



ROSS EARLE BONAN
ENSOR & CARRIGAN, P.A.

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REB LAW REVIEW

ROSS EARLE BONAN ENSOR & CARRIGAN, P.A. NEWS

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Greetings to all of our clients, friends, and colleagues. This year has been another busy year for all of our community associations, with many dealing with issues in obtaining insurance coverage in a tight and expensive insurance market and meeting structural integrity requirements imposed upon residential condominiums that are three (3) stories or higher. We continue to monitor these issues and remain available to all our clients for guidance on the potential impacts to community associations.

In other news, on September 2, 2023, the firm celebrated our twenty (20) year anniversary. We are so proud of our long history of serving community associations throughout the Treasure Coast and beyond. Additionally, on October 1, 2023, the firm's Stuart office relocated to the third floor of the building next door- 819 SW Federal Highway. Our new larger suite of offices provides room for the firm to grow.

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Changes Affecting All Community Associations

The Corporate Transparency Act

Beginning January 1, 2024, this new Federal regulation requires Associations to file a Beneficial Ownership Information Report (BOIR) with the Financial Crimes Enforcement Network (FinCEN) at this website: <https://boiefiling.fincen.gov>.

As of April 2024, FinCEN has issued guidance that the reporting requirements apply to officers and directors of an Association. The regulation further provides financial and criminal penalties for non-compliance. The regulation mandates a compliance deadline of January 1, 2025. An Association is also required to report updates and corrections as to changes to its officers and directors to FinCEN within thirty (30) days.

Community Association Managers

Official Records – Fla. Stat. 468.4334 (July 1, 2024)

When an Association manager or an Association management company (collectively “LCAM”) is terminated, the LCAM is required to return all of an Association’s official records within 20 business days of the termination or upon written request by an Association, whichever occurs first.

Conflicts of Interest – Fla. Stat. 468.4335 (July 1, 2024)

LCAMs must disclose to an Association any activity that might reasonably be construed as a conflict of interest, and creates a conflict of interest disclosure process for LCAMs.

If an Association receives and considers a bid for goods or services in excess of \$2,500.00 – other than community management services – from persons with a financial interest in the LCAM, an Association must also solicit multiple bids from other third-party providers of such good or service. Furthermore, if the LCAM proposes to provide a good or service from persons with a financial interest in its LCAM, such activity (i) must be disclosed on all contracts; (ii) the transactional documents related to the goods or service must be attached to the next Board Meeting agenda; and (iii) the disclosure of the conflict of interest must be documented in the meeting minutes. Additionally, approval of a contract for goods or services from persons with a financial interest in the LCAM must be approved by 2/3rd of the Board Members present at a Board Meeting. Lastly, a contract involving conflict of interest with the LCAM must be disclosed to the membership at the next regular or special membership meeting.

If an LCAM fails to disclose a conflict of interest as set forth above, an Association may cancel its management contract with the LCAM, and is only liable for the reasonable value of management services up to the time of cancellation. Additionally, the failure of an LCAM to disclose a conflict of interest as set forth above permits an Association to void the contract for goods and services upon written notice of the termination filed with an Association's Board of Directors signed by at least 20% of the total membership voting interests.

LCAM Education – Fla. Stat. 468.4337

LCAM's biannual continuing education requirements must include at least five (5) hours that pertain specifically to HOAs, three (3) hours of which must relate specifically to record keeping.

Officers and Directors

Criminal Penalties – Fla. Stat. 718.103(20), 718.111(1)(a), 718.111(12)(c)2-4, 718.111(15), 718.112(2)(q)-(r), Fla. Stat. 720.303(5)(d)-(f), Fla. Stat. 720.303(13), Fla. Stat. 720.3033(3)-(4), Fla. Stat. 720.3065 (July 1, 2024)

New criminal penalties are established for various forms of misconduct within community associations, including but not limited to, accepting a kickback, knowingly, willfully and repeatedly violating the requirements for inspection and copying of official association records or destroying or failing to maintain such records, and fraudulent voting activities.

Officers or directors facing criminal charges related to forgery of election materials, theft/embezzlement, or destruction of official records must be removed from their position. These charges warrant immediate removal from office to uphold the integrity of community association governance.

Homeowners Insurance – Fla. Stat. 626.9201 (July 1, 2024)

The statutory amendment provides that if a Declaration of Emergency is issued, an insurer may not cancel or non-renew a personal residential or commercial residential insurance policy covering a dwelling or a residential property which has been damaged as a result of hurricane or wind-loss for ninety (90) days after the dwelling or residential property has been repaired. There are certain statutory exceptions that may apply.

Legislation Affecting Homeowners Associations

HB 1203 Homeowners' Associations (July 1, 2024)

Record Keeping & Websites – Fla. Stat. 720.303(4)-(5)

Clarifies what official records HOAs must keep for at least seven years.

Starting January 1, 2025, HOAs with 100 or more parcels must have an access-restricted website and must maintain digital copies of certain official records that members can download from the HOA's website or mobile app. The HOA's website must contain a subpage or web-portal that is inaccessible to the general public and accessible only to parcel owners and employees of the Association.

HOAs must also create a policy concerning retention of official records that complies with the statute and requirements of the governing documents. Such policy must be posted on the HOA's website.

Law enforcement agencies can subpoena official records, and HOAs must provide them within five (5) business days or as otherwise required by the subpoena.

Notice Members Meetings on Website – Fla. Stat. 720.303(4)

On the website homepage, notices and agendas of scheduled Members Meetings must be posted at least fourteen (14) days in advance conspicuously on the homepage or under a separate subpage labeled "Notices". In addition, all documents to be considered or voted upon at the Members Meeting must be posted at least seven (7) days before the meeting.

Notice Board Meetings on Website – Fla. Stat. 720.303(4)

On the website homepage, notices and agendas of scheduled Board Meetings must be conspicuously posted on the homepage or under a separate subpage labeled "Notices" no later than the required notice period set forth in the statute or governing documents, along with any draft board meeting minutes to be approved.

Financial Reporting Requirements – Fla. Stat. 720.303(7)

HOAs of at least 1,000 parcels must always provide audited financial statements.

HOAs may not reduce the level of financial reporting requirements permitted by statute by member vote for consecutive years.

Debit Cards – Fla. Stat. 720.303(13)

HOAs are prohibited from using debit cards issued in the name of the Association.

Accounting – Fla. Stat 720.303(14)

HOAs must provide a detailed accounting of amounts owed within 15 business days of a written request by a parcel owner. A parcel owner may only request an accounting every 90 days. Failure to respond within 15 business days waives the Association's ability to collect certain fines. Should an HOA receive a request for an accounting that for a file in collections with the law firm, the Association or management should immediately contact legal counsel.

Director Certification and Educational Curriculum – Fla. Stat. 720.3033(1)

The amendment eliminates the ability of newly elected directors to self-certify. It now requires that newly directors within 90 days of being elected or appointed must complete a DBPR approved education class and provide the same to the HOA. The certificate of completion is valid for up to four (4) years, and must be renewed thereafter every four (4) years.

In addition, all HOA directors are now required annually to complete four (4) hours of continuing education. If more than 2,500 parcels, eight (8) hours of continuing education is required annually.

Failure to complete the required education classes above results in the automatic suspension of a director until he or she complies with the requirements.

Architectural Review Restrictions – Fla. Stat. 720.3035

The statute was amended to prohibit a HOA or its architectural committee from enforcing or adopting a covenant, rule, or guideline that:

- Limits or places requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel, an adjacent common area, or a community golf course.
- Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the HOA if such system is:
 - not visible from the parcel's frontage, an adjacent parcel, an adjacent common area, or a community golf course; and
 - is substantially similar to a system that is approved or recommended by the HOA or a committee thereof

The statute now requires that a denial of a homeowner's architectural application for the construction of the structure or other improvement on a parcel must include the rule or covenant which the Association relied, and the specific aspect or portion of the proposed improvement that does not conform to such covenant or restriction.

Installation, Display and Storage of Items – Fla. Stat. 720.3045

The statute was amended to now provide that an HOA cannot restrict parcel owners or their tenants from installing, displaying, or storing any items which are not visible from the parcel's frontage or an adjacent parcel, an adjacent common area, or a community golf course regardless of any HOA covenants, restrictions, bylaws, rules, or requirements. Such items include, but are not limited to, artificial turf, boats, flags, vegetable gardens, clotheslines, and recreational vehicles.

Levying Fines – Fla. Stat. 720.305(2)

The statutory fine procedures have been amended to afford additional periods within which owners or other violators can cure a violation and avoid a fine or suspension.

Once the Board levies a fine for a violation, at least fourteen (14) days written notice of a fine committee hearing must be sent to the parcel owner and violator. Such committee hearing must be conducted within ninety (90) days of the initial notice. The parcel owner and violator have the right to attend such committee hearing telephonically or by other electronic means.

Within seven (7) days after the hearing, the committee must provide written notice to the parcel owner and violator of the committee findings, including any applicable fines or suspensions imposed or rejected, how the parcel owner or other violator may cure a continuing violation (including a deadline for compliance), and the date by which the fine must be paid, which must be at least thirty (30) days after delivery of the notice. We recommend sending all such notices via email, certified mail return receipt requested, and first-class U.S. Mail.

If the parcel owner or violator cures the continuing violation as set forth in the notice referenced above, the fine may not be imposed.

Fines for Garbage Cans and Holiday Decorations & Lights – Fla. Stat. 720.305(7)

HOAs may not impose a fine or suspension for leaving garbage receptacles at end of a driveway less than 24 hours before or after the designated garbage collection day or time.

HOA's must provide written notice and a one-week cure period before imposing any fines or suspension concerning holiday decorations or lights left upon a structure or upon the parcel longer than as permitted in the governing documents.

Governing Document Prohibitions – Fla. Stat. 720.3075

An HOAs governing documents cannot prohibit the following:

- The parking of personal pickup trucks, work vehicles, or first responder vehicles upon an owner's driveway. The statute does not prohibit HOAs from restricting the parking of such vehicles on private roadways.
- Work vehicle is defined as any vehicle, regardless of any official insignia or visible designation, as long as the vehicle is not a commercial motor vehicle as defined by Fla. Stat. 320.01(25).
- Inviting, hiring, or allowing entry of a contractor who is not on a preferred vendor list, or a contractor who does not hold a professional or an occupational license.

Interest Charges – Fla. Stat. 720.3085

If the governing documents authorize the charging of interest on unpaid assessments, the interest charged must be simple interest.

"Kaufman" Language: Do these new changes apply to all homeowners' associations regardless of restrictions in the governing documents? Perhaps not. In Florida, governing documents, such as the declaration of restrictive covenants, are considered contracts and are under certain circumstances are deemed to be subject to statutes that were operative on the date the document became effective. However, if the governing documents do not include language stating that future amendments to Florida Statutes are incorporated automatically into the governing documents, arguably, those future statutory changes do not apply. There can be exceptions to this rule when statutes are deemed to be remedial or procedural (as opposed to substantive). This issue may be addressed by the courts in the future on some of these laws. In the meantime, given the lack of case or statutory guidance regarding these new laws, we recommend you consult with legal counsel regarding the new laws' applicability to your community because it is a complicated issue.

HB 59 HOA Records (July 1, 2024)

HOA Records and Rules – Fla. Stat. 720.303(13)

The statute was created to provide that HOAs shall provide a physical or digital copy of the Association's Rules and Covenants to every member of the Association on or before October 1, 2024. The Association must also provide a digital or physical copy of the rules prospectively.

If Rules or Covenants are amended, the Association must also provide an updated copy of such documents to all owners.

The requirements of this new statute may be met by posting a complete copy of the HOA's Rules and Covenants, or a direct link thereto, on the homepage of the Association's website, and the Association sends notice to each owner that a digital copy is available on the website.

HB 293 Hurricane Protections for HOAs (May 28, 2024)

HOA Hurricane Protections – Fla. Stat. 720.3035(6)

The statute was amended to mandate that each HOA (either through its Board or architectural committee), adopt hurricane protection criteria for each structure or improvement governed by the Association. The specifications for hurricane protections may include the color and style of hurricane protection products and the criteria must comply with relevant building code. Importantly, these specifications may require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

The term "hurricane protection" includes, but is not limited to, roof systems recognized by the Florida Building Code which meet ASCE 7-22 standards, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, exterior fixed generators, fuel storage tanks, and other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the association.

An Association is prohibited from denying an application for installation, enhancement, or replacement of hurricane protection by an owner which conforms to the criteria adopted by the Association or its architectural committee.

House Bill 1645 – Energy Resources (July 1, 2024)

HOA Hurricane Protections – Fla. Stat. 720.3075(3)

The statute was amended to preclude HOA restrictions from prohibiting certain types of fuel sources of energy production and appliances in their governing documents.

Legislation Affecting Condominiums (Ch. 718) and Cooperatives (Ch. 719)

HB 1021 Community Associations (July 1, 2024)

Milestone Inspection – Fla. Stat. 553.899(4)

Four-family dwellings with three or fewer habitable stories above ground are now exempt from the Milestone Inspection requirement.

Fidelity Bonding – Fla. Stat 718.111(11)(h)

Condominiums must maintain the required insurance policies or fidelity bonding covering all persons who control or disburse funds for the Association. Failure to do so may result in fines and penalties imposed by the DBPR.

Official Records – Fla. Stat. 718.111(12)

The amendment affirms that unit owner email addresses are only accessible as part of an official records request, and then, only if a unit owner consented to receiving Condominium notices by email, or otherwise expressly authorized the dissemination of his or her email address to other unit owners. A Condominium must ensure that the email addresses of unit owners are only used for business operations of the Condominium and may not be sold or shared with outside third parties.

Official records also include building permits and board member education certificates. Accounting records subject to inspection are now deemed to also include invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by a Condominium.

The statute was amended to clarify that official records must be maintained in an organized manner to facilitate inspection. In response to a records request, a Condominium must simultaneously provide a check list of all records available for inspection and copying, and must identify all of the records not made available for the inspection. The check list is considered an official record that must be maintained for seven years.

The statute clarifies that a Condominium may fulfill a records request by directing an owner to official records available on a Condominium's website.

On or before January 1, 2026, Condominiums with 25 or more units must have a website and post current digital copies of official records as required by statute under subsection Fla. Stat. 718.112(12)(g)(1).

Financial Reports – Fla. Stat. 718.111(13)

Condominiums may now deliver financial reports by mail, email, fax, or personal delivery. This section also prohibits a Condominium from waiving the annual financial reporting requirements for consecutive fiscal years.

Debit Cards – Fla. Stat. 718.111(15)

Condominiums are prohibited from using debit cards issued in the name of the Condominium. Additionally, there are criminal penalties associated with its use.

Board Meetings, Member Questions, Contract Approvals – Fla. Stat. 718.112(2)

The statute was amended to require the Board of Directors of residential condominium associations of more than 10 units to meet at least once each quarter. At least four times each year the meeting agenda must include an opportunity for members to ask questions concerning reports on the status of construction or repair projects, the status of revenues and expenditures during the current fiscal year, and other issues affecting a Condominium.

If a Condominium is considering the approval of a contract for goods or services, a copy of the proposed contract must be provided with the Board Meeting notice and made available for inspection or through the Condominium's website.

Hurricane Protection – Fla. Stat. 718.103(19) & Fla. Stat. 718.113(5)

The statutory amendments expanded the scope of Fla. Stat. 718.113(5) to include not simply shutters, but also other types of Hurricane Protection defined as hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

If a Condominium intends to make it mandatory for unit owners to install certain types of Hurricane Protection, such mandate must be approved either through a vote of the unit owners or an amendment of the Declaration of Condominium. Please contact legal counsel to discuss the proper procedures.

A Condominium cannot install, nor require any member to install, new Hurricane Protection if an owner's unit already had Hurricane Protection that has not yet reached the end of its useful life.

The amendment requires that if Hurricane Protection must be removed to allow the Association to maintain, repair or replace of the condominium property, the Condominium is obligated to remove and reinstall such Hurricane Protection, including the costs thereof.

The statute was also amended to provide that a unit owner that previously installed Hurricane Protection that complies with the Building Code is excused from any assessment levied by a Condominium or is entitled to a credit if the same type of Hurricane Protection is installed by a Condominium. The credit is equal to the amount the unit owner would have been assessed to install the Hurricane Protection.

Director Certification and Educational Curriculum – Fla. Stat. 718.112(2)(d)(4).b

The statute was amended to now require that a Director of a residential condominium must:

- (i) Certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members; and
- (ii) Submit to the secretary of the association a certificate of having satisfactorily completed the educational curriculum administered by the division or a division-approved condominium education provider. The educational curriculum must be at least 4 hours long and include instruction on milestone inspections, structural integrity reserve studies, elections, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements.

Each newly elected or appointed director must submit to the secretary of a Condominium the written certification and educational certificate within one (1) year before being elected or appointed or ninety (90) days after the date of election or appointment. A director of a residential condominium who was elected or appointed before July 1, 2024, must comply with the written certification and educational certificate requirements in this sub-subparagraph by June 30, 2025. Such educational certificate is valid for seven (7) years, as long as the director continuously serves on the Board of Directors.

In addition, directors of a residential condominium must complete one (1) hour of continuing education by a DBPR provider each year, and submit a certification of completion to the Condominium.

Structural Integrity Reserve Study (SIRS) – Fla. Stat. 718.112(2)(g)

In addition to the Milestone Inspection Report, the statute now provides that within 45 days after receiving the SIRS a Condominium must furnish a copy of the SIRS to each unit owner or provide notice that the completed study can be examined and copied upon a written request. This notice must be sent via US Mail, email, or personal delivery.

Additionally, within the same 45-day timeframe following receipt of the SIRS, a Condominium is obligated to submit a statement to the DBPR confirming the completion of the study and its availability to every owner.

Retaliation/SLAPP (Strategic Lawsuit Against Public Participation) – Fla. Stat. 718.1224

The statute has been amended to restrict the use of Condominium funds to bring lawsuit against unit owners who in good faith exercise protected speech activities and enumerated under the statute.

Notice of Suspension of Voting Rights – Fla. Stat. 718.303

The statute was amended to provide that at least ninety (90) days before an election, a Condominium must notify a unit owner that his or her voting rights may be suspended due to non-payment of any assessment, fee or other monetary obligation owed to the Condominium.

DBPR Jurisdictional Oversight – Fla. Stat. 718.501

The statute was amended to increase the breadth of the DBPR investigative reach and oversight.

HB 1029 My Safe Florida Condominium Pilot Program (July 1, 2024)

Condominium Pilot Program – Fla. Stat. 215.5587

The statute establishes the My Safe Florida Condominium Pilot Program (MSFCP) – the Condo counterpart to the My Florida Safe Home Program. It provides mitigation grants (limited to \$175,000 per association) to Condos for improvements recommended in a Hurricane Mitigation Inspection Report, such as roof-related and opening protection-related projects. It is expected that the application website will be live as of July 2024.

House Bill 1263 – My Florida Safe Home Program (July 1, 2024)

Residential Pilot Program – Fla. Stat. 215.5586

The statute makes additional changes to improve the operation and effectiveness of the My Florida Safe Home Program, which provides mitigation grants to eligible applicants who made their homes less vulnerable to hurricane damage.