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Dear Valued Client,

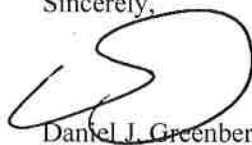
Enclosed with billing this month is the 2024 legislative update covering the relevant changes affecting condominium and homeowner associations this year. You will note there are some significant changes that will require your association to adopt or revise policies, distribute governing documents, organize official records, create websites, entertain more questions in board meetings, cease enforcement of certain deed restrictions and adopt new hurricane protection specifications. Further, all directors are now subject to annual continuing education requirements. To say the least, this was an extremely impactful legislative session, and we are here to help you comply with these new requirements.

For our condominium clients – please note that if you have 25 or more units you will need to create a statutorily compliant website by the end of 2025. This requirement can be satisfied by using a management company portal, so long as it contains the necessary records and notices required by statute. You will also need to organize your records and create a checklist of available records to provide to owners during record inspections. Owners will now have the opportunity to ask questions at board meetings regarding items that may not be on the agenda, and at least 4 times per year you will need to have an open forum section. We understand that this may lengthen board meetings and give rise to potential disruptions, so we strongly encourage you to allow us to help you craft a board meeting participation policy aimed at facilitating effective meetings while still affording owners their statutory rights. Please note that the Association will now only be able to waive its annual financial reporting requirement (review, compilation or audit) every other year. The association will also need to review and revise its hurricane protection policy, or create a new one, as well as review the current Declaration provisions pertaining to same, if any. The state is pushing associations to focus on how best to protect buildings from hurricane and storm damage to keep insurance costs and losses to a minimum. The association may consider applying for a wind mitigation inspection and, potentially, a grant to address upcoming common element roof, window or door projects under the My Safe Florida program. We are ready to help you comply with the voting and application process. Please contact us for help with any of the above items, or to discuss the application of HB 1021 to your association.

For our HOA clients - please note that if you have 100 or more lots you will need to create a statutorily compliant website by the end of this year. This requirement can be satisfied by using a management company portal, so long as it contains the necessary records and notices required by statute. By 10/1/24, you will need to provide a copy of the Declaration and Rules & Regulations to all owners, or at least a postcard notice that these documents are available electronically on the association's website or portal. You will also need to create a record retention policy, which we will assist with. It is our strong recommendation that this be included in a broader record inspection policy that protects the Association and controls the flow of requests and governs the facilitation of record inspections. If you already have a general records policy, we will work with you to update it to include the new retention language. Likewise, if you have an existing violation and fining policy, same will need to be revised to comply with the new fining procedures included in HB 1203. Please contact

us at your earliest convenience to have these policies updated to ensure their enforceability. Like the condominiums, you will also have to create or revise a hurricane protection policy, or add such policy to your existing architectural standards. Please note that the Association will now only be able to waive its annual financial reporting requirement (review, compilation or audit) every other year. Please contact us for help with any of the above items, or to discuss the application of HB 59, 293 or 1203 to your association.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Greenberg', written over a horizontal line.

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## 2024 LEGISLATIVE UPDATE

### HOMEOWNERS ASSOCIATIONS

#### **HB 59**

- By 10/1/24, Associations must provide a physical or digital copy of the Association's rules and covenants, including amendments, to every member of the Association. This requirement may be satisfied by either providing a physical copy to every member (by mail or personal delivery), or by posting the rules and covenants on the Association's website and providing written notice by mail or email (to those members who have consented to receive electronic notices) to the membership advising that they are available digitally. *F.S. 720.303(13)*

#### **HB 293**

- Associations must adopt hurricane protection specifications for all dwellings within the community that are subject to Association architectural control. The specifications may include color and style of the permitted hurricane protection products and any other factors deemed relevant by the Board, and the specifications must comply with all applicable building codes. The specifications may require owners to adhere to an existing unified building scheme to maintain the exterior appearance of the building(s). *F.S. 720.3035(6)*
- Types of hurricane protection products contemplated by the statute include, but are 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, and fuel storage tanks.
- It is unclear the extent to which the Association must make hurricane protection available in its specifications. The Board should exercise its business judgment, in consultation with the appropriate advisors, to adopt hurricane protection standards that balance the members' ability to protect their property and the Association's interest in maintaining the community's aesthetic standard.

#### **HB 1203**

- **Community Association Manager ("CAM") Regulations** – A CAM or CAM firm shall do all of the following (*F.S. 468.4334*):
  - Annually attend at least one member meeting or board meeting of the Association.
  - Provide to Association members certain information, including the contact person, contact information, and the hours of availability.
  - Provide the community's members upon request a copy of the contract between the Association and the CAM or CAM firm.
  - Annually complete at least 10 hours of continuing education.
  - Every two years complete at least five hours of continuing education that pertains to homeowners' Associations, three hours of which must relate to recordkeeping.
- **Official Records** (*F.S. 720.303(4)*)
  - By January 1, 2025, Associations with 100 or more parcels must maintain a digital copy of certain official records on the Association's website (which includes an online portal provided by a CAM firm) or through an application on a mobile device. The Association must provide all members with a username and password and access to the protected sections of the website

that contain the official documents upon request.

- Associations must maintain official records for at least seven years, unless the governing documents of the Association require a longer period of time.
- Associations must create a written record retention policy.
- Associations must provide a copy of records or otherwise make the records available that are subpoenaed by a law enforcement agency within five days of receiving a subpoena.
- Criminal penalties are imposed for destroying or withholding records under certain circumstances.

- ***Financial Reporting***

- Associations with 1,000 or more parcels must prepare audited financial statements on an annual basis regardless of the total overall budget.
- Associations may not vote to waive down the required type of financial statement (compilation, review, or audit) for consecutive years. *F.S. 720.303(7)*
- Associations may not use debit cards. *F.S. 720.303(13)*
- Association members may make a written request for a detailed accounting of any amounts owed to the Association. If the Association fails to provide the accounting within 15 business days of a written request, any outstanding fines of the requester are waived if the fine is more than 30 days past due and the Association did not give prior written notice that the fine was imposed. Members may only request one detailed accounting every 90 days. *F.S. 720.303(14)*

- ***Director Education***

- Newly elected or appointed directors must, within 90 days of being elected or appointed, complete a certification course by a State approved provider. The educational curriculum must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements. The educational certification must be renewed every 4 years. *F.S. 720.3033*
- Directors must now also complete ongoing continuing education as follows:
  - Directors in Associations with fewer than 2,500 parcels must complete at least four hours of continuing education annually.
  - Directors in Associations with 2,500 or more parcels must complete at least eight hours of continuing education annually.

- ***Fining and Enforcement***

- When denying an architectural application, the Association must provide written notice to the parcel owner of the rule or covenant relied upon for such denial. *F.S. 720.3035*
- The Association cannot require review of an HVAC, refrigeration, heating, or ventilating system that is not visible from a parcel's frontage, an adjacent parcel, common area, or community golf course, if a substantially similar system has been previously approved.
- Associations may not prohibit an owner from inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor list of the homeowners' Association or does not have a professional or occupational license.
- Adding to the "backyard" enforcement rule passed last year, Associations may not prevent a homeowner from installing or displaying vegetable gardens and clotheslines (in addition to other items) in areas not visible from the frontage of the parcel, an adjacent parcel, an adjacent common area, or a community golf course. This clarifies that the Association may still issue backyard violations if the violation can be observed from Association common area in addition to the frontage of the parcel and an adjoining parcel. *F.S. 720.3045*
- Associations may not prohibit the parking of a personal vehicle, including a pickup truck, in the property owner's driveway or in any other area where they have a right to park. *F.S. 720.3075(3)(b)*
- Associations may not prohibit a work vehicle, which is not a commercial motor vehicle as

defined by statute, in the property owner's driveway. Florida Statute 320.01(25) defines a commercial vehicle as exceeding 26,001 lbs. or 3 or more axels, so these are the only commercial vehicles that can be prohibited from being parked in public view on the owner's driveway. *F.S. 720.3075(3)(b)*

- Members may not be prohibited from operating a vehicle in conformance with state traffic laws on public roads or rights-of-way or the property owner's parcel, unless the vehicle is a commercial motor vehicle.
- First responder vehicles may be parked anywhere that other permitted vehicles may be parked, including on public roads or rights-of-way within the Association.
- The fining process has been modified to require the following (*F.S. 720.305*):
  - The 14-day notice of the hearing must be in writing.
  - The fining hearing must be held within 90 days of the notice of hearing.
  - The committee may hold the hearing by telephone or other electronic means.
  - If the violation is cured by the hearing, a fine cannot be imposed.
  - The fining committee's decision must be provided to the owner within 7 days of the hearing, and such letter must also advise how the violation may be cured.
  - The due date for paying the fine must be at least 30 days after delivery of the written notice of the committee's decision.
  - Attorney fees and costs cannot be incurred for the violation the owner is being fined for between the fining hearing and the date set for the fine to be paid. Practically, this means that if the Association's governing documents permit pre-litigation attorney fees to be assessed to the owner, such fees can be incurred before the fine is levied, and after the fining process is complete.
  - Associations may not fine for an owner leaving garbage receptacles at the curb or end of the driveway less than 24 hours before or after the designated garbage collection day or time.
  - Association may not fine for leaving holiday decorations or lights up longer than indicated in the governing documents, unless such decorations or lights are left up for longer than one week after the Association provides written notice of the violation to the parcel owner.

## CONDOMINIUMS

### **HB 1021**

- ***Community Association Manager ("CAM") Regulations and Conflicts of Interest – (F.S. 468.4334):***
  - The CAM or CAM firm must return all community Association records in their possession within 20 business days of termination of a services agreement or a written request whichever occurs first, with license suspension and civil penalties for noncompliance, except that the time frames applicable to timeshare plans apply to the records of a timeshare plan.
  - The following activities create a rebuttable presumption that a conflict of interest exists and must be disclosed prior to contract being entered:
    - The CAM or CAM firm (or their relatives) enters into a contract for goods and services with the Association.
    - The CAM or CAM firm (or their relatives) hold a financial interest in a company that enters into or proposes to enter into a contract for goods and services with the Association.
  - The proposed activity that may be a conflict of interest must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the board's meeting agenda and entered into the meeting minutes.
  - The Board must approve contracts with a potential conflict of interest, and all management contracts, by an affirmative vote of two-thirds of all directors present.
  - If the Association receives and considers a bid to provide a good or service that exceeds \$2,500, other than community Association management services, from a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or a relative of such persons,

the Association must also solicit multiple bids from other third-party providers of such good or service.

- If a CAM or CAM firm violates these conflict-of-interest provisions, the Association may terminate their contract without penalty.

- ***Hurricane Protection***

- The uniform definition of “hurricane protection” includes shutters, impact glass, code-compliant windows and doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property.
- Installation and maintenance of hurricane protection is not a material alteration.
- Condominium declarations must delineate the responsibilities of unit owners and Associations for the costs of maintenance, repair, and replacement of hurricane protections, exterior doors, windows, and glass apertures.
- Associations may obtain a majority vote of the membership to require all owners to install hurricane protection. A certificate of the vote must be recorded in the public record.
- Unit owners are not responsible for the cost of removal and reinstallation of hurricane protection if the removal is necessary to repair condominium property, unless the owner is made responsible for these costs in the Declaration.
- If hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the Board may not install the same type of hurricane protection or require that unit owners install the same type of hurricane protection unless the unit owner installed hurricane protection has reached the end of its useful life or it is necessary to prevent damage to the common elements or the unit.
- The Board may require that owners adhere to an existing unified building scheme regarding the external appearance of the condominium when installing hurricane protection.
- Unit owners are not responsible for the cost of any removal or reinstallation of hurricane protection if its removal is necessary for the maintenance repair, or replacement of the condominium property or Association property for which the Association is responsible.
  - If such removal or reinstallation is completed by the Association, the Association may not charge the costs incurred to the owner.
  - If such reinstallation of removal is completed by the owner, the Association must reimburse the owner for the cost or apply the cost as a credit toward future assessments in the amount of the owner’s cost to remove or reinstall the hurricane protection.
  - The Board is responsible to determine if removal or reinstallation of hurricane protection must be completed by the owner or Association.
- If the removal or reinstallation of hurricane protection is the responsibility of the unit owner and the Association completes such removal or reinstallation and then charges the unit owner for such removal or reinstallation, such charges are enforceable as an assessment and may be collected in the same manner as assessments under the statute.

- ***Milestone and SIRS***

- Currently, single-family, two-family, and three-family dwellings are exempt from the milestone inspection requirements. The bill now exempts four-family dwellings with three or fewer habitable stories above ground.
- Associations must notify the Division within 45 days after the SIRS is completed. By January 1, 2025, the Division must create a database of Associations that have completed the SIRS. After December 31, 2024, the Division must include in its annual report a list of all Associations that have completed the SIRS.
- Associations must provide unit owners with a notice that the SIRS is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically to those members who have consented to receive electronic notices.

- ***Official Records***

- Effective January 1, 2026, condominiums with 25 or more units must maintain specified records on a website or mobile app.
  - The division may request access to an Association's website to investigate complaints related to unit owner access to official records on such website.
  - If official records are lost or destroyed, the Association has a good faith obligation to obtain and recover the records as is reasonably possible.
  - E-mail addresses and facsimile numbers are accessible to unit owners if consent to receive notice by electronic transmission has been provided.
  - The sale or sharing of personal information to third parties is prohibited.
  - Associations must maintain the official records in an organized manner that facilitates inspection of the records by a unit owner.
  - Associations must maintain a checklist of all records made available for inspection when responding to a record inspection request. The checklist must also identify the records that were not made available for inspection.
  - Associations must maintain additional financial records (e.g., invoices and other documentation that substantiates any receipt or expenditure).
- ***Financial Reporting and Reserves***
    - Associations may not reduce the required type of financial statement (compiled, reviewed, or audited financial statements) for consecutive years.
    - Associations may temporarily pause the funding of reserves or reduce reserve funding if the entire condominium building is uninhabitable due to a natural emergency, as determined by the local enforcement agency, upon majority approval of the Board.
- ***Board Meetings***
    - Associations of 10 or more units must meet at least quarterly.
    - Four times each year the agenda must allow members to ask questions to the Board – i.e., an open forum agenda item.
    - At all Board meetings, members are permitted to ask questions concerning the status of construction or repair projects, revenues and expenditures, and “other issues affecting the condominium,” regardless of whether such items are on the agenda.
    - Notice of meetings regarding regular or special assessments must state that such assessments will be considered and include the cost and purpose of such assessments.
    - If the agenda includes approval of a contract, a copy of the proposed contract must be provided with the meeting notice.
- ***Director Education***
    - Newly elected or appointed directors must submit both the written certification that they have read the Association's governing documents, will work to uphold the documents to the best of their ability and faithfully discharge their duties, and submit a certificate of completion of an approved condominium education course. The course must be 4 hours of training which includes instruction on milestone inspections, SIRS, elections, recordkeeping, financial literacy and transparency, levying of fines, and meeting requirements.
    - In addition to the initial certification class, all directors must complete 1 hour of continuing education annually about recent changes to the condominium laws and rules during the past year.
    - Proof of compliance with the above requirements must be kept in the official records.
- ***Voting***
    - Associations must notify an owner that his or her voting rights may be suspended due to nonpayment of a fee or other monetary obligation at least 90 days before an election.
    - Unit owners may consent to electronic voting in elections by using an electronic means of consent.
    - If the Association authorizes online voting, the Board must honor an owner's request to vote electronically at all subsequent elections, unless the owner opts out.

- ***SLAPP and Defamation Suits***
  - The law revises the prohibitions against “strategic lawsuits against public participation” or “SLAPP” suits, which occur when Association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the Association. The bill includes condominium Associations in the SLAPP suit prohibition, and protects unit owners who report complaints to government agencies or law enforcement, or make public statements critical of the operation or management of an Association by prohibiting Associations from:
    - Retaliating against unit owners by increasing assessments, threatening to bring an action for possession or other civil action; and
    - Spending Association funds in support of defamation, libel, or tortious interference actions against a unit owner
  
- ***The Division of Condominiums, Timeshares and Mobile Homes (“The Division”)***
  - The bill expands the Division’s post-turnover jurisdiction to include:
    - Procedures and records related to financial issues, including annual financial reporting, assessments for common expenses, fines, and commingling funds;
    - Elections, including election and voting requirements, and recall of board members;
    - The maintenance of and unit owner access to Association records;
    - The procedural aspects of meetings, such as unit owner meetings, quorums, voting requirements, proxies, board of administration meetings, and budget meetings;
    - Disclosure of conflicts of interest;
    - Removal of a board director or officer under chapter 718, F.S.;
    - The procedural completion of structural integrity reserve studies; and
    - Any written inquiries by unit owners to the Association.
  - In addition, the bill:
    - Requires that the Division must refer to local law enforcement authorities any person it believes has engaged in any criminal activity.
    - Provides that the Division and the office of the condominium ombudsman may attend and observe any meeting of the board or any unit owner meeting, for the purpose of performing the duties of the division or the office of the ombudsman.
    - For Fiscal Year 2024-2025, appropriates \$6,122,390 in recurring and \$1,293,879 in nonrecurring funds from the General Revenue Fund to the Department of Business and Professional Regulation, and 65 full-time equivalent positions with an associated salary rate, for the purpose of implementing the bill.
  
- ***Criminal Violations***
  - The bill provides the following criminal penalties for the below acts:
    - Second degree misdemeanor for any director or member of the board or Association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an Association;
    - First degree misdemeanor for knowingly and intentionally defacing or destroying required accounting records, or failing to create or maintain required accounting records, with the intent of causing harm to the Association or one or more of its members;
    - Third degree felony to willfully and knowingly refuse to release or produce Association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape;
    - Third degree felony for an officer, director, or manager of a condominium Association to knowingly solicit, offer to accept, or accept a kickback; and
    - First degree misdemeanor for engaging in specified fraudulent voting activity, and knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to Association elections.



- **Miscellaneous**
  - The attendance of a director at a meeting of the board is sufficient to constitute a quorum for the meeting, and for any vote taken in his or her absence, if the director is required to leave the room during the discussion and voting on a contract in which the director, or a relative, has an interest.
  - The statute of repose (the ultimate deadline for filing legal action) for certain actions will not begin to run until the unit owners have elected a majority of the members of the Board. This is especially relevant for construction defect claims.
  - The annual financial statement and annual budget of the Association must be given to a prospective purchaser of a unit by a non-developer seller of a unit.
  - Developers of nonresidential condominiums have the option of delivering to the escrow agent a surety bond or an irrevocable letter of credit with specified conditions.
  - Escrow requirements for developers have been revised.
  - The definition for the term “condominium property” is revised to mean “the lands, leaseholds, improvements, any personal property, and all easements and rights appurtenant thereto, regardless of whether contiguous, which are subjected to condominium ownership.”
  - Effective October 1, 2024, the bill provides disclosure requirements for the creation of condominiums within a portion of a building or within a multiple parcel building. The Association of a condominium created within a portion of a building or within a multiple parcel building has the right to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based and to receive an annual budget with respect to such costs.

### **MY SAFE FLORIDA HOME**

#### **HB 1029**

- The program is available to condominium Associations located within 15 miles of a coastline and is regulated by the Department of Financial Services (“DFS”). It provides for hurricane mitigation inspections and grants to Associations if the following conditions are met:
  - Inspections
    - Must be approved by either a majority of the Board or a majority of the total voting interests of the community.
    - Will be conducted at no cost to the Association and will identify:
      - The present mitigation measures that are needed.
      - Insurance premium discounts that may be available.
      - The improvements to existing Association property that are needed to reduce the property’s vulnerability to hurricane damage.
    - The inspection will include, at a minimum:
      - An inspection of the property.
      - A report that summarizes the results of the inspection.
      - Recommended mitigation improvements.
      - Estimated cost of such improvements.
      - Information regarding potential insurance premium savings.
    - The application for inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the Board that the Association has submitted only a single application for each property the Association operates or maintains.
    - The Association may apply for an inspection without also applying for a grant.
  - Grants
    - The grant may be used to make improvements recommended in the hurricane mitigation inspection report.
    - The application for grant must:
      - Contain a signed or electronically verified statement made under penalty of perjury by the president of the Board that the Association has submitted only a single application for each property the Association operates or maintains.

- Include a notarized statement from the President of the Board containing the name and license number of each contractor the Association intends to use for the mitigation projects.
- Include a notarized statement from the President of the Board which commits to the DFS that the Association will complete the mitigation projects.
- For common element projects, the grant application must be approved by either a majority of the Board or a majority of the total voting interest.
- For grants benefiting individual units, the grant application must be approved by a unanimous vote of all unit owners within the structure or building that is the subject of the grant.
- The Association may choose its own contractors so long as they meet all qualification, certification, and licensing requirements in general law.
- The mitigation projects must be completed, or an extension requested, within 1 year of the grant approval. The projects must be completed and pass inspection before the grant money is issued.
- Grants shall be awarded as follows:
  - All grants must be matched on the basis of \$1 provided by the Association and \$2 provided by the State.
  - For roof-related projects, the grant contribution is \$11 per square foot multiplied by the square footage of the replacement roof, not to exceed \$1,000 per unit, with a maximum grant award of 50% of the cost of the project.
  - For opening-related projects, the grant contribution is a maximum of \$750 per replacement window or door, not to exceed \$1,500 per unit, with a maximum grant award of 50% of the cost of the project.
  - An Association may receive grant funds for both roof and opening projects, but the maximum total award is \$175,000 per Association.