

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/CS/SB 1178

INTRODUCER: Fiscal Policy Committee; Appropriations Committee on Agriculture, Environment, and General Government; Regulated Industries Committee; and Senator Bradley and others

SUBJECT: Community Associations

DATE: February 28, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Oxamendi/Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u>Oxamendi</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1178 relates to the governance of condominium and cooperative associations and the practice of community association management. Regarding community association managers (CAMs) and CAM firms, the bill:

- Requires CAMs and CAM firms to 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.
- Provides conflict of interest disclosure requirements and a process for associations to follow when approving contracts with CAMs and CAM firms, or a relative, that may present a conflict of interest. The requirements are similar to the conflicts of interest provisions for condominium associations and their officers and directors.
- Provides grounds to discipline CAMs and CAM firms for failure to disclose a conflict of interest as required by the bill.

Regarding the milestone inspection requirements, the bill exempts four-family dwelling with three or fewer habitable stories above ground. Current law exempts single-family, two-family, and three-family dwellings from these requirements.

Regarding access to the official records of a condominium association, the bill:

- Requires official records be maintained in an organized manner that facilitates inspection by unit owners.
- Prohibits access to unit owner email addresses and facsimile numbers without a unit owner's consent, and prohibits the sale or sharing of such personal information to third parties.
- Effective January 1, 2026, decreases from 150 units to 25 units the threshold requirement for an association to maintain specified records available for download on the association's website or by an application on a mobile device.
- Requires official records to be provided to the unit owner at no charge if the Division of Condominium, Timeshares, and Mobile Homes (division) subpoenas records an association has failed to timely provide in response to a unit owner's written request.
- Requires associations to maintain additional financial records (e.g., invoices and other documentation that substantiates any receipt or expenditure) to be maintained by a condominium association for inspection by association members as official records.
- Permits associations to fulfill records requests by directing unit owners to the records that are posted on the association's website.
- Requires associations to respond to a records request with a checklist of all records provided.
- Authorizes the division to request access to an association's website to investigate complaints related to unit owner access to official records on such website.

The bill provides the following criminal penalties related to condominium associations:

- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept any thing or service of value or kickback;
- First degree misdemeanor for knowingly or intentionally defacing or destroying required accounting records or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;
- 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; and
- Third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

In addition, the bill provides that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

The bill expands the requirement that officers and directors charged by information or indictment with a criminal violation created in the bill are deemed removed from office and a vacancy declared to include forgery of a ballot envelope or voting certificate, theft or embezzlement involving the association's funds or property, destruction of, or refusal to allow inspection or copying of, an official record in furtherance of any crime, and any criminal violation under ch 718, F.S.

Regarding condominium association budgets, financial reporting, and reserves, the bill:

- Revises the term “deferred maintenance” to “planned maintenance.”
- Prohibits associations from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for consecutive years.
- Revises reserve maintenance requirements to:
  - Require an association to provide unit owners with a notice that the structural integrity reserve study (SIRS) is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.
  - Clarify that the turnover report required under s. 718.301(4)(p), F.S., consists of a SIRS.
  - Allow a temporary pause in the funding of reserves or a reduction in reserve funding if the entire condominium building is uninhabitable due to a natural emergency, as defined in s. 252.34, F.S., as determined by the local enforcement agency, upon the approval of a majority of the members. Any reserve account funds held by the association may be expended, pursuant to the board’s determination, to make the condominium building and its structures habitable. Upon the determination by the local building official that the condominium building and its structures are habitable, the association must immediately resume contributing funds to its reserves.

In addition, the bill requires condominium associations to notify the division within 45 days after the structural integrity reserve study is completed, and requires the division to maintain, by January 1, 2025, a database on its website of associations that have completed the SIRS. The bill also requires the division to include an internet link to a list of associations that have completed the SIRS in its annual report.

Regarding meetings of the boards of administration for condominium associations, the bill:

- Requires condominium associations of 10 or more units to meet at least once each quarter for the purpose of responding to inquiries from members and informing members on the status of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association.
- Requires associations to include a copy of the proposed contract if the notice for a board meeting relates to the approval of a contract.

The bill provides education requirements for the officers and directors of condominium associations to:

- Require newly elected or appointed directors to 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 will faithfully discharge their duties, and submit a certificate of completion of an approved condominium education course;
- Provide that the written certification and educational certificate are valid for seven years after the date of issuance and does not have to be resubmitted as long as the director serves on the board without interruption during a seven-year period.;
- Require directors to annually complete continuing education about recent changes to the condominium laws and rules;
- Extend the time an association must retain a copy of an officer or director’s educational certificate from five years to seven years;

- Require association directors to certify that all directors have completed the required written certification and educational certificate requirements; and
- Allow associations to pay, as an expense of the association, for the cost of a director's required educational curriculum and certificate; and require the education curriculum to be at least four 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.

Regarding voting in condominium associations, the bill:

- Provides criminal penalties related to fraudulent voting activities that are punishable as first degree misdemeanors, including preventing members from voting, and menacing, threatening, or using bribery to directly or indirectly influence or deter a member from voting.
- Requires associations to notify a unit owner or member that his or her voting rights may be suspended due to nonpayment of a fee or other monetary obligation at least 90 days before an election.
- Allows condominium and cooperative unit owners to consent to electronic voting in condominium association elections by using an electronic means of consent. Current law requires the consent to electronic voting to be made in writing.

The bill revises the requirements for the installation of hurricane protection in a condominium building to:

- Create a uniform definition for "hurricane protection," to include 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;
- Require condominium declarations to delineate the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections, exterior doors, windows, and glass apertures;
- Provide when a majority vote of the unit owners is required to install hurricane protection;
- Provide a uniform procedure for approval of hurricane protection by the unit owners, including requiring the board to record a certificate in the public records evidencing that the association has voted to install hurricane protection; and
- Provide that, unless otherwise provided in a declaration of condominium recorded in the public record before July 1, 2024, unit owners are not responsible for the cost of removal and reinstallation of hurricane protection if the removal is necessary to repair condominium property.

The bill 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 condominium association.

The bill specifically includes condominium associations in the SLAPP suit prohibition, and protects unit owners from reporting complaints to government agencies or law enforcement, or making public statements critical of the operation or management of an association by:

- Prohibiting associations from retaliating against unit owners, such as by increasing assessments, threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action; and

- Prohibiting associations from spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

Regarding officers and directors of a condominium association, the bill provides that the attendance of an officer or 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 when the director is required to leave the room during the discussion and the taking of a vote on a contract in which the director, or his relative, has an interest.

The bill expands the division's post-turnover jurisdiction to include to include procedure and records related to financial issues under specified provisions, elections under specified provisions (including electronic voting), allegations of criminal violations under ch. 718, F.S., procedural aspects of meetings under specified provisions, disclosure of conflicts of interest, removal of directors and officers for specified criminal violations, 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 whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.
- Authorizes the division to issue citations and promulgate rules to provide for citation bases and citation procedures in accordance in the division's authority, responsibilities, and duties outlined in s. 718.501, F.S.
- Authorizes the division to impose a civil penalty for a violation of ch. 617, F.S., relating to corporations not for profit.
- Provides that the division director or any officer or employee of the division, and the condominium ombudsman or employee of the office of the condominium ombudsman may attend and observe any meeting of the board or any unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association, for the purpose of performing the duties of the division or the office of the ombudsman under ch. 718, F.S.

The bill requires the division to submit findings by January 1, 2025, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, of its review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement.

The bill provides that the statute of limitations and statute of repose for certain actions available to a condominium association or a cooperative association, will not begin to run until the unit owners have elected a majority of the members of the board of administration.

The bill also requires the Florida Building Commission division to submit a report by December 1, 2024, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, of its review of the standards to prevent water intrusion through the tracks of sliding glass doors.

Regarding cooperative associations, the bill:

- Revises the term “deferred maintenance” to “planned maintenance.”
- Requires an association to provide unit owners with a notice that the structural integrity reserve study is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.
- Clarifies that the turnover report required under s. 719.301(4)(p), F.S., consists of a structural reserve study.

The bill has a significant negative fiscal impact on state expenditures. For the 2024-2025 fiscal year, the bill 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 of 3,180,319 are authorized, for the purpose of implementing the provisions of this bill. See Section V., Fiscal Impact Statement.

Except as otherwise expressly provided, the bill takes effect July 1, 2024.

## II. Present Situation:

### Milestone Inspections

Section 553.899, F.S., requires residential condominium and cooperative buildings that are three stories or more in height, as determined by the Florida Building Code, to have a milestone inspection by December 31 of the year in which the building reaches 30 years of age. However, if a building reaches 30 years of age before July 1, 2022, the initial milestone inspection must be performed before December 31, 2024. If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building’s milestone inspection must be performed before December 31, 2025. The local enforcement agency will provide written notice of the required inspection to the association.<sup>1</sup>

Local enforcement agencies that are responsible with enforcing the milestone inspection requirements may set a 25-year inspection requirement if justified by local environmental conditions, including proximity to seawater.<sup>2</sup> Local enforcement agencies may also extend the inspection deadline for a building upon a petition showing good cause that the owner or owners of the buildings have entered into a contract with an architect or engineer to perform the milestone inspection services and the milestone inspection cannot reasonably be completed before the deadline.<sup>3</sup>

The milestone inspection requirement applies to buildings that in whole or in part are subject to the condominium or cooperative forms of ownership, such as mixed-ownership buildings. Consequently, all owners of a mixed-ownership building in which portions of the building are subject to the condominium or cooperative form of ownership are responsible for ensuring compliance and must share the costs of the inspection.

The purpose of a milestone inspection is to determine the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determine the general structural

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<sup>1</sup> Section 553.899(3), F.S.

<sup>2</sup> Section 553.899(3)(b), F.S.

<sup>3</sup> Section 553.899(3)(c), F.S.

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.<sup>4</sup> The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code.<sup>5</sup> The milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.<sup>6</sup>

In addition, s. 553.899, F.S.:

- Requires that a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency.
- Provides the minimum contents of a milestone inspection report.
- Requires inspection report results to be provided to local building officials and the affected association.
- Requires that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) or CAM firm must require compliance with those requirements as directed by the board.
- Requires the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.

Within 45 days after receiving a milestone inspection report, the condominium or cooperative association must distribute a copy of an inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner. The inspector-prepared summary must be provided to unit owners, regardless of the findings or recommendations in the report, by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under ch. 718, F.S., or ch. 719, F.S., as applicable, and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission. The association must also post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative 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.

## **Condominium and Cooperative Associations**

### ***Chapters 718 and 719, F.S.***

Chapter 718, F.S., relating to condominiums, and ch. 719, F.S., relating to cooperatives, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,<sup>7</sup> recordkeeping requirements, including which records are accessible to the members of

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<sup>4</sup> Section 553.899(2)(a), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See ss. 718.112(2) and 719.106(2)(c), F.S., for condominium and cooperative associations, respectively.

the association,<sup>8</sup> and financial reporting.<sup>9</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively.

### ***Condominiums***

A condominium is a “form of ownership of real property created under ch. 718, F.S.”<sup>10</sup> the “Condominium Act.” Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.<sup>11</sup> For unit owners, membership in the association is an unalienable right and required condition of unit ownership.<sup>12</sup>

A condominium association is administered by a board of directors referred to as a “board of administration.”<sup>13</sup> The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.<sup>14</sup>

There are approximately 1,529,764 condominium units in Florida operated by 27,588 associations.<sup>15</sup> Approximately 912,376 of these condominium units in Florida are at least 30 years in age.<sup>16</sup> Further breakdown of the age of condominium units in Florida is as follows:

- 105,404 units – 50 years old or older;
- 479,435 units – 40-50 years old;
- 327,537 units – 30-40 years old;
- 141,773 units – 20-30 years old;
- 428,657 units – 10-20 years old; and
- 46,958 units – 0-10 years old.<sup>17</sup>

It has been estimated that there are over two million residents occupying condominiums 30 years or older in Florida, based upon census data indicating an average of approximately 2.2 persons living in a condominium unit.<sup>18</sup>

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<sup>8</sup> See ss. 718.111(12) and 719.104(2), F.S., for condominium and cooperative associations, respectively.

<sup>9</sup> See ss. 718.111(13) and 719.104(4), F.S., for condominium and cooperative associations, respectively.

<sup>10</sup> Section 718.103(11), F.S.

<sup>11</sup> See s. 718.103, F.S., for the terms used in the Condominium Act.

<sup>12</sup> *Id.*

<sup>13</sup> Section 718.103(4), F.S.

<sup>14</sup> Section 718.103(2), F.S.

<sup>15</sup> Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 4, available at: <https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf> (last visited Jan. 24, 2024).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

### ***Cooperatives***

Section 719.103(12), F.S., defines a “cooperative” to mean:

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.<sup>19</sup> The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>20</sup> There are 778 cooperative associations in Florida that are registered with the DBPR.<sup>21</sup>

### **Miami-Dade County Grand Jury Report “Addressing Condo Owners’ Pleas for Help: Recommendations for Legislative Action”**

The increasing numbers of condominiums in Florida, the increasing numbers of problems for people living in them, and the increasing numbers of complaints against the DBPR, motivated a Miami-Dade County grand jury to conduct an investigation of complaints by condominium residents and the DBPR’s responses to their complaints.<sup>22</sup> The grand jury’s report contains numerous findings and recommendations, but those relevant to the provisions of the bill are discussed below.

### **Additional Issues**

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

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<sup>19</sup> See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), review dismissed 2020 WL 3442763 (Fla. 2020).

<sup>20</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>21</sup> See Task Force Report, pp. 4-5.

<sup>22</sup> *Final Report of the Miami-Dade County Grand Jury (Addressing Condo Owner’s Pleas for Help: Recommendations for Legislative Action)* (Filed Feb. 6, 2017), Eleventh Judicial Circuit, available at <https://miamisao.com/wp-content/uploads/2021/02/2016-Spring-Grand-Jury-Report-Final.pdf> (last visited on Jan. 24, 2024). This document is further cited in this analysis as “*Final Report of the Miami-Dade County Grand Jury*.”

### III. Effect of Proposed Changes:

#### Condominiums Within a Portion of a Building or Within a Multiple Parcel Building

##### *Present Situation*

The term “condominium” is defined in the Condominium Act to mean:<sup>23</sup>

...that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

The term “condominium property” is defined in the Condominium Act to mean:<sup>24</sup>

...the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

The “common elements” of a condominium include:<sup>25</sup>

- The condominium property which is not included within the units.
- Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.
- An easement of support in every portion of a unit which contributes to the support of a building.
- The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

Other parts of the condominium may be declared common elements in the declaration of condominium.<sup>26</sup>

A condominium association is administered by a board of directors referred to as a “board of administration.”<sup>27</sup> The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.<sup>28</sup>

There are several types of condominiums:

- Phase condominiums in which the developer may develop the condominium in phases with all phases completed within a seven-year period.<sup>29</sup>

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<sup>23</sup> Section 718.103(12), F.S.

<sup>24</sup> Section 718.103(14), F.S.

<sup>25</sup> Section 718.108(1), F.S.

<sup>26</sup> Section 718.108(2), F.S. Section 718.103(16), F.S., defines the terms “declaration” or “declaration of condominium” to mean the instrument or instruments by which a condominium is created, as they are from time to time amended.

<sup>27</sup> Section 718.103(4), F.S.

<sup>28</sup> Section 718.103(2), F.S.

<sup>29</sup> Section 718.403, F.S.

- Mixed-use condominiums in which the condominium contains both commercial and residential units.<sup>30</sup>
- Multi-condominiums in which the real property contains two or more condominiums, all of which are operated by the same association.<sup>31</sup>
- Condominiums created within condominium parcels, i.e., a condominium is created within a condominium unit with an undivided share in the appurtenant common elements.<sup>32</sup>

### **Recent Case Law - Mixed-Use Condominiums**

In a recent decision by the Florida Third District Court of Appeals (3<sup>rd</sup> DCA), the court held that the declaration of condominium had impermissibly divested a unit of its undivided share of the common elements by designating certain portions of the condominium property as “shared facilities.”<sup>33</sup>

In *IconBrickell*, the condominium is a mixed-use condominium consisting of residential condominium units and a luxury hotel. The declaration of condominium designated a wide variety of specific portions of the common elements as “shared facilities” under the exclusive ownership and control of the hotel unit owner. The “shared facilities” include the balconies, lobby, elevators, and the infrastructure for utilities, such as wires and pipes. The term “shared facilities” is not defined in ch. 718, F.S.

Even though the residential unit owners did not have a common ownership interest in the “shared facilities,” the declaration burdened the residential unit owners, and not the owner of the hotel, with expenses incurred by the owner of the hotel for the maintenance, repair, replacement, improvement, management, and operation of the shared facilities.

The court held that the “recharacterization, and the resultant expropriation of undivided common ownership, indubitably contravenes the edict of the [Condominium] Act.”<sup>34</sup>

### ***Effect of Proposed Changes***

Effective October 1, 2024, the bill revises the definition for the term “condominium property” in s. 718.103(14), F.S., 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, s. 718.104(4)(b), F.S., relating to the creation of condominiums, is revised by the bill to provide that condominiums created within a portion of a building or within a multiple parcel building shall include the name by which the condominium is to be identified

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<sup>30</sup> See ss. 718.103(24) and 718.404, F.S.

<sup>31</sup> See ss. 718.103(21) and 718.405, F.S.

<sup>32</sup> Section 718.406, F.S. Section 718.103(13), F.S., defines a “condominium parcel” to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

<sup>33</sup> *IconBrickell Condominium No. three Association, Inc. v. New Media Consulting, L.L.C.*, 310 So.3<sup>rd</sup> 477 (Fla. 3<sup>rd</sup> DCA 2020).

<sup>34</sup> *IconBrickell* at 481.

and be followed by “a condominium within a portion of a building or within a multiple parcel building.”

Effective October 1, 2024, the bill revises ss. 718.202(1) and (3), F.S., relating to the escrow requirements in contracts for the sale of a condominium parcel and the construction, furnishing and landscaping of the property. Section 718.202(1), F.S., is revised to allow developers of nonresidential condominiums the option of delivering to the escrow agent a surety bond or an irrevocable letter of credit with specified conditions. The surety bond or irrevocable letter of credit must be in an amount equivalent to the aggregate of some or all payments up to 10 percent of the sale price received by the developer from all buyers towards the sale price, in all cases the aggregate of the initial 10 percent of deposit monies being released secured by a surety bond or irrevocable letter of credit in an equivalent amount.

The bill revises s. 718.202(3), F.S., which allows a developer to use escrow funds in excess of 10 percent of the purchase price to pay for actual costs incurred by the developer in the construction and development of the condominium property, to allow the developer to use such escrow funds for the construction and development of easements and the rights appurtenant thereto.

The bill creates s. 718.407, F.S., to provide conditions, including disclosure requirements in sales contracts, for the creation of condominiums within a portion of a building or within a multiple parcel building.

Section 718.407(1), F.S., provides that a condominium may be created within a portion of a building or within a multiple parcel building, as defined in s. 193.0237(1), F.S.<sup>35</sup>

The bill provides that a condominium may be created within a portion of a building or within a multiple parcel building notwithstanding the definition for “condominium” in s. 718.103(12), F.S., or the provision of s. 718.108(1), F.S., relating to common elements.

Section 718.407(2), F.S., provides that the common elements of a condominium created within a portion of a building or a multiple parcel building are only the portions of the building submitted to the condominium form of ownership, excluding the units of such condominium.

Section 718.407(3), F.S., provides that the declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable (creating document) under s. 718.407, F.S., must specify all of the following:

- The portions of the building which are included in the condominium and the portions of the building that are excluded.
- The party responsible for maintaining and operating those portions of the building which are shared facilities, and which may include, among other things, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.

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<sup>35</sup> Section 193.0237(1), F.S., defines a “multiple parcel building” to mean “a building, other than a building consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land.”

- The manner in which the expenses for the maintenance and operation of the shared facilities will be apportioned:
  - An owner of a portion of the building, which is not submitted to the condominium form of ownership, or the condominium association, as applicable, submitted to condominium form of ownership, must approve any increase in the apportionment of expenses to such portion of the building.
  - The apportionment of expenses for the maintenance and operation of the shared facilities may be based on any of the specified criteria or any combination thereof.
  - An alternative method of apportionment of expenses may be provided if the apportionment method is stated in the creating document.
- The party responsible for collecting shared expenses.
- The rights and remedies that are available to enforce payment of shared expenses.

The specified criteria for the apportionment of expenses for the maintenance and operation of the shared facilities include:

- The area or volume of each portion of the building in relation to the total area or volume of the entire building without the shared facilities.
- The initial estimated market values of each portion compared to the initial estimated market value of the entire building.
- The extent the owners are allowed to use the shared facilities.

It is unclear how these criteria are to be applied if the expenses are appropriate.

Section 718.407(4), F.S., provides that the association of a condominium subject to s. 718.407, F.S., 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.

Section 718.407(5), F.S., provides a disclosure summary that must be included, in conspicuous type,<sup>36</sup> in every contract for the sale of any condominium created under s. 718.407, F.S. The disclosure summary informs the prospective purchaser of a condominium unit that:

- The condominium is created within a portion of a building or within a multiple parcel building.
- The common elements of the condominium consist only of the portions of the building submitted to the condominium.

The disclosure summary includes the buyer's acknowledgment that:

- The condominium may have minimal or no common elements.
- Portions of the building that are not included in the condominium are (or will be) governed by a separate recorded instrument that contains important provisions and rights.
- The party that controls the maintenance and operation of the portions of the building that are not included in the condominium determines the budget for the operation and maintenance of

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<sup>36</sup> Section 718.103(15), F.S., defines the term "conspicuous type" to mean "bold type in capital letters no smaller than the largest type, exclusive of headings, on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print."

such portions; however, the association and unit owners are still responsible for their share of such expenses.

- The allocation between the owners of the costs to maintain and operate the building can be found in the declaration of condominium or other recorded instrument.

Section 718.407(6), F.S., provides that the creation of a multiple parcel building is not a subdivision of the land upon which such building is situated, provided the land itself is not subdivided.

Effective October 1, 2024, the bill revises s. 718.503(2)(a), F.S., which lists the documents a nondeveloper seller of a unit must give to a prospective purchaser of a unit, to include the annual financial statement and annual budget of the condominium association.

Effective October 1, 2024, the bill also revises s. 718.503(3), F.S., relating to disclosures the seller of a condominium unit must give in sales contracts before the sale of a unit, to provide that, if a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building, the developer or nondeveloper unit owner must provide the disclosures required by ss. 718.407(5) and (6), F.S.

Effective October 1, 2024, the bill revises s. 718.504, F.S., to require the prospectus or offering circular for a condominium to state whether the condominium is created within a portion of a building or a multiple parcel building. The developer of a condominium with more than 20 residential units must prepare a prospectus or offering circular, which must be filed with the division and given to each prospective purchaser of a unit.

The bill creates an undesignated section of Florida law to provide that the amendments made to s. 718.103, F.S., which revise the definition for the term “condominium property,” and s. 718.202(3), F.S., relating to the use of escrow funds by the developer, and the creation of ss. 718.407(1), (2), and (6), F.S., by the bill are intended to clarify existing law and to apply retroactively. The bill also provides the provisions in the bill do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before October 1, 2024.

## **Community Association Managers**

### ***Present Situation***

#### **Community Association Manager Regulation**

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR or department) pursuant to part VIII of ch. 468, F.S.

Section 468.431(2), F.S., defines “community association management” to mean:

any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a

community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.<sup>37</sup>

Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers. Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to four-year terms by the Governor and confirmed by the Senate.<sup>38</sup>

To become licensed as a CAM, a person must apply to the department to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend a department-approved in-person training prior to taking the examination.<sup>39</sup> Community association managers must successfully complete an exam and pay a fee to become licensed. They must also complete continuing education hours as approved by the council to maintain their licenses.<sup>40</sup>

#### Practice Standards and Conflicts of Interest

Section 468.4334, F.S., delineates the professional practice standards for CAMs and CAM firms, including the duty to “discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.” In addition, if a CAM or CAM firm has a contract with a community association that has a building on the association’s property that is subject to s. 553.899, F.S., the CAM or firm must comply with that section as directed by the board.

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including contracting, on behalf of an association, with any entity in which the CAM or CAM firm has a financial interest that is not disclosed to the association.

Section 718.3027, F.S., provides the process for resolving potential conflict of interest for the officers and directors of condominium associations. It requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person’s relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. The board of a condominium association must approve a contract for services or other

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<sup>37</sup> Section 468.431(2), F.S.

<sup>38</sup> Section 468.4315(1), F.S.

<sup>39</sup> Section 468.433, F.S.

<sup>40</sup> Sections 468.4336 and 468.4337, F.S.

transactions by an affirmative vote of two-thirds of all other directors present. Current law does not have a comparable process for a CAM's or CAM firm's disclosure of a potential conflict of interest or the process for an association's affirmative acceptance or approval of such a conflict of interest.

### *Effect of Proposed Changes*

The bill revises the following requirements for CAM and CAM firms under part VIII of ch. 468, F.S., which apply to all CAM and CAM firms engaged in community association management in condominium associations under ch. 718, F.S., cooperative associations under ch. 719, F.S., and homeowners' associations under ch. 720, F.S.

The bill creates s. 468.4334(3), F.S., to require a CAM or CAM firm to return all community association records in his or her possession within 20 business days of termination of services agreement or a written request, whichever occurs first. The bill allows a CAM or CAM firm to retain records for up to 20 business days after the contract is terminated in order to complete an ending financial statement or report. If the association fails to provide the CAM or CAM firm access or retention to the accounting records, the CAM or CAM firm is relieved of any further responsibility or liability for preparation of the statement or report. If the CAM or CAM firm fails to timely return all of the official records within its possession to the community association, the successor CAM firm, the bill creates a rebuttable presumption that the CAM or CAM firm willfully failed to comply with this subsection.

However, the bill also provides that a CAM or CAM firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, F.S., and a civil penalty of \$1,000 per day for up to 10 business days, assessed beginning on the 21st business day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the association for return of the records, whichever occurs first.

The bill provides such notice of termination must be sent by:

- Certified mail;
- Return receipt request; or
- In the manner required in the management contract.

However, under the bill, a timeshare plan licensed under ch. 721, F.S., is subject to the time periods in s. 721.14(4)(b), F.S.

The bill creates s. 468.4335, F.S., to provide additional conflict of interest disclosure requirements for CAMs and CAM firms and a process for associations to follow when approving contracts with a CAM or CAM firm, or a relative of a CAM, which may present a conflict of interest. The requirements are similar to those applicable to contracts between condominium associations and their officers and directors.

The bill requires a CAM or CAM firm, including the directors, officers, persons with a financial interest in the CAM firm and relatives of such persons, to provide a written disclosure of any activity which may reasonably be construed by the board to be a conflict of interest. The bill

creates a rebuttable presumption of an existing conflict of interest if a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or the relative of such persons:

- Enters into a contract for goods or services with the association, other than community association management services.
- Holds an interest in a corporation, limited liability corporation, 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.

Under the bill, 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.

The bill requires that 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 written minutes of the meeting. The board must approve the contract or other transaction by an affirmative vote of two-thirds of all other directors present.

At the next regular or special meeting of the members, the existence of the conflict of interest and the contract or other transaction must be disclosed to the members. If a CAM or CAM firm has previously disclosed a conflict of interest in an existing management contract with the association, the conflict of interest does not need to be additionally noticed and voted on during the term of the contract, but must be noticed and voted on in accordance with the provision in the bill upon renewal of the contract.

If the contract is canceled because the board finds that the CAM or CAM firm has violated the disclosure requirements, the bill provides that the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Under the bill, if the activity has not been properly disclosed as a conflict of interest or potential conflict of interest, the contract is voidable and terminates upon the association filing a written notice terminating the contract.

The bill defines the term "relative" to mean a relative within the third degree of consanguinity<sup>41</sup> by blood or marriage of a board member or officer.

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<sup>41</sup> Relatives of the third degree of consanguinity include great grandparent, aunt/uncle, niece/nephew, and great grandchild.  
*See:*

[https://www.uab.edu/humanresources/home/images/M\\_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf](https://www.uab.edu/humanresources/home/images/M_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf)  
(last visited Jan. 24, 2024).

The bill revises the disciplinary grounds for CAMs and CAM firms to provide a disciplinary grounds on the basis of a CAM or CAM firm's failure to disclose a conflict of interest as required by s. 468.4335, F.S.

### **Milestone Inspections**

#### *Present Situation*

Condominium and cooperative buildings that are single-family, two-family, and three-family dwellings with three or fewer habitable stories above ground are exempt from the milestone inspection requirement.<sup>42</sup>

#### *Effect of Proposed Changes*

The bill amends s. 553.899(4), F.S., to exempt four-family dwellings with three or fewer habitable stories above ground from the milestone inspection requirements.

### **Condominium Officers and Directors**

#### *Present Situation*

#### Breaches of a Fiduciary Duty and Prohibited Acts

Officers and directors of a condominium association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty.<sup>43</sup> An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value or a kickback for which consideration has not been provided for the benefit of such person (or immediate family members) from any person providing or proposing to provide goods or services to the association.<sup>44</sup>

Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.

Section 718.111(1)(d), F.S., requires an officer, director, or agent to discharge his or her duties in good faith, with the care an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breaches or fails to perform his or her duties. The breach of, or failure to perform, such duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or

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<sup>42</sup> Section 533.899(4), F.S.

<sup>43</sup> Section 718.111(1)(a), F.S.

<sup>44</sup> Section 718.111(1)(a), F.S., does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.

- Recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 617.0834, F.S., relates to the provisions for the civil liability of officers and directors of not-for-profit corporations and associations.<sup>45</sup> Section 617.0834(1), F.S., provides that officers and directors of certain not-for-profit corporations and associations are not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless the officer or director:

- Breached or failed to perform his or her duties as an officer or director; and
- Breached or failed to perform his or her duties, and the breach constitutes:
  - A criminal violation, unless he or she had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful.<sup>46</sup>
  - A transaction from which he or she derived an improper personal benefit, directly or indirectly; or
  - A recklessness or an act or omission committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The Miami-Dade County grand jury found:

Although the directors have a legally mandated fiduciary obligation toward their unit owners, it appears that some of them are more involved in self-dealing and looking out for their own financial interests. The position of board director is not generally a paid position. Yet, some directors appear to view the ability to get into office as an opportunity to cash in. This should not be countenanced.<sup>47</sup>

### Criminal Prohibitions

Section 718.111(1)(d), F.S., also criminalizes the following acts:

- Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, F.S.;
- Theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, F.S.; and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.

### Removal from Office

<sup>45</sup> Corporations that operate residential homeowners' associations are governed by ch. 720, F.S., relating to homeowners' associations, and are subject to part I of ch. 607, F.S., the Florida Business Corporation Act, or ch. 617, F.S., relating to corporations not-for-profit.

<sup>46</sup> Section 617.0834, F.S., does not provide criminal penalties nor reference the criminal law that is violated by the officer's or director's breach or failure to perform his or her duties.

<sup>47</sup> *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at page 10 (citation omitted).

Section 718.112(2)(q), F.S., requires a board to immediately remove from office any officer or director who is charged with felony theft or embezzlement involving association funds. If the charges are resolved without a finding of guilt or without acceptance of a plea of guilt or nolo contendere, the director or officer must be reinstated for any remainder of his or her term of office.

Section 718.111(1)(d), F.S., also provides that an officer or director charged by information or indictment with any crime referenced in this paragraph<sup>48</sup> must be removed from office, and the vacancy must be filled as provided in s. 718.112(2)(d)2., F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

#### Defacing or Destroying Records

Section 718.111(12)(c)2., F.S., provides that any person who knowingly or intentionally defaces or destroys accounting records that are required to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.<sup>49</sup>

#### *Effect of Proposed Changes*

##### Additional Criminal Prohibitions

The bill amends s. 718.111, F.S., to provide the following additional criminal prohibitions relating to the management of a condominium association, and provides penalties for violations:

- Third degree felony<sup>50</sup> for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept a kickback, which the bill defines as anything or service of value for which consideration has not been provided for an officer's, a director's,

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<sup>48</sup> The only crimes specifically referenced in s. 718.111(1)(d), F.S., are the previously-described offenses relating to forgery of a ballot envelope or voting certificate, theft or embezzlement of association funds, and destruction of or refusal to allow inspection or copying of association records. Additionally, s. 718.111(1)(d), F.S., states that an officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834, F.S. The reference to criminal violations in s. 718.111(1)(d), F.S., is slightly different than the reference to criminal violations in s. 718.112(2)(o), F.S., which provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office. The latter provision appears to be more limited than the former provision.

<sup>49</sup> Section 718.501(1), F.S., authorizes the division to enforce and ensure compliance with the provisions of the Condominium Act, and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of the Condominium Act, an adopted rule, or a final order of the division.

<sup>50</sup> Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

or a manager's benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association;

- First degree misdemeanor<sup>51</sup> to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members (and deletes the provision that such an offense is punishable by a civil penalty);<sup>52</sup>
- Second degree misdemeanor<sup>53</sup> 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 the inspection and copying of official records of an association; and
- Third degree felony<sup>54</sup> to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.<sup>55</sup>

### Use of Credit Cards

The bill amends s. 718.111(15), F.S., to revise the prohibitions related to use of an association's credit card. Under the bill, a person commits theft<sup>56</sup> by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association. The bill defines a "lawful obligation of the association" as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget. The bill deletes the provision in current law that the unlawful use of an association's credit card constitutes credit card fraud pursuant to s. 817.61, F.S.

### Removal from Office

The bill amends s. 718.112(2)(q), F.S., to expand the number of crimes for which an officer or director charged by information or indictment must be removed from office to include:

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<sup>51</sup> Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

<sup>52</sup> This provision is similar to the Miami-Dade County grand jury's recommendation to criminally punish directors and members of the board or association who knowingly or intentionally deface or destroy accounting records or fail to create or maintain such records. The grand jury recommended a second degree misdemeanor for a first offense, and a first degree misdemeanor for any subsequent offenses. *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at pages 8-9.

<sup>53</sup> Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>54</sup> Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>55</sup> This provision is similar to the Miami-Dade County grand jury's recommendation to make it a third degree felony for any association, board director, management company, or management company employee to willfully, knowingly, or intentionally refuse to release or otherwise produce official association records, if such refusal is done to facilitate or cover-up the commission of a crime. *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at pages 8-9.

<sup>56</sup> Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. *Id.*

- Forgery of a ballot envelope or voting certificate used in a condominium association election punishable as a felony crime as provided in s. 831.01, F.S.;<sup>57</sup>
- Theft or embezzlement involving the association's funds or property as provided in s. 812.014, F.S.;
- Destruction of, or refusal to allow inspection or copying of, an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime which is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.;
- Obstruction of justice under ch. 843, F.S.; and
- Any criminal violation under ch 718, F.S.

Under the bill, a vacancy must be filled as provided by s. 718.112(2)(d), F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.<sup>58</sup>

Under the bill, if a criminal charge is pending against an officer or director, he or she may not have access to the official records of any association, except pursuant to a court order.

#### Fraudulent Voting Activities

The bill creates s. 718.112(2)(r), F.S., to provide that each of the following actions relating to condominium association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:<sup>59</sup>

- Willfully and falsely swearing to or affirming an 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.
- 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.
- 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.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- 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. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of

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<sup>57</sup> Section 831.01, F.S., relates to the crime of forgery. A forgery violation is a felony of the third degree. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>58</sup> Section 720.306(9), F.S., relates to elections and vacancies on a board. It also prohibits convicted felons, including persons who've been convicted in another jurisdiction which would be considered a felony crime in Florida, of serving on a board for at least five years as of the date the person seeks election to the board, unless their civil rights have been restored.

<sup>59</sup> Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

- Using or threatening to use, either directly or indirectly, 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 any particular ballot measure.

In addition, the bill provides that the following actions relating to condominium association elections are fraudulent voting activities and constitute a misdemeanor of the first degree:<sup>60</sup>

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

The criminal prohibitions in s. 718.112(2)(r), F.S., do not apply to a licensed attorney giving legal advice to a client.

## **Official Records – Condominiums**

### ***Present Situation***

Section 718.111(12)(a), F.S., requires a condominium association to maintain various records, including but not limited to, the association's recorded bylaws and amendments to those bylaws, articles of incorporation and amendments to those articles, bills of sale or transfer for association-owned property, accounting records, voting ballots, contracts for work to be performed, and bids.

Section 718.112(12)(a)7., F.S., provides, in pertinent part, that email addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with s. 718.112(12)(c)5.e., F.S., which provides for unit owners to consent in writing to the disclosure of contact information.

An association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.<sup>61</sup>

Section 718.111(12)(b), F.S., requires that some of these records (e.g., bylaws and articles of incorporation) be permanently maintained from the inception of the association. All other official records must be maintained within the state for at least seven years, unless otherwise provided by general law.<sup>62</sup> The records must be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. An association must make a copy of the records available for inspection or copying by a unit owner

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<sup>60</sup> *Id.*

<sup>61</sup> Section 718.112(12)(a)7., F.S.

<sup>62</sup> Section 718.111(12)(b), F.S.

on the condominium property or association property or offer the option of making the records available electronically via the Internet or allow the records to be viewed in electronic format on a computer screen and printed upon request.

Section 718.111(12)(c)1., F.S., provides that official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times.<sup>63</sup> A renter of a unit has a right to inspect and copy the association's bylaws and rules. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with these requirements. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

Section 718.111(12)(g), F.S., provides that by January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units must post digital copies of specified records on its website. These documents include, but are not limited to: the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration, the recorded association bylaws and amendments to those bylaws, articles of incorporation of the association and amendments to those articles, the annual and proposed budget, and various contracts, including any contract or document regarding a conflict of interest or possible conflict of interest. The failure of the association to post required information is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

### ***Effect of Proposed Changes***

The bill amends the official records requirements for condominium associations in s. 718.111(12), F.S., to require official records be kept in an organized manner that facilitates inspection of the records by unit owners. In addition, if records are lost, destroyed, or otherwise made unavailable, the bill provides that the obligation to maintain official records includes the obligation to recover those records as may reasonably be possible.

Effective January 1, 2026, the bill amends the requirements for condominium associations to maintain specified records available for download on the association's website or by an application on a mobile device to decrease from 150 units to 25 units the threshold for that requirement.

The bill also amends s. 718.111(12), F.S., to:

- Provide that, in accordance with s. 718.112(12)(c)5.e., F.S., e-mail addresses and facsimile numbers are only accessible to unit owners if consent to receive notice by electronic transmission is provided, the unit owner has expressly indicated that such personal

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<sup>63</sup> The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

information can be shared with other unit owners, and the unit owner has not provided the association with a request to opt-out of such dissemination with other unit owners;

- Require associations to ensure that such e-mail addresses and facsimile numbers are only used for the business operation of the association and may not be sold or shared with outside third parties;
- Provide that, if personal information is included in documents released to third parties other than unit owners, the association must redact such personal information before the document is disseminated;
- Provide that an association may be liable for the disclosure of the e-mail address or facsimile numbers if made with a knowing or intentional disregard of the protected nature of such information;
- Require additional financial records (all invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association) be maintained by a condominium association and made available for inspection by association members;
- Include within the official records a copy of all satisfactorily completed board member educational certificates;
- Permit associations to comply with its obligations related to a member's right of access to certain official records and right to copies of such records by posting the records on the association's website and directing an authorized requester to such website;
- Require associations to respond to a statutorily compliant written request to inspect records with a checklist of all records made available, and not made available, for inspection and copying;
- Require associations to maintain the checklist provided in response to a written request for seven years (An association delivering a checklist and affidavit creates a rebuttable presumption that the association has complied); and
- Require an association to maintain, and have available for download on the association's website or by an application on a mobile device, building permits related to ongoing or planned construction.

The bill amends s. 718.501(1)(d)7., F.S., to require the division to provide the official records to the unit owner at no charge when the division subpoenas the records the association failed to timely provide in response to a unit owner's written request.

The bill also amends s. 718.501(1)(u), F.S. to provide that, if the division receives a complaint regarding access to official records on the association website under s. 718.718.111(12)(g), F.S., the division may request access to the association website and investigate. The division may adopt rules to carry out this provision.

## **Financial Reporting – Condominiums**

### ***Present Situation***

Section 718.111(13), F.S., provides the financial reporting requirements for condominium associations. Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the governing board of the association must complete, or contract with a third party to complete, the financial report. Within 21 days after the financial report is completed by the board or received from the third party, but no later than 120

days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The association must deliver the financial report, by mail or hand delivery to each unit owner at the address last furnished to the association by the unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner.

The type of financial reporting that an association must perform differs based on the association's total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- At least \$150,000 but less than \$300,000 must prepare *compiled* financial statements.<sup>64</sup>
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.<sup>65</sup>
- \$500,000 or more must prepare *audited* financial statements.<sup>66</sup>

An association may prepare a more or less stringent type financial report if approved by vote of the majority of the voting interest of the association.<sup>67</sup> An approval to provide a less stringent type of financial report is effective only for the year in which the vote is taken and for the following fiscal year.<sup>68</sup>

### ***Effect of Proposed Changes***

The bill amends the financial reporting requirements in s. 718.111(13), F.S., to:

- Require the financial statement be delivered by hand delivery or mailed to each unit owner, by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements; and
- Prohibit associations from reducing the required type of financial statement for consecutive years

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<sup>64</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

<sup>65</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>66</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

<sup>67</sup> See s. 718.111(13)(c) and (d), F.S.

<sup>68</sup> See s. 718.111(13)(d), F.S.

## **Meetings of the Board of Administration – Condominiums**

### ***Present Situation***

Section 718.112(2)(c), F.S., requires that all meetings of the board in which a quorum is present to be open to all unit owners. Chapter 718, F.S., provides notice requirements for meetings of the board,<sup>69</sup> but does not mandate the frequency of such meetings.

If the board considers any special or regular assessment against unit owners, the notice for the meeting must specifically state that the assessments will be considered and provide the estimated cost and description of the purposes for such assessments.

### ***Effect of Proposed Changes***

The bill amends s. 718.112(2)(c), F.S., to:

- Require condominium associations of 10 or more units to meet at least once each quarter;
- Provide that at least four times each year, the meeting agenda must include an opportunity for members to ask questions;
- Provide that members have the right to ask questions at meetings with respect to reports on the status of construction or repair projects, status of revenues and expenditures during the current fiscal year, and other issues affecting the condominium; and
- Require associations to include a copy of the proposed contract in the notice of a board meeting, or provide electronic access to the contract on the association's website or through an application on a mobile device, if the notice for a board meeting relates to the approval of a contract.

## **Director and Officer Education – Condominiums**

### ***Present Situation***

Section 718.112(2)(d)4.b., F.S., provides education or certification requirements for newly elected or appointed members of the board.<sup>70</sup> Within 90 days after being elected or appointed, a new board member for a condominium, cooperative, and homeowners' association must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the

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<sup>69</sup> Section 718.112(2)(c), F.S.

<sup>70</sup> Sections 719.106(1)(d)b. and 720.720.303(1)(a), F.S., provide comparable post-election certification requirements for newly elected cooperative and homeowners' association board members, respectively.

election or 90 days after the election or appointment.<sup>71</sup> The curriculum must be administered by a condominium education provider approved by the division.<sup>72</sup> A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.<sup>73</sup> If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.<sup>74</sup> The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.<sup>75</sup>

### ***Effect of Proposed Changes***

The bill amends the post-election certification requirements in s. 718.112(2)(d)4.b., F.S., to:

- Require newly elected or appointed directors to submit both the written certification that they have read the association's governing documents, will work to uphold the governing documents of the association to the best of their ability and will faithfully discharge their duties, and submit a certificate of completion of an education course and submit certification that they have completed an educational curriculum administered by the division or a division-approved provider;
- Require a director that was elected or appointed before July 1, 2024, to comply with the written certification and educational certificate requirement by June 2025;
- Provide that the written certification and educational certificate are valid for seven years from the date of issuance and does not have to be resubmitted as long as the director serves on the board without interruption during a seven-year period;
- Provide that a director who is appointed by the developer may satisfy the educational certificate requirement for any subsequent appointment to a board by a developer within seven years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or appointment to a board in another association within that seven-year period;
- Require directors to annually complete continuing education on recent changes to the condominium laws and rules;
- Require associations to retain the educational certificates of the directors for seven years, instead of five years; and
- Allow associations to pay, as an expense of the association, for the cost of a director's required educational curriculum and certificate.

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<sup>71</sup> The division's Internet site provides a listing of approved educational providers for the certification of board members. See Department of Business and Professional Regulation, *Condominium & Cooperatives – Education*, available at: <http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/education/> (last visited Jan. 24, 2024).

<sup>72</sup> Sections 718.112(2)(d)4.b., F.S.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

The bill requires the education curriculum to be at least four 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.

The bill also amends s. 718.501, F.S., to:

- Require the division to adopt by rule the educational curriculum required under s. 718.112(2)(d), F.S., for its approval of condominium education providers; and
- Require the division to provide division-approved education providers with the template certificate for issuance directly to the association board of directors who have satisfactorily completed the education requirements under s. 718.112(2)(d), F.S. The division may adopt rules to implement this section.
- Require the directors of the association to certify, on a form provided by the division, that each director has completed the written certification and educational certificate requirements in s. 718.112(2)(d)4.b., F.S.

### **Reserves and Structural Integrity Reserve Studies – Condominiums and Cooperatives**

#### ***Present Situation***

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. Reserve 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.<sup>76</sup>

The amount to be reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. Replacement reserve assessments may be adjusted annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.<sup>77</sup>

A “structural integrity reserve study” (SIRS) is a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection. A SIRS is required for condominium buildings that are three or more stories in height.<sup>78</sup>

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, ss. 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively, associations that are required to have a SIRS may not waive reserves for the SIRS items or use such reserves for other purposes.

Regarding the SIRS, ss. 718.112(2)(g) and 719.106(1)(k), F.S., relating to condominium and cooperative associations, respectively:

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<sup>76</sup> See s. 718.112(2)(f) and 719.106(1)(j), F.S., relating to reserves requirements for condominium and cooperative associations, respectively.

<sup>77</sup> *Id.*

<sup>78</sup> See s. 718.112(2)(g) and 719.106(1)(k), F.S., relating to SIRS requirements for condominium and cooperative associations, respectively

- Require condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height, as determined by the Florida building code.
- Require associations existing on or before July 1, 2022, that are controlled by non-developer unit owners, to have a structural integrity reserve study completed by December 31, 2024.
- Require that the study include a visual inspection, and state the estimated remaining useful life and the estimated replacement cost of the following items (structural integrity items): roof, structure, fireproofing and fire protection systems, plumbing, electrical systems, waterproofing, windows and exterior doors, and any item with a deferred maintenance or replacement cost that exceeds \$10,000.
- Require the visual inspection be performed or verified by a person licensed as an engineer, an architect, reserve specialist, or professional reserve analyst certified by the Community Associations Institute or the Association of Professional Reserve Analysts. However, any qualified person or entity may perform the other components of a SIRS.
- Provide that the SIRS 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 cost or deferred maintenance expense cannot be determined or for which the estimate of useful life is greater than 25 years, but the study may recommend a deferred maintenance amount for such items;
- Exempt from the SIRS requirement:
  - Buildings less than three stories in height;
  - Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; and
  - Any portion or component of a building that has not been submitted to the condominium or cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the condominium or cooperative association.

Members of unit-owner-controlled associations may waive reserves upon a majority vote of the total voting interests of the association. However, after December 31, 2024, unit-owner-controlled condominium and cooperative associations that must obtain a SIRS may not waive reserves. Associations that are required to obtain a SIRS also may not opt to provide less reserves or no reserves than are required for the structural integrity items. Nor may those reserves be used for any other purpose than their intended purpose.<sup>79</sup>

Before turnover of control to the unit owners, ss. 718.301(4)(p) and 719.301(4)(p), F.S., require the developer to perform a turnover inspection performed by a licensed professional engineer or architect, or a reserve specialist or professional reserve analyst certified by the Community Associations Institute or the Association of Professional Reserve Analysts. However, this provision does not require that the inspection comply with the SIRS requirements in ss. 718.112(2)(g) and 719.106(1)(k), F.S., relating to condominium and cooperative associations, respectively.

### ***Effect of Proposed Changes***

The bill revises the term “deferred maintenance” to “planned maintenance” in chs. 718 and 719, F.S.

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<sup>79</sup> Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.

In addition, the bill amends s. 718.112(2), F.S., to allow condominium associations to waive reserves if the entire condominium building is uninhabitable due to a natural emergency, as defined in s. 252.34, F.S.,<sup>80</sup> as determined by the local enforcement agency, upon the approval of a majority of the members. Any reserve account funds held by the association may be expended, pursuant to the board's determination, to make the condominium building and its structures habitable. Upon the determination by the local building official<sup>81</sup> that the condominium building and its structures are habitable, the association must immediately resume contributing funds to its reserves.

Relating to the SIRS requirements for condominium and cooperative associations, the bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., respectively, to require these associations to provide unit owners with a copy of the study or deliver a notice that the structural integrity reserve study is available for inspection and copying upon written request within 45 days of completion of the study. The notice may be provided electronically.<sup>82</sup>

Within 45 days after receiving the structural integrity reserve study, the bill requires condominium and cooperative associations to provide the division with a statement indicating that such study was completed and that the association provided or made available such study to each unit owner in accordance with this section. The statement must be provided to the division in the same manner provided by the division using a form posted on the division's website.

In addition, the bill requires the division to maintain, by January 1, 2025, a database on its website of the associations that have completed the SIRS. After December 31, 2024, the association must include the internet link to the database in its annual report.

The bill also clarifies that the turnover report required under ss. 718.301(4)(p) and 719.301(4)(p), F.S., consists of a structural integrity reserve study.

## **Hurricane Protection – Condominiums**

### ***Present Situation***

Chapter 718, F.S., does not define the term “hurricane protection.”

Section 718.113(5)(b), F.S., provides that a condominium association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.

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<sup>80</sup> Section 252.34(8), F.S., defines the term “natural emergency” to mean an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake.

<sup>81</sup> See s. 533.71(5), F.S., defining “local enforcement agency.”

<sup>82</sup> This notice delivery requirement is identical to the requirement for delivery of the inspector-prepared summary of the milestone inspection report required under s. 553.899, F.S.

Section 718.113(5)(c), F.S., authorizes the board to operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection without the permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or and association property. The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in s. 718.113(5)(c), F.S., are not a material alteration to the common elements or association property.<sup>83</sup>

Section 718.113(5)(d), F.S., provides that, notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane protection by a unit owner conforming to the specifications adopted by the board.

Section 718.115(1)(e), F.S., requires that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5), F.S., constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Section 718.115(1)(e)1., F.S., does not indicate that the costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S.

Further, s. 718.115(1)(e), F.S., states that a unit owner who has previously installed code-compliant shutters, impact glass, windows, or doors, must receive a credit when code-compliant shutters, impact glass, windows, or doors are installed. A unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code, must receive a credit when the impact glass or code-compliant windows or doors are installed. A unit owner who has installed other types of code-compliant hurricane protection that comply with the currently applicable building code is entitled to receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit must be equal to the pro rata portion of the assessed installation cost assigned to each unit.

### ***Effect of Proposed Changes***

The bill substantially revises the existing hurricane protection provisions in ch. 718, F.S.

The bill creates s. 718.103(19), F.S., to define “hurricane protection” to mean “hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane

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<sup>83</sup> Section 718.110, F.S., provides the procedure for amending the declaration of condominium. It provides that, “unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment.”

protection products used to preserve and protect the condominium property or association property.”

The bill clarifies the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections exterior doors, windows, and glass apertures. The bill amends s. 718.104(4)(p), F.S., relating to the creation of condominiums, to require the declarations of residential condominiums and mixed-use condominiums specify whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

The bill amends s. 718.113(5), F.S., to provide that, to protect the health, safety, and welfare of the people of this state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, the hurricane protection provisions apply to all residential and mixed-use condominiums in Florida, regardless of when the condominium is created pursuant to the declaration. The bill provides that the installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with the hurricane protection requirements is not considered a material alteration or substantial addition to the common elements or association property.

Under the bill, a vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county where the condominium is located. The certificate must include the recording data identifying the declaration of the condominium and must be executed in the form required for the execution of a deed. Once the certificate is recorded, the board must mail or hand-deliver a copy of the recorded certificate to the unit owners at the owners’ address as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. The board’s failure to record the certificate or to send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners.

The bill allows the board to require that unit owners adhere to an existing unified building scheme regarding the external appearance of the condominium.

Regarding a unit owner’s responsibility for the costs of installation or removal of hurricane protection, the bill provides that a unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection if the unit owner installed the hurricane protection and 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 that cost to the unit owner. If such reinstallation or removal is completed by the unit owner, the association must reimburse the unit owner for the cost or apply the cost as a credit toward future assessments.

Under the bill, the board must determine if the removal or reinstallation of hurricane protection is the responsibility of the unit owner, including costs, and if such removal or reinstallation is

completed by the association, then the costs incurred by the association may be charged to the unit owner. If the association charges a unit owner for the removal or installation of hurricane protection, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S., for the collection of assessments.

The bill amends s. 718.115(1)(e)1., F.S., to delete the requirement that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5), F.S., constitutes a common expense and must be collected as a common expense if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Additionally, s. 718.115(1)(e)1., F.S., is also amended to provide that the costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S.

The bill amends s. 718.115(1)(e)2., F.S., to delete the requirement that a unit owner who previously installed hurricane shutters in accordance with s. 718.113(5), F.S., that comply with the current applicable building codes receive a credit when the shutters are installed. A unit owner who has previously installed such items must receive a credit when the impact glass or code-compliant windows or doors are installed.

The provision is revised to provide that a credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The bill adds that the credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection and that expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

## **SLAPP Defamation Law Suits – Condominiums**

### ***Present Situation***

Section 718.1224, F.S., prohibits "strategic lawsuits against public participation" or "SLAPP suits," and provides legislative findings that such lawsuits are against the public interest. A SLAPP lawsuit occurs when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association.<sup>84</sup>

Under s. 718.1224, F.S., governmental entities, business organizations, and individuals are prohibited from filing or causing to be filed any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State

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<sup>84</sup> See s. 718.1224(1), F.S., providing legislative intent.

Constitution. Current law does not specifically prohibit condominium associations from engaging in SLAPP suits, instead the prohibition generally applies to governmental entities, business organizations, and individuals.

Section 718.1224, F.S., provides that unit owners have a right to an expeditious resolution of such an action, including the right to petition for a motion to dismiss or for a summary judgment. The court may award the unit owner actual damages for a violation of this prohibition and may also award treble damages. However, the court must state a basis for an award of treble damages. The court is further required to award the prevailing party reasonable attorney's fees and costs. Governmental entities, business organizations, and individuals are barred from expending funds in prosecuting a SLAPP suit against a unit owner.<sup>85</sup>

### *Effect of Proposed Changes*

The bill amends s. 718.1224, F.S., to revise the SLAPP suits prohibition to protect condominium unit owners' exercise of their free speech rights before their association. The bill specifically prohibits condominium associations from engaging in a SLAPP suit.

The bill also amends s. 718.1224, F.S., to prohibit condominium associations from:

- Retaliating against a unit owner, such as by increasing a unit's assessments, discriminatorily decrease services to a unit owner, threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action; and
- Spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

The unit owner must have acted in good faith and not for any improper purposes, such as to harass or cause unnecessary delay, for frivolous purposes, or needless increase in the cost of litigation in order for the unit owner to raise the defense of retaliatory conduct. The bill provides examples of conduct for which a condominium association, officer, director, or agent of an association may not retaliate include, but are not limited to, situations where:

- The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;
- The unit owner has organized, encouraged, or participated in a unit owners organization;
- The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;
- The unit owner has exercised his or her rights under ch. 718, F.S.;
- The unit owner has complained to the association or any of its representatives for their failure to comply with ch. 718, F.S., or ch. 617, F.S.; or
- The unit owner has made public statements critical of the operation or management of the association.

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<sup>85</sup> A similar prohibition against SLAPP suits by homeowners' associations is contained in s. 720.304(4), F.S.

The bill allows the unit owner to present evidence of retaliatory conduct as a defense in any action brought against him or her for possession.

### **Electronic Voting – Condominiums**

#### ***Present Situation***

Sections 718.128 and 719.129, F.S., relating to electronic voting in condominium and cooperative associations, respectively, allow these associations to conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, in writing, to online voting and the specified requirements are met, including:

- The association provides each unit owner with:
  - A method to authenticate the unit owner's identity to the online voting system.
  - For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.
  - A method to confirm, at least 14 days before the voting deadline, which the unit owner's electronic device can successfully communicate with the online voting system.
- The association uses an online voting system that is:
  - Able to authenticate the unit owner's identity.
  - Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
  - Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.
  - For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.
  - Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

Unit owners who vote electronically may be counted as attending the meeting for the purpose of determining a quorum.<sup>86</sup> A unit owner may opt-out of his or her consent to vote electronically.<sup>87</sup>

#### ***Effect of Proposed Changes***

The bill amends ss. 718.128 and 719.129, F.S., relating to electronic voting in condominium and cooperative associations, respectively, to allow condominium and cooperative unit owners to consent to electronic voting in condominium and cooperative association elections by using an electronic means of consent.

### **Conflicts of Interests – Condominiums**

#### ***Present Situation***

Section 718.3027, F.S., provides the process for resolving potential conflict of interest for the officers and directors of condominium associations. It requires an officer or director of a

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<sup>86</sup> Sections 718.128(3) and 719.129(3), F.S., relating to electronic voting in condominium and cooperative associations, respectively.

<sup>87</sup> Section 718.128(5) and 719.129(5), F.S., relating to electronic voting in condominium and cooperative associations, respectively.

condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. The board of a condominium association must approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present. A director or officer who is a party to, or has an interest in, the activity that may be a potential conflict of interest must leave the board meeting during the discussion and vote, and must recuse himself or herself from the vote.

### ***Effect of Proposed Changes***

The bill amends s. 718.3027, F.S., to provide that the attendance of an officer or director at the meeting of the board is sufficient to constitute a quorum for the meeting and for the vote taken in his or her absence when the director is required to leave the room during the discussion and vote on a contract in which the director, or his relative, has an interest.

## **Nonpayment of Monetary Obligations**

### ***Present Situation***

Section 718.303(5), F.S., allows an association to suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than \$1,000 and more than 90 days delinquent. The association must send the unit owner proof of such obligation 30 days before such suspension takes effect. The suspension ends when the full payment of all past due obligations currently due the association are paid.

### ***Effect of Proposed Changes***

The bill amends s. 718.303(5), F.S., to require an association to notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation at least 90 days before an election.

## **Division of Condominiums, Cooperatives, and Mobile Homes**

### ***Present Situation***

Section 718.501, F.S., provides the investigative and enforcement authority of the Division of Condominium, Timeshares, and Mobile Homes (division). The division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899, F.S. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control, including investigating complaints against developers involving improper turnover or failure to transfer control to the association.<sup>88</sup> After control of the condominium is transferred from the developer to the unit owners, the division only has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.<sup>89</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> Section 718.501(1), F.S.

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers, associations, and association board members.<sup>90</sup>

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.<sup>91</sup>

### *Effect of Proposed Changes*

The bill amends s. 718.501(1), F.S., to delete the limitation on the division's jurisdiction after turnover. The bill expands the division's post-turnover jurisdiction to include:

- Procedures and records related to financial issues, including annual financial reporting under s. 718.111(13), F.S., assessments for common expenses, fines, and commingling of reserve and operating funds under in s. 718.111(14), F.S., use of debit cards for other than intended purposes under s. 718.111(15), F.S., the annual operating budget and the allocation of reserve funds under s. 718.112(2)(f), F.S., financial records, under s. 718.111(12)(a)11, F.S., and any other record necessary to determine the revenues and expenses of the association;
- Elections, including election and voting requirements under s. 718.112(2)(b) and (d), F.S., recall of board members under 718.112(2)(l), F.S., electronic voting under s. 718.128, F.S., and elections that occur during an emergency under s. 718.1265(1)(a), F.S.;
- The maintenance of and unit owner access to association records under s. 718.111(12), F.S.;
- Allegations of criminal violations under ch. 718, F.S.;
- The procedural aspects of meetings, such as unit owner meetings, quorums, voting requirements, proxies, board of administration meetings, and budget meetings under s. 718.112(2), F.S.;
- Disclosure of conflicts of interest under s. 718.111(1)(a), F.S., and s. 718.3027, F.S., including limitations contained in s. 718.111(3)(f), F.S.;
- Removal of a board director or officer under ss. 718.111(1)(a) and (15), F.S., and s. 718.112(2)(p) and (q), F.S.;
- The procedural completion of structural integrity reserve studies under s. 718.112(2)(g), F.S.; and
- Any written inquiries by unit owners to the association relating to such matters, including written inquiries under s. 718.112(2)(a)2., F.S.

In addition, the bill:

- Authorizes the division to issue citations and adopt rules to provide citation bases and citation procedures in accordance with the division's authority, responsibilities, and duties outlined in s. 718.501, F.S.

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<sup>90</sup> Sections 718.501(1), F.S.

<sup>91</sup> *Id.*

- Authorizes the division to impose a civil penalty for a violation of ch. 617, F.S., relating to corporations not for profit.
- Requires the division refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.
- Provides that the division director or any officer or employee of the division, and the condominium ombudsman or employee of the office of the condominium ombudsman,<sup>92</sup> may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association for the purpose of performing the duties of the division or the office of the ombudsman under ch. 718, F.S.

## **Condominium Ombudsman**

### ***Present Situation***

The Office of the Ombudsman (condominium ombudsman) within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the condominium ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.

The condominium ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.

### ***Effect of Proposed Changes***

The bill amends s. 718.5011(2), F.S., to provide for the appointment of the Condominium Ombudsman by the secretary of DBPR instead of by the Governor, and deletes the requirement that the ombudsman must be an attorney.

## **Limitations on Actions by Condominium and Cooperative Associations**

### ***Present Situation***

Statute of limitations for any actions in law or equity that a condominium association or a cooperative association may have do not begin to run until the unit owners have elected a majority of the members of the board of administration.<sup>93</sup> A statute of limitations provides a

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<sup>92</sup> Sections 718.5011-50152, F.S., relate to the Office of the Ombudsman within the division. The ombudsman is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints. The ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.

<sup>93</sup> Section 718.124, F.S.

specific time period in which an individual must bring a lawsuit, measured from the time of accrual of the cause of action.<sup>94</sup> This means that the specific time period for such cause of action does not begin to run until the turnover of control of the association “...passes from the developer to the unit owners.”<sup>95</sup> Currently, this turnover provision is not applicable to statutes of repose for any actions in law or equity.<sup>96</sup> If a defect occurs during construction of a condominium or cooperative but turnover does not happen for years after an event triggering the statute of repose, the association may be time-barred from filing suit on the defect claim even if the statute of limitations had only just begun to run because the statute of repose may have started to run well before the statute of limitations.

A statute of repose bars the filing of a lawsuit after a fixed period of time passes following a specific act, which act is unrelated to the cause of action’s accrual or the injury’s discovery, even if this period ends before the plaintiff is injured.<sup>97</sup> Further, a statute of repose eliminates the underlying substantive right of action, not just the available civil remedy, upon expiration of the statutorily-specified filing period.<sup>98</sup> Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed, which encourages diligence in the prosecution of claims, eliminates the potential for abuse resulting from a stale claim, and fosters finality in liability.<sup>99</sup>

### Construction Defect Claims

A “construction defect” is a deficiency in, or arising out of, the design, specifications, surveying, planning, supervision, or observation of construction, or the construction, repair, alteration, or remodeling of real property<sup>100</sup> resulting from:

- Defective material, products, or components used in construction or remodeling;
- A Florida Building Code violation;
- A failure of real property’s design to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction in place at the time of construction.<sup>101</sup>

<sup>94</sup> Statute of Limitations, Black’s Law Dictionary (11th ed. 2019).

<sup>95</sup> *Charley Toppino & Sons, Inc. v. Seawatch at Marathon Condo. Ass’n, Inc.*, 658 So. 2d 922, 925 (Fla. 1994). The intention for this provision was “to lengthen the limitations period for particular causes of action [in order] to prevent a developer from retaining control over an association long enough to bar a potential cause of action which the unit owners might otherwise have been able and willing to pursue.” *Id.*, quoting *Regency Wood Condominium, Inc. v. Bessent, Hammack & Ruckman, Inc.*, 405 So.2d 440 (Fla. 1st DCA 1981).

<sup>96</sup> *Sabal Chase Homeowners Ass’n, Inc. v. Walt Disney World Co.*, 726 So. 2d 796, 798 (Fla. 3d DCA 1999).

<sup>97</sup> Legal Information Institute, *Statute of Repose*, [https://www.law.cornell.edu/wex/statute\\_of\\_repose](https://www.law.cornell.edu/wex/statute_of_repose) (last visited Feb. 27, 2024); *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

<sup>98</sup> *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997).

<sup>99</sup> *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff’d, 835 F.2d 1369 (11th Cir. 1988).

<sup>100</sup> “Real property” means land that is improved and the improvements thereon, including fixtures, manufactured housing, or mobile homes. Section 558.002(8), F.S.

<sup>101</sup> Section 558.002(5), F.S.

### Applicable Statutes of Limitations and Repose

Section 95.11(3)(b), F.S., establishes the time periods within which a construction defect cause of action must be brought. Specifically, for a patent defect,<sup>102</sup> an action must generally be filed within four years from the date of the earliest of the:

- Owner’s actual possession;
- Issuance of a certificate of occupancy;
- Construction’s abandonment, if not completed; or
- Completion or termination of the engineer’s, architect’s, or contractor’s contract with his or her employer.<sup>103</sup>

However, for a latent defect,<sup>104</sup> the four-year statute of limitations begins to run on the date the defect was discovered or should have reasonably been discovered with due diligence. In any event, the statute of repose in this section provides that in no case may a construction defect claim be filed more than seven years after the earliest of any event triggering the statute of limitations for patent defects. In other words, a construction defect claim is time-barred after seven years from the earliest of any of the events listed above even where the defect is not yet discovered or could not reasonably have been discovered with the exercise of due diligence.

At the point of turnover in a condominium or cooperative, Florida law requires the developer to provide the association with a written inspection report; however, this report is limited in scope to the maintenance, condition, replacement costs, and useful life of specified components and thus may not provide the association with any insight into the existence of a construction defect.<sup>105</sup> It is the responsibility of the association to conduct an exhaustive property evaluation and determine if construction defects exist.<sup>106</sup>

### ***Effect of Proposed Changes***

The bill amends s. 718.124, F.S., to include the statute of repose, so that the statute of repose also begins to run once the unit owners elect the association board.

<sup>102</sup> A “patent defect” is a defect that is reasonably apparent or known to the owner. *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003); Legal Information Institute, *Patent Defect*, [https://www.law.cornell.edu/wex/patent\\_defect](https://www.law.cornell.edu/wex/patent_defect) (last visited Feb. 27, 2024).

<sup>103</sup> “Completion of the contract” means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made. Section 95.11(3)(c), F.S.

<sup>104</sup> A “latent defect” is a hidden defect that cannot be discovered by reasonable and customary observation or inspection, and of which the owner has no knowledge. *Alexander*, 837 So. 2d at 1058; Legal Information Institute, *Latent Defect*, [https://www.law.cornell.edu/wex/latent\\_defect#:~:text=A%20hidden%20or%20concealed%20defect,and%20customary%20observation%20or%20inspection](https://www.law.cornell.edu/wex/latent_defect#:~:text=A%20hidden%20or%20concealed%20defect,and%20customary%20observation%20or%20inspection) (last visited Feb. 27, 2024).

<sup>105</sup> Sections. 718.301(4)(p) and 719.301(4)(p), F.S.

<sup>106</sup> In any claim against a developer, if a defect is found in a condominium’s design, construction, or structural elements, or in any mechanical, plumbing, electrical, fire protection, or other element that requires a licensed professional for design or installation under chs. 455, 471, 481, 489, or 633, F.S., the defect must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or other individual or entity. A condominium or cooperative association should also reference its governing documents to determine whether any restrictions exist that would impair its right to initiate litigation. Section 718.301(7), F.S.

## Reports to the Legislature and Governor

### *Present Situation*

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>107</sup>

The Florida Building Commission (commission) was statutorily created to implement the Building Code. The commission, which is housed within DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.<sup>108</sup> The commission reviews several International Codes published by the International Code Council,<sup>109</sup> the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated, and adopts an updated Building Code every three years.<sup>110</sup>

### *Effect of Proposed Changes*

#### Florida Building Commission

The bill requires the Florida Building Commission to submit a report by December 1, 2024, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, of its review of the standards to prevent water intrusion through the tracks of sliding glass doors.

#### DBPR

The bill requires the division to submit, by January 1, 2025, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, a review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the provision.

### **Appropriation**

For the 2024-2025 fiscal year, the bill appropriates \$6,122,390 in recurring and \$1,293,879 in nonrecurring funds from the General Revenue Fund to the DBPR, and 65 full-time equivalent positions with an associated salary rate of 3,180,319 are authorized, for the purpose of implementing the provisions of this bill.

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<sup>107</sup> Section 553.72(1), F.S.

<sup>108</sup> Section 553.74, F.S.

<sup>109</sup> The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Feb. 27, 2024).

<sup>110</sup> Section 553.73(7), F.S.

**Effective Date**

Except as otherwise provided, the bill takes effect July 1, 2024.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

For the 2024-2025 fiscal year, the bill 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 associated salary rate of 3,180,319 are authorized, for the purpose of implementing the provisions of this bill

The Department of Business and Professional Regulation (DBPR) states it will incur additional expenses related to the number of positions required to handle the workload needed to implement the bill. The DBPR estimates it will need 65 additional staff and associated costs of \$7,416,268 (\$6,122,390 recurring and \$1,293,879 nonrecurring) from the General Revenue Fund for Fiscal Year 2024-2025.

The Division of Condominiums, Timeshares, and Mobile Homes (division) and the Office of the General Counsel both identified the need for additional positions to address the possible increases of violations and administrative complaints received by the DBPR. The additional staff costs are as follows:

- Office of the General Counsel: 8 positions with \$774,930 of Salaries and Benefits, \$118,129 of Expense, and \$2,880 of Transfer to DMS budget authority.
- Division of Regulation: 4 positions with \$259,346 of Salaries and Benefits, \$56,910 of Expense, \$50,000 of Acquisition of Motor Vehicles, \$6,000 of Operation of Motor Vehicles, and \$1,440 of Transfer to DMS-HR Services in budget authority.
- Division of Condominiums, Timeshares, and Mobile Homes: 53 positions with \$3,783,621 of Salaries and Benefits, \$1,110,777 of Expense, \$393,156 of Contracted Services, \$750,000 of Acquisition of Motor Vehicles, \$90,000 of Operation of Motor Vehicles, and \$19,080 of Transfer to DMS budget authority.

The bill creates new criminal penalties for violations relating to the management of a condominium association. This may have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) on the Department of Corrections.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.4334, 468.436, 553.899, 718.103, 718.104, 718.111, 718.112, 718.113, 718.115, 718.121, 718.1224, 718.128, 718.202, 718.301, 718.3027, 718.303, 718.501, 718.5011, 718.503, 718.504, 718.618, 719.106, 719.129, 719.301, and 719.618.

This bill creates the following sections of the Florida Statutes: 468.4335, 553.8445, and 718.407.

This bill creates undesignated sections of Florida law.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Fiscal Policy on February 27, 2024:**

- The committee substitute makes the following substantive changes to the bill:
- Provides conditions, including disclosure requirements in sales contracts and redefining the term “condominium,” for the creation of condominiums within a portion of a building or within a multiple parcel building.

- Regarding timeshare condominiums, applies the time periods for return of records by a community association manager (CAM) that are applicable to timeshare plans, and exempts timeshare condominiums from the requirement to submit a certificate of compliance with the director education requirements with the Division of Condominiums, Timeshare, and Mobile Homes (division).
- Requires a previously disclosed conflict of interest in an existing community management contract to, upon renewal, be noticed and voted on in accordance with the conflict disclosure process in the bill.
- Limits the requirement for boards to consider multiple bids from other third-party providers of such goods or services to only those goods or services that exceed \$2,500.
- Prohibits access to unit owner email addresses and facsimile numbers without a unit owner's consent, and prohibits the sale or sharing of such personal information to third parties.
- Removes from the bill the requirement for certain condominiums to be equipped with a reusable devise to prevent water intrusion through the tracks of sliding glass doors as a condition for a certificate of completion or occupancy.
- Requires the Florida Building Commission to perform a study and report, by December 1, 2024, to the Governor, the presiding officers of the Legislature, and others on the standards to prevent water intrusion through the tracks of sliding glass doors, including considerations of devises designed to prevent such water intrusion.
- Includes board member education certificates as an official record.
- Requires official records to be organized.
- Revises the director education requirements to include instruction on milestone inspections, structural integrity reserve studies, elections, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements.
- Removes from the bill the exemption from the structural integrity reserve study (SIRS) requirements for a four-family dwelling with three or fewer habitable stories above ground.
- Requires condominium associations to notify the division within 45 days after the structural integrity reserve study is completed, requires the division to maintain an online database of associations that have completed the SIRS, and requires the division to include an internet link to a list of associations that have completed the SIRS in its annual report.
- Provides that the statute of limitations and statute of repose for certain actions available to a condominium association or a cooperative association, will not begin to run until the unit owners have elected a majority of the members of the board of administration.
- Effective October 1, 2024, requires a nondeveloper seller of a unit to give, to a prospective purchaser of a unit, a copy of the annual financial statement and annual budget of the condominium association (instead of the "financial information required by s. 718.111, F.S.")
- Revises the post-turnover jurisdiction of the division to include procedure and records related to financial issues under specified provisions, elections under specified provisions (including electronic voting), allegations of criminal violations under ch. 718, F.S., procedural aspects of meetings under specified provisions, disclosure of

conflicts of interest, removal of directors and officers for specified criminal violations, and any written inquiries by unit owners to the association.

- Authorizes the division to issue citations and adopt rules to provide for citation bases and citation procedures.
- Authorizes the division to provide a template for director education certificates.
- Authorizes the division to request access to an association's website to investigate complaints related to unit owner access to official records on such website.
- Requires associations to certify such compliance with director education requirements on a form provided by the division and deletes the requirement in the bill to submit the certificate along with the payment of the annual fee.
- Provides an appropriation.

**CS/CS by Appropriations Committee on Agriculture, Environment and General Government on February 13, 2024:**

The committee substitute makes several technical and clarifying changes to the bill and the following substantive revisions to the bill:

- Deletes the requirements for the Division of Condominium, Timeshares, and Mobile Homes (division) to provide education programs for director and officer, and to pay for such programs even if performed by a division-approved provider.
- Deletes the requirement for the division to conduct random audits of condominium associations' compliance with the requirement to maintain certain records on their websites.
- Revises the division's post-turnover jurisdiction to include only allegations of criminal violations under ch. 718, F.S., and the removal of directors and officers who have been indicted or charged by information under s. 718.112(2)(q), F.S.
- Removes from the bill all the provisions related to allowing associations to invest reserve funds, and impose contingent special assessments based on a line of credit.
- Exempts four-family dwelling with three or fewer habitable stories above ground from the milestone inspection and structural integrity reserve study (SIRS) requirements.
- Requires all residential dwellings to be equipped with a reusable device to prevent water intrusion through the tracks of an exterior sliding glass door as a condition for a building permit for a new or existing dwelling if the work involves a sliding glass door, and is a condition for the milestone inspection.
- Removes duplicative provisions stating that a director or an officer who commits specified crimes is deemed removed from office and a vacancy declared.
- Defines the term "kickback."
- Deletes the requirement for associations to give members a copy of the accountant's management letter or opinion letter for the financial statement.
- Clarifies the requirement for boards to meet at least quarterly, to provide that members have a right to ask questions with respect to reports on the status of construction or repair projects, the status of revenues and expenditures, and other issues affecting the condominium.
- Requires that the officer and director education curriculum be at least four hours long, specifies the topics that must be addressed, including fiduciary duty and SIRS requirements, and permits associations to pay for directors' education expense.

- Deletes the extension of time to complete the SIRS if the association has a contract to perform a SIRS if the SIRS cannot reasonably be completed before the December 31, 2024 deadline.
- Allows associations to pause reserve funding, with the approval of the majority of the members, if the entire building is unsafe and uninhabitable because of a natural disaster.
- Provides that the provision in s. 718.113(5)(d), F.S., relating to hurricane protection, applies unless the declaration of condominium recorded on or before July 1, 2024 provides otherwise.
- Provides for the appointment of the condominium ombudsman by the secretary of the Department of Business and Professional Regulation instead of by the Governor, and deletes the requirement that the ombudsman be an attorney.

**CS by Regulated Industries on January 22, 2024:**

The committee substitute makes several technical and clarifying changes to the bill and following substantive revisions to the bill (unless otherwise stated all revisions relate to condominium associations):

- Changes the title from an act relating to condominium and cooperative association to an act relating to community associations.
- Revises for clarity the requirements that condominium association managers (CAMs) and firms return documents to the association to provide that the CAM may retain records for up to 20 days after their contract is terminated in order to complete an ending financial statement or report.
- Revises the requirements for CAMs to disclose a conflict of interest to:
  - Require the board to solicit multiple bids (instead of at least three bids) if the association considers a bid for goods or services for which a CAM has a conflict of interest;
  - Delete the provision allowing association members to void a contract; and
  - Provide that the procedures for resolving conflicts of interest in the bill do not apply to activities or the provision of goods and services that are disclosed in the management services contract.
- Regarding the requirement in the bill related to the maintenance of official records:
  - Deletes the requirement for associations to maintain “other substantiating documentation” which is not necessary;
  - Deletes the requirement in the bill that official records be maintained in an organized manner;
  - Provides that the obligation to maintain official records includes a good faith obligation to recover records as may be reasonably possible in the event records are lost, destroyed, or otherwise unavailable;
  - Provides that associations may satisfy a request for access to records by making the records available for download on the association website or through an application on a mobile device; and
  - Deletes the requirement that the checklist made in response to a records request be accompanied by a sworn affidavit.
- Provides a first degree misdemeanor criminal offense for a person to knowingly or intentionally deface or destroy required accounting records or knowingly and

intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members.

- Provides that officers and directors charged with the criminal violation created in the bill are deemed removed from office and a vacancy declared.
- Requires that meetings of the board must meet at least once each quarter instead of four times a year.
- Revises the requirement in the bill that copies of contracts being considered by the board must be provided to the unit owner with the meeting notice, to allow the copies to be made available for download on the association website or through an application on a mobile device.
- Extends the period associations must retain a copy of an officer or director's educational certificate from 5 years to 7 years.
- Provides an extension of the deadline for completion of a structural integrity reserve study if the condominium or cooperative association has entered into a contract for the performance of the study and the study cannot reasonably be performed or completed by December 31, 2024. The study still must be completed by December 31, 2026.
- Includes contingent special assessments and any line of credit for which a contingent special assessment may be imposed in the list of information that must be included in the estoppel certificate.
- Deletes the requirement in the bill for the recording of special assessments in the public record.
- Deletes the requirement that a notice of such obligation must also be provided to the unit owner at least 90 days before a vote of the members (instead of before an election or vote of the members).
- Allows unit owners to consent to electronic voting in condominium and cooperative association elections by using an electronic means of consent.
- Authorizes the Division of Condominium, Timeshares, and Mobile Homes to impose a civil penalty for a violation of ch. 617, F.S., relating to corporations not for profit.

**B. Amendments:**

None.