.111(12)(c)1.b.4.)...Third degree felony for any person who willfully and knowingly refuse to release or 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;

Fla. Stat. §718.111(1)(a)...Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept a kickback (the term “kickback” has been defined to mean any thing or service of value for which consideration has not been provided for an officer’s, director’s or a manager’s own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association – Fla. Stat. §718.103(20));

Fla. Stat. §718.112(2)(r)1.)...First degree misdemeanor for engaging in specified fraudulent voting activity, and knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections; and

Fla. Stat. §718.111(15)(b)...A person who uses a debit card issued to the association for any expense that is not a lawful obligation of the association (the term “lawful obligation of the association” means an obligation that has been properly preapproved by the board and is reflecting in the meeting minutes or the budget §718.111(15)(b)) commits theft and must be removed from office and a vacancy declared.



Officers and directors charged with a criminal violation under the Condo Act for forgery of a ballot envelope or voting certificate used in a condominium association election, theft or embezzlement involving the association's funds or property, destruction or the refusal to allow inspection or copying of an official record in furtherance of a crime or obstruction of justice are deemed removed from office and a vacancy declared (Fla. Stat. §718.112(2)(q)).

SLAPP and Defamation Suits (Fla. Stat. §718.1224(1)). The Condo Act changed the prohibitions against “strategic lawsuits against public participation” or “SLAPP suits,” which occur when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner’s appearance and presentation before a governmental entity on matters related to the condominium association. The statute now includes condominium associations in the SLAPP suit prohibitions, and protects owners who report complaints to government agencies or law enforcement, or make public statements critical of the operation or management of an association by prohibiting associations from: retaliating against unit owners with fines or by increasing assessments, threatening to bring an action for possession or other civil action, and spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

Limitation on Lawsuits by the Condominium Association (Fla. Stat. §718.124). The statute of limitations and now the statute of repose for any actions in law or equity which the condominium association may have do not begin to run until the owners have elected a majority of the board. Previously, only the statute of limitations was tolled until such time as the owners elected a majority of the board.

A statute of limitations is not the same as a statute of repose. Rather than establishing a time limit in which the action must be brought, measured from the time when the cause of action began to accrue, the statute of repose cuts off the action after a specified period – which is measured from the delivery of a product/good or the completion of work/service. The statute of repose tolls regardless of the time of accrual of the cause of action or of notice of the invasion of a legal right.

For example, in cases involving the design, planning, or construction of an improvement to real property, the statute of limitations provides that a claimant has 4 years to bring a lawsuit after a project is completed or upon discovery of any latent (hidden) defects. *See* Fla. Stat. § 95.11(3)(b). In addition, there is a 7-year statute of repose to sue for latent defects, meaning that any action must be brought, at the very latest, within 7 years from a specific set of events (issuance of a temporary certificate of occupancy, issuance of certificate of occupancy, issuance of certificate of completion or the date of abandonment of construction if not completed). Like the statute of limitations, the statute of repose defines the time when a lawsuit can be filed. The primary difference is that the statute of repose completely bars a suit after a specified period, which may end before the association has even discovered the defect. The new language in § 718.124, Florida Statutes, would serve to extend the statute of repose period until the association is turned over to the owners. Based on the statutory language, the statute of repose provision would only apply prospectively and not retroactively.



Voting in Condominium Associations (Fla. Stat. §718.303(5) and Fla. Stat. §718.128).

Condominium associations must notify a unit owner or member that his or her voting rights may be suspended due to nonpayment of a fee or other monetary obligation at least 90 days before an election. Condominium owners may consent to electronic voting in elections by using an electronic means of consent as opposed to written means of consent. If the condominium board authorizes online voting, the board must honor an owner's request to vote electronically at all subsequent elections, unless the owner opts out.

Milestone Inspections (Fla. Stat. §553.899). Single-family, two-family, three-family and now four-family dwellings with three or fewer habitable stories above ground are not required to obtain a milestone inspection report.

****HOMEOWNER ASSOCIATIONS – NEW LAWS****

New Requirement for HOAs to Establish Hurricane Protection Specifications (§720.3035(6)(a), Fla. Stat.)

The HOA Act now requires all HOAs in Florida (or their architectural review committee) to adopt hurricane protection specifications for each structure or other improvement on a parcel. The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the association's board. All specifications adopted by the association must comply with the applicable building codes. Before adopting specifications, the association should ensure that it has the requisite authority in its governing documents for its architectural review committee to review and approve plans or enforce standards for the exterior appearances of any structure or improvement located on a parcel.

The provision allows the HOA or committee to require parcel owners to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel. The provision further provides that, regardless of any other provision in association governing documents, the HOA or architectural review committee may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the HOA or committee. The term "hurricane protection" is defined to include, but is not limited to the following: roof systems, 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.

If your board or architectural review committee has not already done so, your HOA should consider preparing and adopting hurricane protection specifications which are now required by the HOA Act. This will ensure that homes in your community will maintain a unified exterior appearance and provide the board with authority to deny any hurricane protection installations which are not in conformance with the association's established standards.



New Requirement for HOAs to Provide Rules and Covenants to all Members (§720.303(13), Fla. Stat.) This provision is aimed at ensuring that every HOA member is aware of the covenants and rules which they must abide by in the community. The HOA Act now requires all HOAs in Florida to deliver a physical copy or digital copy of the rules and covenants to all HOA members before **October 1, 2024**. The association must also provide a physical copy or digital copy of their rules and covenants to every new HOA member. This provision would include a copy of the declaration of covenants, articles of incorporation, bylaws, and any rules and regulations adopted by the association's board. The new law also provides that any time the HOA amends its rules or covenants, it must provide every HOA member with an updated copy of the amended rules or covenants.

Florida Statutes Section 720.306(1)(b) already requires HOAs to provide copies of any amendments of the governing documents to members within thirty (30) days after recording the amendment in the official records of the county where the HOA is located. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association.

The new statutory provision specifically states that associations can comply with this requirement of providing copies of the rules and covenants by posting a complete copy of the HOA's rules and covenants on its website and sending notice to the membership of its intent to use the website for this purpose. Governing documents can be lengthy and HOAs can have a lot of owners, so to save on copying and postage charges, we would strongly recommend that HOAs consider including the governing documents and rules on their website (if the association has not already done so) and advising members that they can obtain a copy of the rules and covenants directly from the website. If the association elects to use its website for this purpose, the notice of the HOA's intent to do so must be delivered to members electronically (if the member has consented to receive notices by email and provided an email address to the association) and by U.S. mail to the member's address in the official records of the association.

The HOA Act does not specify when new members are to be provided with a copy of the rules and covenants, but the association should consider establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants to members. Your HOA should consider taking proactive steps to determine how it will comply with this provision so that it can meet the initial deadline of October 1, 2024.

HOA Officer and Director Educational Requirements (§720.3033(1)(a), Fla. Stat.) This provision imposes new certification requirements for newly elected or appointed board members. Within 90 days after being elected or appointed to the board, each director must submit a certificate having satisfactorily completed the educational curriculum administered by a department-approved education provider. The educational curriculum focuses on financial literacy and



transparency, levying of fines, recordkeeping, and notice/meeting requirements. The certificate of completion is valid for up to 4 years. A director must complete the education specific to a newly appointed or appointed director at least every 4 years. Previously, the written certification or educational certificate was valid for the uninterrupted tenure of the director while on the board. In addition to the educational curriculum, directors must complete at least 4 hours of continuing education annually (for associations with less than 2,500 parcels) or 8 hours of continuing education annually (for associations with more than 2,500 parcels).

A director who does not timely file the educational certificate is suspended from the board until he/she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension. Note: A newly elected or appointed director is no longer able to simply certify that he/she has read the governing documents and will work to uphold such documents to the best of their ability and faithfully discharge his or her fiduciary responsibility to the association's members.

New Requirements for HOA Official Records (§720.303(4), Fla. Stat.) HOAs must maintain official records, including, but not limited to, board meeting minutes, ballots, tax returns and vendor contracts, for at least 7 years unless the governing documents of the association require the records to be maintained for a longer period of time. The HOA Act now requires HOAs with 100 or more parcels to maintain official records on their website or a mobile app by **January 1, 2025**. The association needs to ensure that certain information and records (such as attorney-client privileged information, personnel records of employees, medical records of owners, social security numbers, driver's license numbers, etc.) are either not posted on the website or sufficiently redacted prior to posting on the website. The HOA must adopt rules governing the method by which official records are retained and the time periods the records must be retained.

Enforcement of Covenants and Rules (§720.3085, Fla. Stat.) For enforcement matters, HOAs (or its architectural committee, construction improvement or similar committee) are required to:

- Reasonably and equitably apply and enforce on all parcel owners the architectural and construction improvement standards authorized by the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.
- Provide written notice to the parcel owner of the rule or covenant relied upon when denying a request for the construction of a structure or other improvement;
- Not place limits on the interior of a structure or require review of HVAC, refrigeration, heating, or ventilating system not visible from a parcel's frontage, an adjacent parcel, common area, or community golf course, if a substantially similar system has been previously approved; and
- Not prevent a homeowner from installing or displaying vegetable gardens and clotheslines in areas not visible from the frontage or an adjacent parcel, an adjacent common area, or a community golf course.



Assisting Law Enforcement (§720.303(5)(i), Fla. Stat.) HOAs are required, if subpoenaed by a law enforcement agency, to provide a copy of the requested records within 5 business days of receiving the subpoena and to assist law enforcement in any investigation to the extent permissible by law.

Debit Cards (§720.303(13), Fla. Stat.) HOAs and its officers, directors, employees and agents may not use a debt card issued in the name of the association or billed directly to the association for the payment of any association expenses. 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. 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.

Voter Fraud in HOA Elections (§720.3065, Fla. Stat.) The HOA Act expands the current criminal prohibitions against fraudulent voting activity to provide that it is a first-degree misdemeanor for any person to:

- Knowingly aid, abet, or advise a person in the commission of a fraudulent voting activity related to association elections.
- Agree, conspire, combine, or confederate 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 avoid or escape detection, arrest, trial, or punishment.

Any officer or director charged with a criminal violation under Chapter 720, Florida Statutes, must be removed from office and a vacancy declared.

Criminal Violations (§720.303(5), Fla. Stat.) The HOA Act provides the following criminal penalties related to HOAs:

- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association with the intent of causing harm to the association or one or more of its members;
- First-degree misdemeanor for knowingly and intentionally defacing or destroying required accounting records, or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;

- Third-degree felony to willfully and knowingly refuse 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; and
- Third-degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept a kickback. A “kickback” means any thing or service of value for which consideration has not been provided for an officer’s, director’s or a manager’s benefit or 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.

Financial Reporting (§720.303(7), Fla. Stat.) HOAs with 1,000 or more parcels must have audited financial statements; HOAs are prohibited from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for a consecutive fiscal year (i.e., such approval must occur during that same fiscal year).

Parking of Personal Vehicles, Pickup Trucks and Work Vehicles (§720.3075(3)(b), Fla. Stat.) HOAs may not prohibit a property owner (or their tenant, guest, or invitee) from parking their personal vehicle, including a pickup truck, in their driveway or in any other area where the owner has a right to park per state, county or municipal regulations. A property owner is also not prohibited from parking his/her work vehicle, which is not a commercial motor vehicle, in the owner’s driveway. The term “commercial motor vehicle” means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight.

Parking of Assigned First Responder Vehicles (§720.318, Fla. Stat.) HOAs may not prohibit a first responder who is a parcel owner, tenant, guest or invitee of a parcel owner, from parking his/her assigned first responder vehicle in the area where the parcel owner, tenant, guest or invitee of the parcel owner has a right to park, including on public roads and rights-of-way. The term “first responder” includes law enforcement officers, firefighters, emergency medical technicians and paramedics. Previously, the statute only permitted the parking of assigned vehicles by law enforcement officers.

Contractors and Workers (§720.3075(3)(c), Fla. Stat.) HOAs may not prohibit a contractor from working on an owner’s parcel because the contractor is not on the association’s preferred vendor list. Additionally, HOAs may not preclude an owner from inviting a contractor on his/her property solely because the contractor does not have a professional license or occupational license. HOAs also may not require a contractor to present or provide proof that they have a professional license or occupational license to be allowed entry onto an owner’s property.

Requirement to Provide Accounting (§720.303(14), Fla. Stat.) HOAs must provide a detailed accounting to owners making such a request that describes any amounts owed to the association. The HOA is required to provide this information within 15 business days after receipt of the

request. If the association fails to respond within 15 business days, it constitutes a complete waiver of any outstanding fines of the person who requested the accounting which are more than 30 days past due and for which the association has not provided prior written notice of the imposition of fines. The provision also prohibits parcel owners from requesting another detailed accounting within 90 days of making an accounting request.

Changes to HOA Fining/Suspension Procedures (§720.305(2), Fla. Stat.) A fine or suspension levied by the board may not be imposed unless the board first provides at least 14 days' written notice of the owner's right to a hearing. The hearing must now be held within 90 days after the issuance of the notice before an independent committee of members appointed by the board. The hearing may be held by telephone or other electronic means. The notice must include a description of the alleged violation, the specific action required to cure the violation and the hearing date, location, and access information if the hearing is held by telephone or other electronic means. The committee must provide written notice to the owner of its decision within 7 days after the hearing. If a violation has been cured before the hearing, a fine or suspension may not be imposed. Attorney's fees and costs based on actions taken by the board before the date set for the fine to be paid are not permitted. If a violation and the proposed fine or suspension is not cured or the fine is not paid, reasonable attorney's fees and costs may be awarded to the association but may not begin to accrue until after the payment date of the fine or the appeal time has expired.

HOAs may not levy a fine or impose a suspension for leaving garbage cans at the curb or end of the driveway within 24 hours before or after the designated garbage collection date/time. Further, HOAs may not levy a fine or impose a suspension for leaving holiday decorations or lights for a period longer than set forth in the governing documents unless the decorations or lights are left up for longer than one week after the association provides written notice of the violation to the owner.

Electronic Voting (§720.317, Fla. Stat.) HOA members may consent to electronic voting by using an electronic means of consent. Current law requires written consent to vote electronically.

Interest on Unpaid Assessments (§720.3085(3), Fla. Stat.) The HOA Act permits only simple interest at a maximum rate of 18% per year (unless a lower simple interest rate is specified in the association's governing documents), not compound interest, to accrue on assessments and installments on assessments that are not paid when due.