Rembaum's Association Roundup

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2023 LEGISLATIVE UPDATE

The 2023 Florida legislature adopted prolific legislation this session as it pertains to Florida homeowners', condominium and cooperative association law, construction law, and insurance law, to name just a few. While many association members and stakeholders were focused on 2023 legislative amendments to the laws adopted in 2022 pertaining to the condominium and cooperative milestone and structural integrity reserve studies, the 2023 Florida legislature was also quite busy amending Chapter 720 of the Florida Statutes, the Homeowners' Association Act, too.

Please take careful note that, as bills are passed into law and other information regarding this legislation comes to our attention, this 2023 Legislative Update will be continually updated. Please be sure to check back from time to time to stay up to date. For your ease of reference, each version will be denoted.

Version 4: 8.10.23

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HOMEOWNERS' ASSOCIATION LEGISLATION

House Bill 919 (a/k/a, the "Homeowners Association Bill of Rights"), Effective Oct. 1, 2023

Board Meeting Notices. Board meeting notices are now required to specifically identify all agenda items for the meeting, except for emergencies.
§720.303, Fla. Stat.

Official Records. Regarding official records, in addition to maintaining a current roster of all members, the association is now also required to maintain the designated mailing addresses of the members which is considered the property address within the association unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices. The association must also maintain e-mail addresses and facsimile numbers which members designate for receiving notice sent by electronic transmission when consenting to receiving notice by electronic transmission. A member's e-mail address for Official Record purposes is the e-mail address the member provides when consenting in writing to receiving notice by electronic transmission, unless the member sends written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail address and facsimile number provided by a member must be removed from the association's records when the member revokes their previously provided consent to receive notice by electronic transmission. However, the association is not liable for an erroneous disclosure of the e-mail address or facsimile number.
§720.303, Fla. Stat.

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 project, the deposit must be returned to the member within thirty (30) days after receiving notice that the member's construction project, or other reason for which the deposit was collected, is complete. In addition, if a member makes a request for an accounting from the association for their funds that were deposited, the association must provide such accounting to the member within seven (7) days after receiving the request.
§720.303, Fla. Stat.

Prohibition on "Kickbacks". An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value for which consideration has not been provided for his or her 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 anything 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, or proposing to provide goods or services to the association, is subject to monetary damages under §617.0834, Fla. Stat. If the board finds that the officer or director violated the aforementioned, the board shall immediately remove the officer or director from office and 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 continue to accept food to be consumed at a business meeting with a value of less than Twenty-Five Dollars and 00 Cents ($25.00) per person, or a service or good receipt in connection with the trade fair or education program.
§720.3033, Fla. Stat.

Grounds for Immediate Removal of a Director or Officer from Office. An officer or director must be removed from office if charged by information or indictment with any of the following crimes:

1. forgery of a ballot envelope or voting certificate used in the election.
2. theft or embezzlement involving association funds or property, as provided in §812.014, Fla. Stat.
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 also constitutes tampering with physical evidence, as provided in §918.13, Fla. Stat.
4. obstruction of justice, as provided in §843, Fla. Stat.

§720.3033, Fla. Stat.

Required Conflict of Interest Disclosures for Developer Appointed Board Members and Officers. Such officers and directors appointed by the developer must disclose to the association their relationship to the developer each calendar year in which they serve as a director or an officer. Directors and officers appointed by the developer must also disclose any other activity that may be reasonably construed to be a conflict of interest as such is defined immediately below. However, a developer's appointment of an officer or director does not create a presumption a conflict of interest with the performance of his or her official duties.

Required Conflict of Interest Disclosures for Board Members and Officers. Directors and officers (including those appointed by the Developer) must disclose to the association any activity that may be reasonably construed to be a conflict of interest at least fourteen (14) days before voting on an issue or entering into a contract that is the subject of a 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 officer, or relative of a director or officer, enters into a contract for goods or services with the association.
2. a director or officer, or relative of a director or 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.

§720.3033, Fla. Stat.

Fines. Clarification is provided that an association may levy reasonable fines for violations of the association's declaration, bylaws, or reasonable rules of the association, and that, after the board's adoption of the fine, the notice to be sent to the offending member at least fourteen (14) days prior to the hearing committee meeting must be sent to the member's designated mailing or e-mail address, as set out in the association's official records. Clarification is also provided that the hearing before the independent committee is not optional but rather mandatory. The notice to the offending member must include a description of the alleged violation, the specific action required to cure the violation (if applicable), and the date and location of the hearing. A parcel owner has the right to attend the hearing by telephone or other electronic means. After the hearing takes place, the independent committee must provide written notice to the parcel owner at his or her designated mailing or e-mail address and if applicable to any occupant, licensee or invitee of the parcel owner, of the committee's findings related to the violation including any applicable fines or suspensions the committee approved or rejected and how the parcel owner or any occupant, licensee, or invitee of the parcel may cure the violation, if applicable. Clarification is provided that the independent committee's actions must be approved by majority vote of its members.
§720.305, Fla. Stat.

Fraudulent Voting Activities, as Related to Association Elections and Penalties. §720.3065, Fla. Stat., a new section within Chapter 720, F.S., is created. The following provisions take effect on October 1, 2023. 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 at 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. However, this does not apply to any food served which is to be consumed at the election rally or 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 direct or indirect 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.

§720.3065, Fla. Stat.

CREATES PROPERTY OWNERS' RIGHTS TO INSTALL, DISPLAY, AND STORE ITEMS ON THEIR LOT AND CLARIFIES THE ABILITY TO DISPLAY CERTAIN FLAGS

House Bill 437

Effective July 1, 2023

Installation, Display, and 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.
§720.3045, Fla. Stat.

Flags. Notwithstanding any covenant, restriction, bylaw, rule, or requirement of an HOA, a homeowner may display *up to two (2)* of the following flags, in a respectful manner:

- The United States flag.
- The official flag of the State of Florida.
- A flag that represents the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
- A POW-MIA flag.
- A first responder flag.

A homeowner may fly one United States flag and one flag from the list above from a freestanding flagpole.

CONDOMINIUM & COOPERATIVE ASSOCIATION LEGISLATION, (A/K/A, THE MILESTONE AND SIRS GLITCH BILL), SENATE BILL 154

Already Passed into Law and in Effect, Unless Otherwise Noted Below

(Note: While the following material references condominiums, the same legislation is equally applicable to cooperatives governed under Chapter 719, F.S.)

Mandatory Structural Inspections. The term "milestone inspection" has been redefined 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. (note that the word "walls" was removed from the definition) by an architect licensed under Chapter 481, or engineer licensed under Chapter 471, for the attesting to the life-safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair or replacement of any structural component of the building. Under this definition, it is clarified that the purpose of the inspection is not to determine if the condition of the existing building is in compliance with the Florida building code or fire safety code. Additionally, the milestone inspection services may be provided by a team of professionals with an architect or engineer acting as the registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.
§553.899, Fla. Stat.

Substantial Structural Deterioration. The term "substantial structural deterioration" is redefined to mean substantial structural distress or substantial structural weakness that negatively affects a building's general structural condition and integrity.
§553.899, Fla. Stat.

Milestone Inspection Report Deadlines:

1. **Initial Deadlines**.

    a. an owner, or owners, of a building that is three (3) stories or more in height, as determined by the Florida Building Code, and that is subject in whole or in part to the condominium or cooperative form of ownership, must have a milestone inspection performed by December 31st of the year in which the building reaches thirty (30) years of age based on the date the certificate of occupancy for the building was issued, and every ten (10) years thereafter.

    b. if a building reaches thirty (30) years of age **before** July 1, 2022, the building's initial milestone inspection must be performed by December 31, 2024.

    c. if a building reaches thirty (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.

2. **Certificate of Occupancy Is Not Available**. 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.

3. **Proximity to Salt Water**. The provisions regarding buildings located within three (3) miles of the coastline is removed and 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.

4. **Deadline 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.

5. **Milestone Inspection Reports Prepared 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 this section. Notwithstanding that such inspection was completed, the condominium or cooperative association must comply with the unit owner notice requirements. The inspection for which an inspection report is accepted by the local enforcement agency is deemed to be a milestone inspection for the purposes of satisfying Chapters 718/719 of the Florida Statutes. If a previous inspection and report is accepted by the local enforcement agency, then the deadline for the building's subsequent ten (10) year milestone inspection is based on the date of the accepted previous inspection.

6. **Mixed Use and Condominium Hotels**. The milestone inspection report must be arranged by the condominium association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership. The condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership are each responsible for ensuring compliance with the requirements for the milestone inspection.

7. **Costs**. The condominium association or cooperative association is responsible for all costs associated with the milestone inspection attributable to the portions of a building which the association is responsible to maintain under the governing documents of the association.

8. **Exemptions**. As before, the aforementioned requirements do not apply to any single family, two (2) family, or three (3) family dwelling with three (3) or fewer habitable stories above ground.

§553.899, Fla. Stat.

Governmental Notice for Phase One of the Milestone Inspection. Upon determining that a building must have a milestone inspection, a local enforcement agency must provide written notice of such required inspection to the condominium association or cooperative association and to any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership by certified mail, return receipt requested. Thereafter, the association must notify the unit owners of the required milestone inspection within fourteen (14) days after receipt of the written notice from local government and provide the date that the milestone inspection must be completed. Phase one of the milestone inspection must be completed within one hundred and eighty (180) days after the owner, or owners, of the building received written notice from local government.
§553.899, Fla. Stat.

Phase Two of the Milestone Inspection. If a phase two inspection is required, then, within one hundred and eighty (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.
§553.899, Fla. Stat.

Post Inspection Requirements. Upon completion of the phase one and phase two milestone inspections, the Architect or Engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at a minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association and to any other owner of any portion of the building which is not subject to the condominium or cooperative form of ownership.
§553.899, Fla. Stat.

In addition, within forty-five (45) days after receiving the applicable inspection report the condominium or cooperative association must distribute a copy of the inspector prepared summary of the inspection report to each owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery to the owner's mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to such owners who previously consented to receiving notice by electronic transmission and must post a copy of the inspector prepared summary in a conspicuous place on the property and must publish the full report and inspector prepared summary on the association's website if the association is required to have a website.
§553.899, Fla. Stat.

Governmental Ordinances. A board of county commissioners, or municipal governing body may adopt an ordinance requiring that a condominium or cooperative association in any other owner that is subject to the milestone report requirements commence repairs for substantial structural deterioration within a specified time frame after the local enforcement agency receives a phase two inspection report however the repairs must be commenced no later than 365 days after receiving the report. If the owner of the building fails to submit such proof, then local government must review and determine if the building is unsafe for human occupancy.
§553.899, Fla. Stat.

Short Term Exemption from the Milestone Inspection. In addition, if the milestone inspection, or inspection completed for a similar local government requirement, was performed within the past five (5) years and meets the requirements required for the milestone inspection, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.
§718.112, Fla. Stat.

Florida Building Commission Requirements. By December 31, 2024, the Florida Building Commission must adopt rules establishing building safety program for the implementation of the milestone inspection within the Florida building code. The building inspection program must at a 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.
§553.899, Fla. Stat.

New and Revised Definitions within Chapter 718, F.S., the Condominium Act, Follow:

1. The term “alternative funding method” means a method approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes (the “Division") for funding the capital expenditures and deferred maintenance obligations for a multi-condominium association operating

at least twenty-five (25) condominiums which may reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget.

2. The term “structural integrity reserve study” is revised to mean a study of the reserve funds required for future major repairs and replacement of the condominium property performed as required under §718.112(2)(g), Fla. Stat.

§718.103, Fla. Stat.

Official Record Requests. In the past, the official records of the association were open to inspection by any association member ***or*** their authorized representative. This important language has been revised, as follows: “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. The right to inspect the records includes the right to make or obtain copies, at a reasonable expense, if any, of the member and of the person authorized by the association member as a representative of such member.” §718.111, Fla. Stat.

Reserves. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item (the foregoing was not recently added to the Florida Statutes but is an important summary of the existing reserve funding requirements*). The Structural Integrity Reserve Study requirements follow, below.*

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), below, 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 twenty-five (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. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.

§718.112, Fla. Stat.

The Structural Integrity Reserve Study (a/k/a, the paragraph (g) items). A residential condominium association must have a structural integrity reserve study completed at least every ten (10) years after the condominium’s creation for each building on the condominium property that is three (3) stories or higher in height, as determined by the Florida building code, which includes, at a minimum, the study of the following items as related to the structural integrity and safety of the building:

- **a)** Roof;
- **b)** Structure, including load bearing walls and other primary structural members, and primary structural systems as those terms are defined in §627.706, Fla. Stat.;
- **c)** Fire proofing and fire protection systems;
- **d)** Plumbing;
- **e)** Electrical systems;
- **f)** Waterproofing and exterior painting;

g) Windows and exterior doors;
h) And 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 above as determined by the visual inspection portion of the structural integrity reserve study.

With the aforementioned revisions to the structural integrity reserve study, it is clarified that commercial condominiums are exempt from the SIRS requirements. In addition, the terms "floor" and "foundation" were removed from the items needed to be included in the structural integrity reserve study but, however, are also potentially part of the "Structure".
§718.112, Fla. Stat.

Structural Integrity Reserve Items with a Life of 25 Years or Greater. At a minimum, a structural integrity reserve study must identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost deferred maintenance expense of each item of the condominium property being visually inspected and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of the property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement costs cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves or replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than twenty-five (25) years, but the study may recommend a deferred maintenance expense amount for such item.
§718.112, Fla. Stat.

Exclusions to the Requirement to Prepare a Structural Integrity Reserve Study, Follow: the requirement to have the structural integrity reserve study does not apply to:

1. buildings less than three (3) stories in height;
2. single family, two (2) family or three (3) family dwellings with three (3) or fewer habitable stories above ground;
3. any portion or component of a building that has not been submitted to the condominium form of ownership;
4. or any portion or component of a building that is maintained by a party other than the association.

§718.112, Fla. Stat.

Deadlines to Complete the Structural Integrity Reserve Study. Associations existing before July 1, 2022, which are unit owner controlled, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three (3) stories or higher in height. However, an association that is required to complete a milestone inspection on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection period but, however, in no event may the structural integrity reserve study be completed after December 31, 2026.
§718.112, Fla. Stat.

The Persons as to Who May Perform the Structural Integrity Reserve Study is Significantly Broadened, as Follows: 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 association institute or the association of professional reserve analysts. §718.112, Fla. Stat.

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 before the items listed in paragraph (g) below except that members of an association operating a multi-condominium may determine to provide no reserves, or less reserves, than required by this subsection if an alternative funding method has been approved by the Division.
§718.112, Fla. Stat.

Using Reserves for a Different Purpose. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and may only be used for authorized reserve expenditures unless they are used for other purposes as approved in advance by a majority of all of the voting interests. 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 for any other purpose other than the replacement or deferred maintenance costs of the components listed in paragraph (g).
§718.112, Fla. Stat.

Developer Requirement to Provide the Structural Integrity Reserve Study as a Part of Turnover. The developer requirement to provide the structural integrity reserve study as a part of turnover has been deleted and replaced with a requirement that the developer must have a turnover inspection report in compliance with §718.301(4)(p) & (q), Fla. Stat.

Breach of Fiduciary Duty for Failure to Complete the Structural Integrity Reserve Study Period. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study, then such failure is deemed to be a breach of the officers' and directors' fiduciary relationship to the unit owners.
§718.112, Fla. Stat.

Milestone Inspection Cost Apportionment. The association is responsible for all costs associated with the milestone inspection attributable to the portions of the building which the association is responsible for maintaining under the governing documents of the association. *(Especially pertinent to condo-hotels and high-rise residential condominiums that exclude portions of the building from the declaration of condominium.)*
§718.112, Fla. Stat.

Disputes Regarding the Milestone Inspection and Structural Integrity Reserve Study. The term "dispute", as used in §718.1255, Fla. Stat., now also includes the failure to:

1) obtain the milestone inspection, pursuant to §553.899, Fla. Stat.
2) obtain a structural integrity reserve study required pursuant to §718.112(2)(g), Fla. Stat.
3) fund reserves as required for an item identified in §718.112(2)(g), Fla. Stat.
4) make, or provide, necessary maintenance or repairs of the condominium property recommended by a milestone inspection or a structural integrity reserve study.

However, the aforementioned are not subject to mandatory non-binding arbitration but rather must be submitted to presuit mediation and, if unresolved, followed by litigation.
§718.1255, Fla. Stat. (all of which is effective on July 1, 2023)

Maintenance of the Common Elements. Maintenance of the common elements is the responsibility of the association except for any maintenance responsibility for limited common elements assigned to the unit owner by the declaration. The association shall provide for the maintenance, repair and replacement of the condominium property for which it bears responsibility, pursuant to the declaration of condominium. After turnover of control of the association to the unit owners, the association must perform any maintenance identified by the developer pursuant to §718.301(4)(p) & (q), Fla. Stat., until the association obtains new maintenance protocols from a licensed professional engineer or architect, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts. §718.113, Fla. Stat.

Turnover Inspection Report. Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under the seal of an Architect or Engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Association Institute or the Association of Professional Reserve Analysts and attesting to the required maintenance, condition, useful life and replacement costs of the following, applicable to the condominium property:

1) Roof;
2) Structure, including load bearing walls and primary structural members, and primary structural systems as those terms are defined in §627.706, Fla. Stat.;
3) Fire proofing and fire protection systems;
4) Plumbing;
5) Electrical systems;
6) Waterproofing and exterior painting;
7) Windows and exterior doors.

In addition, notwithstanding when the certificate of occupancy was issued, or the height of the building, a turnover inspection report included in the official records under the seal of an Architect or Engineer authorized to practice in this state or person certified as a reserve specialist or Professional Reserve Analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and attesting to the required maintenance, condition, useful life and replacement costs of the following applicable condominium property comprising a turnover inspection report:

1) Elevators;
2) Heating and cooling systems;
3) Swimming pool or spa and equipment;
4) Seawalls;
5) Pavement and parking areas;
6) Drainage systems; and
7) Irrigation systems.

§718.301, Fla. Stat.

Brief Summary of the Developer Disclosure Requirements to Prospective Purchasers. There are numerous developer disclosures required to be provided to initial buyers of condominium units which include providing a copy of the milestone inspection report as well as a copy of the most recent structural integrity reserve study and, if not completed, then notice to the buyer of such circumstance. The buyer is to be provided such reports at least fifteen (15) days, excluding Saturdays, Sundays, and legal holidays prior to the execution of the purchase and sale agreement. In addition, such purchase and sale agreements must include a clause which states the agreement is voidable by the buyer by delivering written notice of the buyers' intention to cancel within fifteen (15) days, excluding Saturdays, Sundays, and legal holidays after the date of execution of the agreement by the buyer and receipt by the buyer of the current copy of the

milestone inspection report. Contracts that do not conform to the developer disclosure requirements are voidable at the option of the purchaser, prior to closing.
§718.503, Fla. Stat.

Brief Summary of Owner Disclosure Requirements to Prospective Purchasers. Unit owners who are selling their condominium units are similarly required to provide prospective buyers copies of the milestone inspection report and structural integrity reserve study or notice that such reports have not yet been prepared, at least three (3) days prior to execution of the purchase and sale agreement. If the reports are provided, thereafter, the buyer has a three (3) day right of recission from the time such reports are provided. In addition, purchase and sale agreements that do not conform to the requirements of the legislation are voidable at the option of the purchaser prior to closing.
§718.503, Fla. Stat.

PATRIOT DAY
HOUSE BILL 437

Effective July 1, 2023

This bill adds Patriot Day, September 11, to the list of days when a condominium unit owner may display armed forces flags.
§718.113, Fla. Stat.

ADDITIONAL NEW LEGISLATION AFFECTING ALL ASSOCIATIONS

ACTIONS FOR NEGLIGENCE
HOUSE BILL 837

Effective March 24, 2023

Statute of Limitation Significantly Reduced. House Bill 837, an already existing law, shortens the time upon which to file a lawsuit founded on negligence from four (4) years to two (2) years. In addition, additional litigation protections are created for armed service members when on active duty and such active duty materially affects the service member's ability to appear (in court, etc.).
§95.11, Fla. Stat.

Modified Comparative Negligence. This bill also modifies Florida's damages apportionment standard from a pure comparative negligence approach to a modified comparative negligence approach, except that this modification does not apply to personal injury or wrongful death cases arising out of medical negligence pursuant to chapter 766, Fla. Stat.

Under the bill, any party to a negligence action not brought under Chapter 766, Fla. Stat., (medical negligence) who is more than 50 percent at fault for his or her own harm recovers no damages. For example, in an automobile accident causing a plaintiff $100,000 in damages:

i) i) If the defendant is fully at fault, the plaintiff recovers all of his damages—that is, $100,000.

j) ii) If the plaintiff is 49 percent at fault and the defendant is 51 percent at fault, the plaintiff recovers 51 percent of his damages—that is, $51,000.
iii) If the plaintiff and the defendant are each 50 percent at fault, the plaintiff recovers 50 percent of his damages—that is $50,000.
iv) If the plaintiff is more than 50 percent at fault for his own damages—meaning the defendant is less responsible than the plaintiff for the plaintiff's damages—the plaintiff recovers nothing. Note that a plaintiff bringing a medical negligence action under chapter 766 who is more than 50 percent at fault for his or her own harm may still recover the percentage of damages for which he or she is not at fault.

Multifamily, Residential Property, Safety, And Security; Presumption Against Liability. This bill creates a presumption against liability under certain circumstances.

The bill provides that, in a negligent security action brought by a person lawfully on commercial or real property who was injured by a third party's criminal act, the trier of fact must consider the fault of all persons who contributed to the injury.

The bill also creates a presumption against negligent security liability for the owner or operator of a multi-family residential property which substantially implements the following security measures on that property where the criminal actor is not an employee or agent of the owner or operator:

- A security camera system at points of entry and exit which records, and maintains as retrievable for at least 30 days, video footage to assist in offender identification and apprehension.
- A lighted parking lot illuminated at an intensity of at least an average of 1.8 foot-candles per square foot at 18 inches above the surface from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn.
- Lighting in walkways, laundry rooms, common areas, and porches, which lighting must be illuminated from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn.
- At least a one-inch deadbolt in each dwelling unit door.
- A locking device on each window, exterior sliding door, and door not used for community purposes.
- Locked gates with key or fob access along pool fence areas.
- A peephole or door viewer on each dwelling unit door that does not include a window or have a window next to the door.
- A crime prevention through environmental design assessment, completed by January 1, 2025, and performed by a law enforcement agency or a designated Florida Crime Prevention Through Environmental Design Practitioner where the owner or operator remains in substantial compliance with the assessment.

The provision of proper crime deterrence and safety training applies to current employees by January 1, 2025, and to an employee hired after that date within 60 days of his or her hire.

For purposes of establishing the presumption against liability, the burden of proof is on the owner or principal operator to demonstrate that he or she has substantially implemented the security measures outlined above.

Under the bill, "proper crime deterrence and safety training" means training which trains and familiarizes employees with the security principles, devices, measures, and standards set forth above, and which is reviewed at least every 3 years and updated as necessary.

The owner or principal operator may request a law enforcement agency or the Florida Crime Prevention Through Environmental Design Practitioner performing the assessment to review the training curriculum, and The Florida Crime Prevention Training Institute must develop a proposed curriculum or best practices for owners and operators to implement the required training.

The bill specifies that the state has no liability in connection with providing a proposed training curriculum, and this section of the bill does not establish a private cause of action.

CONSTRUCTION DEFECT LAWSUIT TIMELINE IN WHICH TO FILE A LAWSUIT IS SIGNIFICANTLY SHORTENED
SENATE BILL 360

Effective April 13, 2023

Construction Defects. Senate Bill 360, an already existing law, shortens the time in which to bring a latent (hidden) construction related defect claim from ten (10) years to seven (7) years. When bringing an action (lawsuit) founded on the design, planning, or construction of an improvement to real property such claim begins from the time one knew, or should have known, of such defect as measured from the issuance of the certificate of occupancy and must be brought within four (4) years. Now, however, the period to file the lawsuit is measured from the earlier date of the issuance of the temporary certificate of occupancy, or certificate of completion, rather than from the date of the issuance of the certificate of occupancy.
§95.11, Fla. Stat.

Notwithstanding being within the statute of limitations to file a lawsuit, the statute of repose acts as a hard deadline in which to file such a lawsuit. As to latent defects, assume such latent defect was discovered in year eight (8) from the issuance of the certificate of occupancy and the aggrieved owner could not possibly have known of the defect earlier. In the past, so long as the claim was brought within four (4) years from the time of discovery but, not later than ten (10) years from the issuance of the certificate of occupancy, then the case could proceed. But, however, with the shortening of the statute of repose to seven (7) years, using the aforementioned example, such lawsuit could not be filed (or, if filed, a strong defense would exist) because it would be already passed the seven (7) year statute of repose when first discovered.

AFFORDABLE HOUSING (Summary only)
SENATE BILL 102

Already Passed into Law with Multiple Effective Dates

Senate Bill 102 makes various changes and additions to affordable housing related programs and policies at both the state and local level and became law upon signing on March 29, 2023.

One major goal at all levels of government is to ensure that citizens have access to affordable housing. Housing is considered affordable when it costs less than 30 percent of a family's gross income. A family paying more than 30 percent of its income for housing is considered "cost burdened," while those paying more than 50 percent are considered "extremely cost burdened." Severely cost burdened households are more likely to sacrifice other necessities such as healthy food and healthcare to pay for housing, and to experience unstable housing situations such as eviction.

Much of the bill involves the Florida Housing Finance Corporation (FHFC), a public-private entity that administers the two largest statewide affordable housing programs: the State Apartment Incentive Loan (SAIL) program and the State Housing Initiatives Partnership (SHIP) program.

With Regard to the FHFC, the bill:

- Provides up to $150 million annually to the SAIL program for certain specified uses such as infill and projects near military installations. These funds are to be redirected from the General Revenue service charge, and this provision sunsets 2033.
- Provides up to a $5,000 refund for sales tax paid on building materials used to construct an affordable housing unit funded through the FHFC.
- Creates a new tax donation program to allow corporate taxpayers to direct certain tax payments to the FHFC, up to $100 million annually, to fund the SAIL program.
- Codifies the Florida Hometown Heroes down payment assistance program, retaining the structure as it exists while increasing the monetary limit per loan and the scope of eligibility.
- Adds two (2) members to the FHFC Board of Directors, one appointed by the leader of each chamber of the Legislature.
- Broadens the ability for the FHFC to invest in affordable housing developments for those in or aging out of foster care.

With Regard to Local Governments, the bill:

- Preempts local governments' requirements regarding zoning, density, and height to allow for streamlined development of affordable housing in commercial and mixed-use zoned areas under certain circumstances. Developments that meet the requirements may not require a zoning change or comprehensive plan amendment.
- Removes a local government's ability to approve affordable housing on residential parcels by bypassing state and local laws that may otherwise preclude such development, while retaining such right for commercial and industrial parcels.
- Removes provision in current law allowing local governments to impose rent control under certain circumstances, preempting rent control ordinances entirely.
- Requires counties and cities to update and electronically publish the inventory of publicly owned properties, for counties including property owned by a dependent special district, which may be appropriate for affordable housing development.

- Authorizes the FHFC, through contract with the Florida Housing Coalition, to provide technical assistance to local governments to facilitate the use or lease of county or municipal property for affordable housing purposes.
- Requires local governments to maintain a public written policy outlining procedures for expediting building permits and development orders for affordable housing projects.

The Bill also Introduces Three Ad Valorem Property Tax Exemptions:

- An ad valorem tax exemption for land owned by a nonprofit entity that is leased for a minimum of 99 years for the purpose of providing affordable housing.
- An ad valorem tax exemption that applies to rent-restricted units within newly constructed or substantially rehabilitated developments setting aside at least 70 units for affordable housing for households earning 120 percent of area median income or less.
- Authorizes counties and municipalities to offer, through ordinance, an ad valorem tax exemption to property owners who dedicate units for affordable housing for households earning 60 percent of area median income or less.

§713, Fla. Stat.

CONSTRUCTION LIENS
HOUSE BILL 331

Effective October 1, 2023

House Bill 331 effectuates significant changes to the construction lien process.

The Notice of Commencement. Failure of a property owner to record a notice of commencement prior to beginning a construction project subjects the owner of the property to potential double payment to all contractors, subcontractors, and suppliers. This bill:

- Modifies the statutorily provided notice of commencement form to reflect that the person signing the notice may use an online notary.
- Authorizes a building permit applicant to submit the clerk's office official records identifying information for the recorded notice of commencement, including the instrument number or the number and page of the book, to the issuing authority in lieu of a certified copy of the notice or notarized statement of filing.
- Provides that the building permit issuing authority is not liable in any civil action for failing to verify that the building permit applicant submitted one of the acceptable forms of proof that the applicant filed a notice of commencement. Increases the contract amount which excuses a building permit applicant from filing a copy of the notice of commencement or an authorized alternative with the issuing authority, from $2,500 to $7,500.

Who is a Contractor? The bill amends the definition of "contractor" to include any licensed general or building contractor who provides construction or program management services. This guarantees to such licensed general and building contractors the ability to claim construction liens if they are not paid for their work.

Manner of Serving Documents. The bill:

- Specifies that all documents allowed or required under the construction lien law must be served as provided in § 713.18, Fla. Stat., relating to manner of serving documents.
- Clarifies that "actual delivery" of a notice means "hand delivery."
- Provides that service by mail must be made to the person to be served.
- Clarifies that service of a notice sent through the mail is effective upon mailing or shipping.
- Specifies that service to a partnership, corporation, or limited liability company may be made on an employee or agent authorized by the business to receive service.

Further, the bill modifies the requirement that, for service to be effective on the date of mailing, the person serving a notice to contractor where a payment bond applies must maintain electronic tracking records generated by the USPS, deleting the requirement that the records be electronic and specifying that they may be either generated or approved by the USPS. The bill also deletes the requirements that such tracking records contain the name and address of the person served.

Notice of Contest of Lien. The bill specifies that after the property owner files a notice of contest of lien with the clerk's office and the clerk's office serves a copy of the notice on the lienor and records the notice with a certificate of service, the clerk's office must serve a copy of the recorded notice on the lienor and the owner or the owner's attorney.

Discharge of Liens. The bill provides that the methods specified for discharging a lien may also be used to release a lien, in whole or in part.

Attorneys' Fees and Costs. The bill provides that a prevailing party in an action to enforce a lien transferred to a security may recover his or her reasonable attorneys' fees in an amount to be determined by the court. The bill also clarifies that, where a prevailing party is entitled to recover his or her reasonable attorneys' fees in an arbitration action to enforce a claim against a payment bond, the amount of the attorneys' fees to be awarded may be determined by the arbitrator.

Computation of Time. The bill provides that, in computing any time period relating to the construction lien law, if the last day of the time period is a Saturday, Sunday, legal holiday, or any day observed as a holiday by the clerk's office or designated as such by the chief judge of the circuit, the time period is extended to the end of the next business day.

However, the bill also provides that, if the clerk's office is closed in response to an emergency for one or more days, so that a person may not present a document for recording or an action for filing in person with the clerk's staff, the time period for recording a document or filing an action with the clerk's office relating to the construction lien law is tolled. Under the bill, when the clerk's office reopens, the time period is extended by the number of days the clerk's office was closed.

Duration of Lien. The bill specifies that after the property owner files a notice of contest of lien with the clerk's office and the clerk's office serves a copy of the notice on the lienor and records the notice with a certificate of service, the clerk's office must serve a copy of the recorded notice on the lienor and the owner or the owner's attorney.

Notice of Termination. The bill requires that a notice of termination be served before recording on each lienor in privity with the owner and on each person who timely served a notice to owner before the recording of the notice of termination. Under the bill, if it is thus served, a notice of termination terminates the notice of commencement 30 days after it is recorded. However, the bill also requires an owner to serve a copy of the notice of termination on any lienor who began work under a notice of commencement before its termination, lacks a direct contract with the owner, and timely serves a notice to owner after the notice of termination is recorded.

The bill also:

- Specifies that the notice of termination is effective as to such lienors 30 days after service.
- Specifies that a notice of termination must include a statement that the owner will serve a copy of the notice on all lienors who time serve a notice to owner after the notice of termination's recording. Deletes a provision specifying that an owner may only record a notice of termination after construction completion or when construction ceases before completion and all lienors have been paid, specifying instead that such notice may be recorded after all lienors have been paid.
- Clarifies that the notice of termination must include the official records reference numbers and recording date affixed to the recorded notice of commencement by the recording office.

LEGAL INSTRUMENTS
SENATE BILL 286

Effective July, 1, 2023

Senate Bill 286 amends laws relating to various legal instruments. The bill:

- Expands the scope of existing law on the finality of a clerk's deed following foreclosure sale to apply to any form of lien. Currently, only foreclosure of a mortgage is governed by the statute on finality of a clerk's deed.
- Requires the foreclosure court to award attorney fees to a senior lienholder when a junior lienholder wrongfully tries to foreclose a senior lien. The bill also reaffirms the common law rule that a superior lien may not be foreclosed by a junior lienholder.
- *Expands application of an assignment of rents to apply to a successor landowner and adds that regular association fees (HOA, condo or co-op) may be paid from the rent collected.* An assignment of rents (if authorized by the mortgage terms) is a temporary relief allowing a foreclosing lienholder to collect rents from the property during the pendency of the foreclosure case and use those rents for upkeep of the property.
- Makes a technical change to the statute authorizing electronic signatures by adding a clarification of the term "witness." When used as a noun, “witness” means an individual whose electronic signature is affixed to an electronic record to attest or subscribe to a principal’s signature on such record. This definition of “witness” applies retroactively to January 1, 2020, which is the effective date for most of the statutory provisions for online notarization.
- Expands application of an “order to show cause” procedure in foreclosure law to allow use of the procedure when a successor landowner is being foreclosed. The current order to show cause procedure compels the defendant to either resume making regular payments or vacate the premises but is only applicable when the mortgagor still holds title to the property.

§702, Fla. Stat.

INSURANCE
SENATE BILLS 2A & 2B, (SPECIAL SESSION)

Already Passed into Law and in Effect

SENATE BILL 2A:

Reinsurance. The state of Florida provided for an optional hurricane reinsurance that insurance companies can purchase at reasonable near market rates with the goal being to stave off additional premium increases.

Timeline Reductions.

1. The claim filing deadline is reduced from two years to one year for a newly reopened claim and from three years to 18 months for a supplemental claim.
2. The time is reduced for insurance companies to pay or deny claims from 90 to 60 days.
3. The time is reduced for insurance companies to review and acknowledge a claim communication from 14 days to seven days.
4. The time is reduced for an insurance company to begin investigation of a claim from 14 days to seven days.
5. The time for an insurance company to conduct a physical inspection is reduced from 45 days to 30 days and this applies to hurricane claims as well.
6. Insurance companies may use electronic methods to investigate damage and allow policyholders to participate in the use of such methods.
7. Insurance companies are required to send any adjuster report estimating the damage to the policy holder within seven days after it is created.
8. All undisputed amounts of benefits must be paid out to the policyholder within 60 days rather than the previously existing 90 days.

All of the aforementioned became effective March 1, 2023.

Attorneys' Fee Awards. One way attorneys' fee provisions related to property insurance claims have been eliminated meaning neither party is awarded prevailing party attorneys' fees and each party is responsible for payment of their own attorneys' fees. However, this is mitigated through the offer of judgment whereby if an offer is made and at trial the other side does not exceed at least 125% of such offer, then that could trigger the prevailing party to still have to pay the other side's attorneys' fees.

Assignment of Benefits. No post loss insurance benefits under any residential property insurance policy or commercial property insurance policy issued on or after January 1, 2023, can be assigned to a third party. Therefore, assignment of benefits is no longer an option.

Bad Faith. Before a policyholder can sue a property insurance company for bad faith-based on how the insurance company settled the claim, the court of competent jurisdiction must first find that a breach of contract occurred. In addition, receiving an appraisal award higher than the insurance companies' appraisers' final estimate may be evidence of bad faith, but on its own does not give rise to a bad faith claim.

Flood Insurance. Citizens residential policyholders can be required to obtain flood insurance as a condition of having coverage from citizens. Considering that the state of Florida is primarily built on swampland, this makes sense.

Mandatory Arbitration. Insurance companies can now offer a policy with mandatory arbitration to settle disputes rather than litigation so long as the insurance company also offers a policy without a mandatory binding arbitration clause. If such binding arbitration is required, then a premium discount is required for such policy.

This bill substantially amends §§624.1551, 624.3161, 626.9373, 626.9541, 627.351, 627.3511, 627.3518, 627.428, 627.7011, 627.70131, 627.70132, 627.70152, 627.7074, 627.7142, 627.7152, 631.252, and 768.79 of the Florida Statutes. This bill creates §215.5552 and §627.70154 of the Florida Statutes.

Portions of this bill become effective upon becoming law, other parts on January 1, 2023, and remaining provisions on March 1, 2023.

SENATE BILL 2B

Effective Date February 15, 2023

The bill creates the Local Government Emergency Bridge Loan Program within the Department of Economic Opportunity to provide financial assistance to local governments impacted by Hurricane Ian or Hurricane Nicole. The bill appropriates $50 million in nonrecurring funds from the General Revenue Fund for the program. The bill transfers $650 million to the Emergency Preparedness and Response Fund to be used for responding to a declared state of emergency. The bill takes effect upon becoming a law.
§288.066, Fla. Stat.

This bill creates §288.066 of the Florida Statutes.

ADDITIONAL TOPICS OF INTEREST

EMERGENCY LIFE SAFETY SYSTEMS UPDATE (ELSS)
At this time, Awaiting Further Agency Action

It is reported that, by 2016, over 4300 Florida condominium associations had voted to opt out of having to install the mandatory sprinkler systems and, instead, opted for the installation of the "emergency life safety systems" (ELSS), as required by the Florida Fire Prevention Code and Chapter 718, Fla. Stat.

Recently, the Florida Fire Code Advisory Committee (the "Committee") proposed a delay in the implementation of the emergency life safety systems in those buildings that have opted out of a full fire sprinkler system. This is a rulemaking process that will not be finalized until December, 2023, if at all. Before the Committee's approved changes can be put into law, these rule changes must be approved by the State of Florida, and then, Chapter 718 provisions regarding the ELSS will be in need of amendment as well. Thus far, the Committee has approved amendments to the ELSS requirements, as follow:

1. By January 1, 2025, the condominium association must have the ELSS study completed and submitted to the local Fire Marshal for review.
2. By January 1, 2026, contractors must have applied for and received permits for the installation of the ELSS.
3. By January 1, 2027, installation of the ELSS must be complete and passed all final inspections by the local Fire Marshal.

As to those condominium associations that choose to fire sprinkler protect their building,

1. By January 1, 2025, the condominium association must have the plans for the installation of the sprinkler system completed and submitted to the local Fire Marshal for review.
2. By January 1, 2026, contractors must have applied for, and received permits for, the installation of the fire sprinkler system.
3. By January 1, 2027, installation of the fire sprinkler system must be complete and passed all final inspections by the local Fire Marshal.

Remember, too, while an automatic sprinkler system is not required in buildings having an approved and implemented ELSS, nevertheless and notwithstanding, the ELSS can still include:

1. partial automatic sprinkler protection;
2. smoke detection systems;
3. smoke control systems;
4. compartmentation; and
5. other approved systems;

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