2024 LEGISLATION IMPACTING ON CONDOMINIUM ASSOCIATIONS

Steven M. Falk, Esq.
Falk Law Firm, P.A.
7400 Trail Blvd., Suite 103
Naples, FL 34108
sfalk@falklawpa.com
(239) 596-8400

House Bill 1021 will become effective on July 1, 2024. Although HB 1021 has not been signed into law yet, it is unlikely that the Governor will veto it. House Bill 1029 became effective on April 24, 2024.

Below is a summary of the revisions to the Condominium Act that will become effective on July 1st.

House Bill 1021

Criminal Penalties

An officer, director, or manager of a condominium association ("COA") who knowingly solicits, offers to accept, or accepts a kickback commits a third degree felony.

Any director or member of the board or COA or a community association manager who knowingly, willfully, and repeatedly violates statutory requirements with respect to a member's access to and obtaining copies of records, with the intent of causing harm to the COA or one or more of its members, commits a second degree misdemeanor. "Repeatedly" is defined as 2 or more violations within a 12-month period.

Any person who knowingly and intentionally defaces or destroys accounting records 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 COA or one or more of its members commits a first degree misdemeanor.

An officer or director who (1) knowingly aides, abets or advises a person in the commission of a fraudulent voting activity related to a COA election; (2) agrees, conspires or confederates with at least one other person to commit a fraudulent voting activity related to COA elections; or (3) has knowledge of a fraudulent voting activity related to COA elections and giving any aid to offender with intent that the offender avoid or escape detection, arrest, trial, or punishment, commits a first degree misdemeanor. The COA Act already provides that persons who engage in fraudulent voting activity are guilty of a first degree misdemeanor.

Any person who willfully and knowingly refuses to release or otherwise produce COA 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, commits a third degree felony.

Any director of officer charged by information or indictment with a criminal violation of the COA Act is deemed to have been automatically removed from the board and a vacancy declared. While the criminal charge is pending, the person is prohibited from serving as a Director or officer, or having access to official records, of any condominium association, except by a court order.

Numerous acts involving COA elections are now a first-degree misdemeanor, including fraud,; making a willfully false affidavit; fraudulently seeking to change a ballot, ballot envelope, vote or voting certificate;

using force or violence or any tactic of coercion or intimidation or bribery, menace, threat, or any other corruption" to try to influence a unit owner's vote; seeking to corruptly influence a vote by giving or promising "anything of value" to someone, other than a wearable campaign advertisement of nominal value or food at an election rally, or aiding an election fraud offender to avoid consequence.

Milestone Inspections

"Four-family" dwellings are now added to the types of buildings that are 3 or fewer habitable stories above ground that are not required to obtain a milestone inspection report (in addition to single-family, 2-family and 3-family dwellings).

SIRS (Structural Integrity Reserve Study)

The Condominium Act was amended to provide that within 45 days of receiving a SIRS, the COA must provide a copy to each unit owner or notify the owners of its availability. The SIRS itself or notice of availability must be sent by U.S. mail, personal delivery or by email if the owner has consented to receive notices via email.

Within 45 days after receiving the SIRS, the COA must provide the Division of Florida Condominiums with a statement that the SIRS was completed and that the COA provided or made the SIRS available. The statement must be provided to the Division in the manner established by the Division using a form posted on the Division's website.

If a natural emergency renders an entire building unsafe and uninhabitable, as determined by the local building official, the board and a majority of the COA's members may vote to suspend reserve funding until the local building official determines that the building is habitable. Any reserves accounts may be spent, pursuant to the board's determination, to make the building habitable. Once the local building official determines that the building is habitable, the COA must immediately resume contributing fund to its reserves.

Board Meetings

If a residential COA operates a condominium with more than 10 units, the board must meet at least once per quarter. In addition, at least 4 times each year, the meeting agenda must include an opportunity for members to pose questions to the board.

The right to attend board meetings now includes the right to ask questions relating to reports on the status of construction or repair projects, the status of revenues and expenditures during the current fiscal year, and other issues affecting the condominium. Prior to this year's amendment to the Condominium Act, owners had the right to speak at board meetings only with reference to items on the agenda.

If an agenda item relates to the approval of a contract for goods and services, a copy of the contract must be provided with the notice and be made available for inspection and copying upon a written request from an owner or made available on the COA's website or through an application that can be downloaded on a mobile device.

Mandatory Director Education

Currently, a newly elected or appointed Director has a choice between attending a Director education class or signing and providing certificate that the Director has read the governing documents and will work to uphold them and uphold the Director's fiduciary duty.

Directors must now provide the certificate about reading the governing documents, etc. and submit to the COA's Secretary a certificate of having completed the Department of Business & Professional Regulation (DBPR) approved education for newly elected or appointed directors within one year before being elected or appointed or 90 days after being elected or appointed.

A director who was elected or appointed before July 1, 2024, must comply with the written certification and educational certificate by June 30, 2024.

The educational curriculum must be at least 4 hours long and include instruction on milestone inspections, SIRS, elections, recordkeeping, financial literacy and transparency, levying of fines and notice and meeting requirements. There is also a required legal update class.

The certificate of course completion is now valid for 7 years and does not have to resubmitted as long as the director serves on the board without interruption during the 7-year period.

A director of an HOA that has fewer than 2,500 parcels must complete at least 4 hours of continuing education annually, while directors of an HOA with 2,500 or more parcels must complete at least 8 hours of continuing education annually.

A director who has not submitted a certificate with respect to having satisfactorily completed the required education courses is automatically suspended from the board until he or she complies with the education requirement. The board may temporarily fill the vacancy during the suspension period.

COA Website

Currently, a COA that manages a condominium with 150 or more units must post a laundry list of official records and notices on its website. Effective July 1, 2024, the website requirements apply to a COA that manages a condominium with 25 or more units.

Suspension of Voting Rights

At least 90 days before an election, a COA must notify an owner or members that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation. The Condominium Act already provides that a COA may suspend the voting rights of an owner or member due to nonpayment of any monetary obligation that is more than $1,000.00 and is more than 90 days delinquent.

Prohibited Action by COA Against Owners

The Condominium Act already limits lawsuits against an owner by a local government, business or individual for speech at a public hearing or other related activities (known as Strategic Lawsuits Against Public Participation, or SLAPP suits). This provision was amended to protect an owner when he or she exercises the right to "instruct his or her representatives" or "petition for redress of grievances" with regard to actions by the COA.

Accordingly, as of July 1, 2024, it will be unlawful for a COA to fine, discriminatorily increase an owner's assessments, discriminatorily decrease services to a unit owner, or bring or threaten to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action, based on conduct described in the amendment to the Condominium Act.

In order to raise the defense of retaliatory conduct, an owner must have acted in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which a COA, an officer, a director, or an agent

of a COA may not retaliate include, but are not limited to, situations in which an owner has: reported code violations to the governmental agency; created, joined or supporting "a unit owners' organization"; reporting information or filing a complaint with the Division, a law enforcement agency, a state attorney, the Attorney General or any other government agency; the owner has exercised his or her rights under the Condominium Act; the unit owner has complained to the COA or any of the COA's representatives for the failure to comply with the Condominium Act or Chapter 617, Florida Statutes; or the unit owner has made public statements critical of the operation or management of the COA.

A COA may not spend COA funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in the amendment to the Condominium Act.

Hurricane Protection

"Hurricane protection" is now defined as "hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

A board must now adopt specifications for hurricane protection, not just hurricane shutters, which specifications may include color, style and other factors deemed relevant by the board. Currently, the Condominium Act provides that the specifications shall include those factors. The board may not refuse to approve the installation or replacement of hurricane protection by an owner which conforms to the specifications adopted by the board. However, the board may require the owner to adhere to an existing unified building scheme regarding the external appearance of the condominium.

For both residential and mixed-use condominiums, the declaration of condominium must specify whether the unit owner or the COA 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 installation, maintenance, repair, replacement and operation of hurricane protection in accordance with Section 718.113(5) of the Condominium Act is not deemed a material alteration of substantial addition to the common elements or association property.

The Condominium Act was also amended to permit the board to require that owners install hurricane protection, subject to approval from a majority of the COA's voting interests. A vote of the owners to require the installation of hurricane protection must be set forth in a certificate attesting to the vote and include the date that the hurricane protection must be installed. The certificate must be recorded in the public records of the county in which the condominium is located. After recording the certificate, the board must mail or hand deliver a copy of the recorded certificate to owners; email is sufficient for those owners who have consented to receive official COA notices via email. However, the failure to record the certificate or sent a copy to owners does not affect the validity or enforceability of the owner vote.

Notwithstanding the discussion in the preceding paragraph of this summary, membership approval is not required if the installation, maintenance, repair and replacement of hurricane protection, or any exterior windows, doors or other apertures protected by the hurricane protection, is the responsibility of the COA pursuant to the declaration of condominium, as originally recorded or amended, or if the owners are required to install hurricane protection pursuant to the declaration of condominium, as originally recorded or amended.

If hurricane protection that meets or exceeds the current applicable building code has been previously installed, the board may not install the same type of hurricane protection or require that owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or it is necessary to prevent damage to the common elements or a unit.

An owner is not responsible for the cost of any removal or reinstallation of hurricane protection, including exterior windows, doors, or other apertures, if its removal is necessary for the maintenance, repair, or replacement of other condominium property or association Property for which the COA is responsible. The board must determine if the removal or reinstallation of hurricane protection must be completed by the owner or the COA. If such removal or reinstallation is completed by the COA, the costs incurred by the COA may not be charged to the Unit Owner. If such removal or reinstallation is completed by the Unit Owner, the COA must reimburse the Unit Owner for the cost of the removal or reinstallation or the COA must apply a credit toward future assessments in the amount of the Unit Owner's cost to remove or reinstall the hurricane protection.

If the removal or reinstallation of hurricane protection, including exterior windows, doors or other apertures, is the responsibility of the owner and the COA completes such removal or reinstallation and then charges the unit owner for such costs, those amounts are enforceable as an assessment.

An owner is exempt from the cost of installing hurricane protection if the owner has the same type of hurricane protection in place and it is compliant with current codes, if the installation for all other units is funded by the COA's budget (including reserves).

Annual Financial Report

Regardless of the type of financial statement required under the Condominium Act, the members can vote to authorize the COA to prepare or obtain a less rigorous financial statement than otherwise required, but the COA may no longer reduce the type of financial statement for consecutive fiscal years (i.e., the reduction is only permitted every other year).

Currently, COA must mail or hand-deliver the annual financial report to each owner or a notice that the annual financial report will be provided upon written request. The Condominium Act was amended to change "or" to "and", a change to the Condominium Act that is incomprehensible.

Debit Cards

The Condominium Act already prohibits a COA and its officers, directors, employees, and agents from using a debit card issued in the name of the COA, or billed directly to the COA, for the payment of any COA expense. The Condominium Act was amended to provide that any person who uses a debit card issued in the name of the COA, or billed directly to the COA, for any expense that is not a lawful obligation of the COA, commits theft.

Statute of Repose

Section 718.124 of the Condominium Act was amended to provide that the statute of repose (the outer date when the statute of limitations expires if there is a latent defect) does not begin to run until turnover.

Official Records

A terminated community association manager or community association management company must provide the COA's official records to the COA within 20 business days after termination of the management

agreement or receipt of a written request for return of the official record, whichever occurs first, except that the terminated community association manager or management company may retain, for up to 20 business days, those records necessary to complete an ending financial statement or report.

Notice of termination of the management agreement must be sent by certified mail, return receipt requested, or in the manner required under the management agreement.

The types of records which are accessible by all owners has been specifically expanded to include all invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the Association, all building permits and a copy of all satisfactorily completed board member educational certificates.

In response to a written request to inspect official records, the COA must simultaneously provide a checklist to the requestor of all official records made available for inspection and copying. The checklist must also identify any of the COA's official records that were not made available to the requestor. A COA must maintain a checklist provided under this sub-subparagraph for 7 years. A COA delivering a checklist creates a rebuttable presumption that the COA has complied with the Condominium Act with respect to providing access to official records.

Conflicts of Interest

Requires written disclosure to the COA's board by a community association manager, community association management company or director, officer or person with a financial interest in the company or a relative who is related within the third degree of consanguinity blood or marriage, of any conflict of interest, including a contract or business with the COA for other than management services.

In such an instance, if the bid for goods or services exceeds $2,500, the COA must solicit multiple competitive bids from other providers. Disclosure of the conflict must be disclosed in agenda text and attachments and meeting minutes. Board approval of a contract or transaction with a conflict requires approval by 2/3 of the Directors present, and disclosure at the next membership meeting, unless the conflict is disclosed in the management services contract. A violation allows the COA to cancel the contract for management services without penalty and subjects the manager or management company to discipline by DBPR.

Electronic Voting

The Condominium Act was amended to permit a member to electronically consent to voting through an Internet-based online voting system

Jurisdiction of Division of Florida Condominiums

Many years ago, the Division's authority to enforce the Condominium Act against COA's was limited by the Florida Legislature to financial issues, elections, records maintenance and access, and COA operations during developer control. The Division was later granted jurisdiction over procedural completion of SIRS.

Effective July 1, 2024, the Division's authority is increased to also include the procedural aspects of membership and board meetings, procedural aspects and records relating to financial issues, assessments, elections, disclosure of conflicts of interest, inquiries by unit owners to COAs and Director recalls.

The jurisdiction of the Division is also expanded to include the new crimes created by the amendments to the Condominium Act and the related removal of a Director or officer from office. The Division is required to refer to local law enforcement authorities any of the new crimes which the Division believes has occurred.

House Bill 1029 (Chapter 2024-108)

HB 1029 (My Safe Florida Condominium Pilot Program) became effective on April 24, 2024. It is intended to provide COAs with a program that is similar to the My Safe Florida Home Program that relates to single family homes. HB 1029 creates a program that makes COAs eligible to apply for grants to upgrade their buildings and reduce the impact of hurricanes.