2024 LEGISLATION IMPACTING ON HOMEOWNERS ASSOCIATIONS

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2024 was an active year for HOA legislation, including House Bills 59, 293 and 1203. HB 293 went into effect on May 28, 2024. HB 59 and 1203 will become effective July 1, 2024.

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

House Bill 1203 (Chapter 2024-221)

House Bill 1203 was the primary bill relating to HOAs.

Mandatory Director Education

Currently, a newly elected or appointed Director has a choice between attending a Director education class or signing a 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 complete the Department of Business & Professional Regulation (DBPR) approved education for newly elected or appointed directors within 90 days after being elected or appointed. Certification of reading the governing documents, upholding them and the director's fiduciary duty is no longer an option.

The certificate of course completion is valid for 4 years. Language was deleted from the Homeowners Association Act that previously provided that the educational certificate is valid for the uninterrupted tenure of the director on the board.

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.

Official Records

HOA records must now be kept for 7 years, unless the governing documents require more years. Although bids are included in the 7-year list, the Homeowners Association Act elsewhere requires that bids be kept for one year.

If an HOA has 100 or more parcels, the HOA must create a website and post notices of board and members' meetings and official records on the website.

The HOA's website and any app must include a section that is accessible only by user name and password by owners and employees of the HOA. Upon written request by an owner, the HOA must provide the owner with a username and password and access to the protection sections of the website.

A terminated community association manager or community association management company must provide the HOA's official records to the HOA 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.

Criminal Penalties

An officer, director, or manager of an HOA who knowingly solicits, offers to accept, or accepts a kickback commits a third degree felony.

Any director or member of the board or HOA 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 HOA 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 HOA 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 an HOA election; (2) agrees, conspires or confederates with at least one other person to commit a fraudulent voting activity related to HOA elections; or (3) has knowledge of a fraudulent voting activity related to HOA 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 Homeowners Association 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 HOA 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 Homeowners Association Act is deemed to have been automatically removed from the board and a vacancy declared.

Financial Statements

Although the Homeowners Association Act continues to determine the level of the annual financial statement on the HOA's annual revenues, the Homeowners Association Act was amended to provide that if the HOA has at least 1,000 parcels, an audit is required, regardless of the annual revenues.

Regardless of the type of financial statement required under the Homeowners Association Act, the members can vote to authorize the HOA to prepare or obtain a less rigorous financial statement than otherwise

required, but the HOA may no longer reduce the type of financial statement for consecutive fiscal years (i.e., the reduction is only permitted every other year).

Conflicts of Interest

Requires written disclosure to the HOA's board by a community association manager, community association management company or any 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 Association for other than management services.

In such an instance, if the bid for goods or services exceeds $2,500, the HOA 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 community association manager or management company to discipline by DBPR.

Debit Cards

An HOA and its officers, directors, employees, and agents may not use a debit card issued in the name of the HOA, or billed directly to the HOA, for the payment of any HOA expense. Any person who uses a debit card issued in the name of the HOA, or billed directly to the HOA, for any expense that is not a lawful obligation of the HOA, commits theft.

Member Request for Accounting

An owner can now make a written request for a detailed accounting of any amounts owed to the HOA. If the HOA fails to provide the accounting within 15 business days of a written request, any outstanding fines of the owner are waived if the fine is more than 30 days past due and the HOA did not give prior written notice of the fines.

Architectural Review/Enforcement

When an HOA notifies an owner that his or her request for construction of a structure or other improvement on a parcel has been denied, the notice must specify the covenant or rule that the HOA relied upon and the specific aspect of the structure or other improvement that violates the covenant or rule.

Arguably, all of the statutory revisions discussed below in this "Architectural Review/Enforcement" section of this legislative summary are not enforceable against governing documents recorded prior to July 1, 2024.

Based upon amendments to the Homeowners Association Act, an HOA or any architectural, construction improvement or other similar committee may not enforce or adopt a covenant, rule or guideline that:

1. Limits or places requirements on the interior of a structure that are not visible from the parcel's frontage or an adjacent parcel, common area or community golf course;
2. Requires the review and approval of plans and specifications for central air-conditioning, refrigeration heating, or ventilating system not visible from a parcel's frontage, an adjacent parcel,

common area, or community golf course, if a substantially similar system has been previously approved; and

3. Prevents a homeowner from installing or displaying any items on a parcel (vegetable gardens and clotheslines were added to the non-exhaustive list of items) in areas not visible from the frontage or an adjacent parcel, an adjacent common area, or a community golf course. Prior to this year's amendment, the non-exhaustive list of items already included artificial turf, boats, and flags,

An HOA's governing documents may not prohibit:

1. An owner or the owner's tenant, guest or invitee from parking his or her personal vehicle, including a pickup truck, in the owner's driveway or in any other area in which the owner or the owner's tenant, guest or invitee has a right to park as governed by Florida, county and municipal regulations;

2. Regardless of any official insignia or visible designation, an owner or a tenant, guest, or invitee from parking his or her work vehicle, which is not a commercial motor vehicle as defined in Section 320.01(25), Florida Statutes, in the owner's driveway.

3. An owner from inviting, hiring or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor list of the HOA. Additionally, the governing documents may not preclude an owner from inviting, hiring, or allowing entry to a contractor or worker on his or her parcel solely because the contractor or worker does not have a professional or an occupational license. The HOA may not require a contractor or worker to present or prove possession of a professional or an occupational license to be allowed entry onto an owner's parcel.

4. Operation of a vehicle that is not a commercial motor vehicle as defined in Section 320.01(25), Florida Statutes in conformance with state traffic laws, on public roads or right of ways or the owner's parcel.

5. A first responder, as defined in Section 112.1815(1), Florida Statutes, who is an owner or the owner's tenant, guest or invitee, from parking his or her assigned first responder vehicle in an area where the owner or the owner's tenant, guest or invitee otherwise has a right to park, including on public roads or rights of way. The Homeowners Association Act was amended to replace "law enforcement" with "first responder".

Interest on Delinquent Assessments

Compound interest (i.e., "interest on interest") may not accrue on delinquent assessments.

Fines and Suspensions

The Homeowners Association Act was clarified by stating that the 14 day notice requirement for the imposition of a fine or suspension previously levied by the board must be in writing and specify that the owner has a right to a hearing. The hearing must be held within 90 days after issuance of the notice. The fining/suspension committee may hold the hearing by telephone or other electronic means. The notice must include the date of the hearing and access information if the hearing will be held by telephone or other electronic means.

The Homeowners Association Act was amended to provide that the committee must, within 7 days after the hearing, include more information in the notice of the results of the fining/suspension hearing – which now includes the manner in which the owner may fulfill the suspension or the date by which the fine must be paid.

The committee must now set a date by which a fine must be paid, which must be at least 30 days after delivery of the notice of the committee's determination.

If a violation has been cured before the hearing or in the manner specified in the pre-hearing notice or the post-hearing notice, the fine or suspension may not be imposed.

If the violation is not cured or the fine is not paid in response to the post-hearing notice, reasonable attorney's fees and costs may be awarded to the HOA. The attorney's fees and costs may not begin to accrue until after the date noticed for payment and the time for an appeal has expired.

The Homeowners Association Act was further amended to provide that notwithstanding anything to the contrary in an HOA's governing documents, an HOA may not levy a fine or impose a sanction for any of the following:

1. Leaving garbage receptacles at the curb or end of a driveway within 24 hours before or after the designated garbage collection day or time;
2. Leaving holiday decorations or lights on a structure or other improvement on a parcel longer than indicated in the governing documents, unless such decorations or lights are left up for longer than one week after the association provides written notice of the violation to the owner.

Electronic Voting

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

House Bill 59 (Chapter 2024-202)

HB 59 deals with dissemination of HOA rules and covenants to existing and new members. HOAs must:

1. Provide a physical or digital copy of the HOA's rules and covenants to every member of the HOA before October 1, 2024;
2. Provide a physical or digital copy of the HOA's rules and covenants to every new member of the HOA; and
3. Provide an updated copy of the amended rules or covenants if the rules or covenants are amended. The HOA may adopt rules establishing standards for the manner of distribution and timeframe for providing such documents;

These requirements may be met by posting a complete copy of the HOA's rules and covenants, or a direct link to those documents, on the homepage of the HOA's website if the website is accessible to the members and the HOA sends notice to each member of its intent to utilize the website for that purpose. The notice must be sent in the following ways:

1. By e-mail to any member who has consented to receive notices by e-mail and provided an e-mail address to the HOA for that purpose; and
2. By mail to all other members at the address identified as the members' mailing address in the HOA's official records.

House Bill 293 (Chapter 2024-205)

HB 293 imposes requirements on HOAs regarding hurricane protection.

An HOA's board or architectural, construction improvement or other such similar committee must adopt hurricane protection specifications. The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All hurricane protection specifications adopted by the board must comply with the applicable building code.

Regardless of anything else in the HOA's governing documents, the board or any architectural, construction improvement or other such similar committee may not deny an application for the installation, enhancement or replacement of hurricane protection by an owner that conforms to the specifications adopted by the board. The board or committee may require an owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel (i.e., lot).

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