



ROSS EARLE BONAN & ENSOR, P.A.

VOLUME 18 SEPTEMBER 2022

REB LAW REVIEW

INSIDE THIS ISSUE:

NEWS	1
AUTHORIZED TREE REMOVAL	2
PICKETING IN RESIDENTIAL AREAS	2
US SPACE FLAGS	2
RADIO SIGNAL STRENGTH FOR FIRE DEPARTMENT	2
COMMUNITY POOL SIGNAGE	3
BUILDING SAFETY FOR CONDOMINIUMS AND COOPERATIVES	4

Greetings to all of our clients, friends and colleagues. It has been another challenging year for our Community Association clients. Associations continue to navigate the operation of their communities through a pandemic and now, many face challenges stemming from the new legislation resulting from the horrific condominium collapse a year ago in Surfside. Please see details of that legislation in the pages to follow.

We are happy to announce that John Carrigan has been elevated from a minority shareholder to a full equal shareholder in the firm.

On a personal note, we have had some changes with our attorneys and staff. Deborah Ross and her husband are now empty nesters. Her daughter is a college graduate and her son is attending the University of Pennsylvania. David Earle is not far off from that status with one daughter away in college and another entering her senior year of high school. Jacob Ensor is on the other side of the spectrum- he and his wife, Lori Steger, have welcomed a new son, Reid Eli Steger, born June 24th. Reid is certainly doted over by his four sisters and parents.

We welcome a new associate attorney, Gary Simmons, admitted to the Florida Bar in March 2018. He is a 5th generation Floridian and Stuart native. Mr. Simmons earned his B.A. in History with a Minor in Secondary Education from the University of Florida in 2006, and earned his Masters in Education in 2008. After teaching in public, private, and charter schools all over Florida, Mr. Simmons decided to pursue a career in the legal field. He graduated with his J.D. from Florida State University in 2017 and worked as a Public Defender in Orlando and private practice before joining Ross Earle Bonan & Ensor, P.A.

ROSS EARLE BONAN & ENSOR, P.A.

Royal Palm Financial Center
Suite 101
789 SW Federal Highway
Stuart, Florida 34994
Phone: 772-287-1745

Transocean Office Building
Suite 220
1701 Highway A1A
Vero Beach, Florida 32963
Phone 772-563-9555

Authorized Tree Removal (Chapter 2022-121, Laws of Florida)

This law provides greater clarity as to when a local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of trees on residential property that pose an unacceptable risk.

- Residential property is defined as a single-family, detached building located on a lot actively used for single-family residential purposes.
- The standard by which a tree may be removed has been changed from “presenting a danger” to “posing an unacceptable risk” which is defined as when removal is the only means to practically mitigate risk to a moderate level as defined in Best Management Practices -Tree Risk Assessment.

Picketing in Residential Areas (Chapter 2022-118, Laws of Florida)

Picketing or protesting in or before a residential dwelling with the intent to harass or disturb persons occupying the residential dwelling is now prohibited. The legislation also provides for notice requirements by law enforcement and for penalties if the instructions by law enforcement officers are not complied with.

United States Space Force Flags (Chapter 2022-183, Laws of Florida)

The flag representing the new United States Space Force branch of the service is now added to Florida Statutes Section 718.113 and Section 720.304 permitting parcel owners in condominium and mandatory homeowners associations to fly flags recognizing the new service branch on designated holidays.

Radio Signal Strength for Fire Department (Chapter 2022-210, Laws of Florida)

Modifies code to require certain buildings to meet a minimum radio signal strength for fire departments. Buildings exempt from this requirement are buildings (a) with wood frame construction, (b) less than 75 feet in height, (c) with less than 150 dwellings, or (d) buildings with dwelling units that discharge to the exterior or to a corridor which leads directly to an exit.

- To determine whether a building requires the installation of signal strength enhancing technology, the premises must be inspected by an approved Bi-Directional Amplifier (BDA) inspector/installer.
 - Communications signals must provide 99% or greater coverage in critical areas including but not limited to: Emergency Command Centers, Fire Pump Rooms, Elevator Lobbies, Sprinkler valve locations, Exit Stairs, and Exit Passageways.
 - Other general areas of the building must provide communication signals of 90% or greater.
 - Any amplification technology must have two power sources: the primary source, such as commercial power, or a dedicated generator along with a battery backup which is capable of supporting the system at 100% operation for a period of 12 hours.

- Two-way radio communication enhancement systems or other equivalents may be installed to meet the requirements.
- Existing “High-Rise” buildings are exempt from these requirements until January 1, 2025.
 - High-Rise buildings are defined in the Florida Building Code as follows:
 - A building with an occupied floor located more than 75 feet (22 860 mm) above the lowest level of fire department vehicle access.
 - Though not required to comply until January 1, 2025, High-Rise buildings not currently in compliance must, by January 1, 2024, apply for appropriate permits and demonstrate that the building will be in compliance.

Community Pool Signage (Florida Building Code, Section 454.1.2.3.5, Effective 1/1/2022)

Regulates signage that must be present on community pools and required rules

- All pools shall add the maximum pool depth to their signage in 2-inch letters
- Signs must list the following rules:
 1. No food or beverages in the pool or on pool wet deck. Commercially bottled water in plastic bottles is allowed on the pool wet deck for pool patron hydration.
 2. No glass or animals in the fenced pool area (or 50 feet (15.24m) from unfenced pool).
 3. Bathing load: ___ persons.
 4. Pool hours: ___ a.m. to ___ p.m.
 5. Shower before entering.
 6. Do not swallow the pool water.
 7. “NO DIVING,” in 4-inch (102mm) letters if the pool is 200 square feet (18.58 square meters) in area or greater without an approved diving well configuration.
 8. “POOL MAXIMUM DEPTH: ___ FEET,” in 2-inch (51mm) letters with the previously listed pool rules.
- If the pool includes a sun shelf, the following rules are also required:
 9. “WARNING: DROP OFF AT SUN SHELF EDGE IS ___ FEET DEEP” in 4-inch (102mm) letters.
 10. “DO NOT PLACE FURNITURE IN POOL.”
- Note the definition of “wet deck”:
 - The 4-foot-wide (1219mm) unobstructed pool deck area around the outside of the pool water perimeter, curb, ladders, handrails, diving boards, diving towers, or pool slides, waterfalls, water features, starting blocks, planters or lifeguard chairs.
- Also the rules required to be listed on the sign requirements are currently different from the rules actually required by the Department of Health Pool Regulations Chapter 64E-9.004.
 - The language found in the rules does not include the prohibition on food or beverage on the “wet deck” and only prohibits food or beverage from being in the pool.
 - “(4) Food, beverages, glass containers, and animals are prohibited in the pool.”

- Prior language more closely followed the language found in the building code; however it appears that the building code was not updated to include this change in health regulations.

Building Safety for Condominiums and Cooperatives (Chapter 2022-269, Laws of Florida)

On May 26, 2022, Governor Ron DeSantis signed Senate Bill 4D into law, which provides several updates and new statutory provisions related to condominium and cooperative building safety in the aftermath of the tragic Champlain Towers collapse. These provisions are comprehensive and must be followed closely to ensure compliance. This is a summary of the most important changes for our condominium and cooperative clients.

Section 553.899, Florida Statutes:

First and Foremost, Senate Bill 4D creates Section 553.899, Florida Statutes, which calls for mandatory structural inspections for condominium and cooperative buildings. Pursuant to this Section, a condominium association under Chapter 718 and a cooperative association under Chapter 719 must have a milestone inspection performed **for each building that is three stories or more in height** by December 31st of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If the building is located within 3 miles of a coastline, the association must have a milestone inspection performed by December 31st of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter.

Section 553.899(2)(a) defines “milestone inspection” as a structural inspection of a building, including an inspection of load bearing walls and the primary structural members and primary structural systems, by a licensed architect or engineer authorized to practice in Florida for the purpose of 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. The purpose of such inspection is not to determinate if the condition of an existing building is in compliance with the Florida Building Code or the fire safety code.

If a milestone inspection is required under Section 553.899 and the building’s certificate of occupancy was issued on or before July 1, 1992, the building’s initial milestone inspection must be performed by December 31, 2024. 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.

Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the association by certified mail, return receipt requested. Within 180 days after receiving this written notice, the association must complete phase one of the milestone inspection. Completion of phase one means the licensed

engineer or architect who performed the phase one inspection submitted the inspection report to the local enforcement agency.

For phase one of the milestone inspection, a licensed architect or engineer authorized to practice in this state shall perform a visual examination of habitable and non-habitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration to any building components under visual examination, phase two of the inspection is not required. An architect or engineer who completes a phase one milestone inspection must prepare and submit an inspection report. "Substantial structural deterioration" is defined as "distress that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration."

Phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or non-destructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report. The Section then describes in detail what the licensed engineer or architect must include in the report.

Once the inspection report is complete, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by US mail or personal delivery and by electronic transmission to unit owners who previously consented to receiving notice by electronic transmission; the association must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and the association must publish the full report and inspector-prepared summary on the association's website, if they are required to have one.

A board of county commissioners may adopt an ordinance requiring that the association schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report; however, such repairs must be commenced within 365 days after receiving such report. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial structural deterioration identified in a phase two inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

Structural Integrity Reserve Study:

Sections 718.103 and 719.103, Florida Statutes have been amended to add the term “structural integrity reserve study,” which is defined as follows:

... [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. 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 by an engineer licensed under chapter 471 or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

Further, Sections 718.111 and 719.104, Florida Statutes, have been amended to provide that the structural integrity reserve study is an official record of the association (included as an accounting record), and must be maintained by the association for at least 15 years after the study is completed. The association must also maintain as an official record any other inspection report relating to a structural or life safety inspection of the association property, which must be maintained for 15 years after receipt of the report. A renter of a unit is also entitled to inspect these reports and the reports must be on the association’s website (if the association is required to have one).

Sections 718.112 and 719.106, Florida Statutes have been amended to provide that, 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 items that has deferred maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved for an item is determined by the association’s most recent structural integrity reserve study that must be completed by December 31, 2024. If the amount to be reserved for an item is not in the association’s initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item....Effective December 31, 2024, the members of a unit-owner controlled association may **not** determine to provide no reserves or less reserves than required by this subsection, nor can they vote to use reserve funds, or any interest accruing thereon, that are reserved for the following items: roof, load-bearing walls or other primary structural members, floor, foundation, fireproofing and fire protection systems, plumbing, electrical systems, waterproofing and exterior painting, windows, and any other items that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects these listed items, as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study, for purposes other than their intended purpose. The

structural integrity reserve study must be completed at least every 10 years after the condominium's creation for each building on the condominium property **that is three stories or higher** and must include the above listed components.

In addition, associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, **for each building on the property that is three stories or higher in height**. If an association fails to complete a structural integrity reserve study, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners.

As to the mandatory milestone inspections required by Section 553.899, Florida Statutes, if the association is required to have the inspection, it must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the statutory requirements. The association is also responsible for all costs associated with the inspection. If the officers or directors willfully and knowingly fail to have a milestone inspection performed, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners. Upon completion of a phase one or phase two milestone inspection and receipt of the inspector-prepared summary of the inspection report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium 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.

Sections 718.501 and 719.501, Florida Statutes have been amended to give the Division of Florida Condominiums, Timeshares, and Mobile Homes jurisdiction over complaints related to the procedural completion of milestone inspections and the procedural completion of structural integrity reserve studies. On or before January 1, 2023, associations existing on or before July 1, 2022, must provide the following information to the Division: (1) the number of buildings on the property that are three stories or higher in height; (2) the total number of units in all such buildings; (3) the addresses of all such buildings; and (4) the counties in which all such buildings are located. If there are any changes to this information, the association must provide an update in writing to the Division within 6 months after the change.

Finally, Section 718.503 and 719.503, Florida Statutes were amended to require unit owners, prior to the sale of his or her unit, to provide the prospective purchaser a copy of the inspector prepared summary of the milestone inspection report and the association's most recent structural integrity reserve study or statement that the association has not completed a structural integrity reserve study.