

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 1021 Community Associations

**SPONSOR(S):** Commerce Committee and State Administration & Technology Appropriations Subcommittee and Regulatory Reform & Economic Development Subcommittee, Lopez, V. and others

**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/CS/CS/SB 1178

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**FINAL HOUSE FLOOR ACTION:** 111 Y's

0 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/CS 1021 passed the House, as amended, on March 1, 2024, and subsequently passed the Senate on March 6, 2024.

Related to community association managers (CAMs) and CAM firms, the bill:

- Requires a CAM to return all community association records in its possession within 20 days of the termination of a services agreement or a written request whichever occurs first.
- Provides conflict of interest disclosure requirements and a process for associations to follow when approving contracts with a CAM with a possible conflict of interest.

Related to official records, the bill:

- Provides that on January 1, 2026, condominium associations with 25 units or more will be required to maintain specified records available for download on the association's website or by an application on a mobile device.
- Requires associations to maintain additional accounting records (e.g., invoices and other documentation that substantiates any receipt or expenditure).
- Provides that a condominium association 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.
- Provides criminal penalties related to the association refusing to release or destroying official records.

The bill:

- Provides criminal penalties for accepting a kickback and for fraudulent voting activities.
- Requires directors to annually complete continuing education on recent changes to the condominium laws and rules.
- Requires a residential condominium association of 10 or more units to meet at least once each quarter; and to include at least four times each year in the meeting agenda an opportunity for members to ask questions.
- Allows the condominium board with regard to the structural integrity reserve study to recommend a temporary pause in the reserve funding or reduced funding in certain circumstances.
- Clarifies and expands the jurisdiction of the Division of Condominiums, Timeshares and Mobile Homes (Division) after turnover occurs.
- Requires Division employees to refer suspected criminal activity to law enforcement agencies.
- Requires the Division to create a database on its website of the condominium and cooperative associations that have completed their structural integrity reserve study by January 1, 2025.
- Requires every contract for sale of a unit that is located within a condominium that is within a portion of a building or within a building other than a building consisting entirely of a single condominium, to include a certain disclosure.
- Requires the Florida Building Commission (FBC) to conduct a study on standards to prevent water intrusion through the tracks of sliding glass doors.

The bill does not have a fiscal impact on local governments. The bill has a significant negative fiscal impact on state government. See Fiscal Analysis and Economic Impact Statement.

The bill was approved by the Governor on June 14, 2024, ch. 2024-244, L.O.F. the effective date of this bill is July 1, 2024 except as otherwise provided.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1021z1.DOCX

**DATE:** 6/24/2024

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Community Associations – Background**

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium associations;
- Cooperative associations;
- Florida mobile home parks and related associations;
- Vacation units and timeshares;
- Yacht and ship brokers and related business entities; and
- Homeowners' associations (limited to arbitration of election and recall disputes).

#### **Community Association Managers- Current Situation**

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR) pursuant to part VIII of ch. 468, F.S. Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers at DBPR.<sup>1</sup>

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 a person who:

- Performs clerical or ministerial functions under the direct supervision and control of a licensed manager, or
- Performs only the maintenance of a community association and does not assist in any of the management services.<sup>2</sup>

To become licensed as a CAM, a license applicant must:

- Submit to a background check to determine good moral character,
- Attend a DBPR-approved in-person training prior to taking the examination, and
- Pass the licensure examination.<sup>3</sup>

CAMs must also complete not more than 10 hours of continuing education hours as approved by the council to renew and maintain their licenses.<sup>4</sup>

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

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

<sup>3</sup> S. 468.433, F.S.

<sup>4</sup> S. 468.4336 and 468.4337, F.S.

Section 468.4334, F.S., outlines 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.”

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:

- Committing acts of gross misconduct or gross negligence in connection with the profession.
- Contracting, on behalf of an association, with any entity in which the CAM has a financial interest that is not disclosed.
- Violating any provision of chapter 718 (relating to condominiums), chapter 719 (relating to cooperatives), or chapter 720 (relating to homeowners’ associations) during the course of performing community association management services pursuant to a contract with a community association.<sup>5</sup>

## **Community Association Managers- Effect of the Bill**

### *Return of Official Records*

The bill provides additional professional practice standards for CAMs and CAM firms. The bill requires CAMs and CAM firms to return all community association official records in its possession within 20 days of the termination of a contractual agreement to provide CAM services or a written request for the return of the official records, whichever occurs first.

Failure of a CAM or a CAM firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that such CAM or CAM firm willfully failed to comply. If the CAM or CAM firm fails to timely return the applicable official records to the community association, the CAM or CAM firm will be subjected to:

- suspension of its license under s. 468.436, F.S., and
- a civil penalty of \$1,000 per day (up to 10 days) which is assessed beginning on the 21<sup>st</sup> day after the termination of a contractual agreement receipt of a written request from the association for return of the records.

The bill requires such notice of termination to be sent by:

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

The CAM or CAM firm may retain, up to 20 business days, those records necessary to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve such CAM or CAM firm of any further responsibility or liability for the preparation of the statement or report.

The bill provides that such time periods above do not apply to CAMs related to management of a timeshare plan created under chapter 721, but that the time periods provided in s. 721.14(4)(b), F.S., apply in those situations.

### *Conflicts of Interest*

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<sup>5</sup> S. 468.436(2)(b)5.-7., F.S.

The bill requires disclosure of any activity that may reasonably be construed to be a conflict of interest by the CAMS and creates a conflict of interest disclosure process for CAMs and CAM firms, including directors, officers, persons with a financial interest in a CAM firm, or a relative<sup>6</sup> of such persons.

If any of the following exist without providing prior notice, there is a presumption that there is a conflict of interest unless proven otherwise:

- Contracts for goods or services with the association.
- Receiving compensation or anything of value from a 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 a CAM service, from an individual with a financial interest in the community association, the association must also solicit multiple bids from other third-party providers of such good or service.

If an individual discloses that he or she engages in an activity that is a conflict of interest as described above:

- Such activity must be listed on all contracts;
- Transactional documents related to the proposed activity must be attached to the meeting agenda of the next board meeting; and
- The disclosures of a possible conflict of interest must be entered into the written minutes of the meeting.

The bill provides:

- A contract or other transaction with a possible conflict of interest must be approved by an affirmative vote of two-thirds of all directors present.
- A contract or other transaction with a possible conflict of interest must be disclosed to the members at the next regular or special meeting.

The bill allows the association to cancel its community association management contract with the CAM or the CAM firm, if the board finds that a CAM or a CAM firm, including directors, officers, and persons with a financial interest in a CAM firm, or a relative of such persons have a conflict of interest. If such contract is canceled, the association:

- would only be liable for the reasonable value of the goods and services provided up to the time of cancellation, and
- would not be liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.

Under the bill, if a CAM or a CAM firm has previously disclosed a conflict of interest in an existing management contract entered into between the board of directors and the CAM or CAM firm, the conflict of interest does not need to be additionally noticed and voted on during the term of the contract between the community association and the CAM or management firm, but must be noticed and voted on upon renewal.

The bill provides:

- A procedure for terminating a contract if a conflict of interest was not properly disclosed.
- A contract is voidable and terminates upon the association filing a written notice of the termination of the contract with its board of directors.
- The notice must contain the consent of at least 20 percent of the voting interests of the association if:
  - an association enters a contract with an individual or the individual has an interest in an activity that is a possible conflict of interest, and

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<sup>6</sup> The term "relative" in the bill means a relative within the third degree of consanguinity by blood or by marriage.

- such activity has not been properly disclosed as a conflict of interest or potential conflict of interest.

The bill revises the disciplinary grounds for CAMs and CAM firms to provide a disciplinary ground 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.

The bill makes conforming changes.

## **Condominiums and Cooperatives Background**

### *Condominiums*

A condominium is a form of real property ownership created under ch. 718, F.S., the "Condominium Act." Persons own condominium units along with an undivided right of access to the condominium's common elements.<sup>7</sup> A condominium is created by recording a declaration of condominium, which governs the relationship between condominium unit owners and the condominium association, in the public records of the county where the condominium is located.<sup>8</sup> All unit owners are members of the condominium association, and the association is responsible for common elements operation and maintenance.<sup>9</sup> The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration," which is responsible for the association's administration.<sup>10</sup>

### *Cooperatives*

A cooperative is a form of property ownership created under ch. 719, F.S., the "Cooperative Act," in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.<sup>11</sup> The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums, and the laws regulating cooperatives are largely identical to those regulating condominiums.

### *Fiduciary Relationship*

Board members and officers of a condominium or cooperative association have a fiduciary relationship with the unit owners in their condominium or cooperative. This fiduciary relationship requires board members and officers to act in good faith and in the best interests of the unit owners. Under the "business judgment rule," the board must act within the scope of its authority, in a reasonable manner, and must perform its duties with the care and responsibility that an ordinarily prudent person would exercise under similar circumstances.<sup>12</sup>

Board members and officers can be the subject of a cause of action for a breach of their fiduciary duty. However, a person bringing such action must prove that the board member or officer had a fiduciary duty that was breached that caused damages and rose to the level of criminal activity, fraud, self-dealing, unjust enrichment, or other improper personal benefit.<sup>13</sup>

To determine if a board member or officer breached his or her fiduciary duty, Florida courts look to see if the board member or officer violated the business judgment rule by determining if the association had the contractual or statutory authority to perform the relevant act and if the decision was reasonable. The

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<sup>7</sup> S. 718.103(11), F.S.

<sup>8</sup> S. 718.104(2), F.S.

<sup>9</sup> S. 718.103(2), F.S.

<sup>10</sup> S. 718.103(4), F.S.

<sup>11</sup> S. 719.103(2), (26), F.S.

<sup>12</sup> S. 718.111(1), F.S.

<sup>13</sup> Harris B. Katz, *Condo column: Can board members be sued and how can an association remove a director?*, TC Palm (Oct. 17, 2019) <https://www.tcpalm.com/story/news/local/florida/2019/10/17/can-condo-board-members-sued-and-how-can-association-remove-director/3907749002/> (last visited Feb. 22, 2024).

business judgment rule generally will protect association board members and officers, as long those board members or officers act within the scope of their authority and in a reasonable manner.<sup>14</sup>

It is a breach of a board member or officer's fiduciary duty if an association fails to complete a milestone inspection or structural integrity reserve study.

### **Milestone Inspections- Current Situation**

Residential condominium and cooperative buildings that are three stories or more in height, as determined by the Florida Building Code, are required 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>15</sup> This requirement does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.<sup>16</sup>

### **Milestone Inspections- Effect of the Bill**

The bill provides that the milestone inspection requirement also does not apply to a **four-family dwelling** with three or fewer habitable stories above ground.

### **Condominium Associations**

#### ***Official Records - Current Situation***

Florida law specifies certain official records that condominium associations must permanently maintain from the inception of the association. These records include:<sup>17</sup>

- A copy of the plans, permits, warranties, and other items provided by the developer.
- A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
- A photocopy of the recorded bylaws of the association and each amendment to the bylaws.
- A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.
- A copy of the current rules of the association.
- A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.
- A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission.
- All current insurance policies of the association and condominiums operated by the association.
- A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.
- Bills of sale or transfer for all property owned by the association.

Generally, other official records must be maintained for at least 7 years. These records include:

- Accounting records for the association and separate accounting records for each condominium that the association operates.

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<sup>14</sup> *Id.*; *Hollywood Towers Condominium Association v. Hampton*, 40 So. 3d 784, 787 (Fla. 4th DCA 2010).

<sup>15</sup> S. 553.899(3), F.S.

<sup>16</sup> S. 553.899(4), F.S.

<sup>17</sup> See s. 718.111(12), F.S.

- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates.
- All rental records if the association is acting as agent for the rental of condominium units.
- A copy of the current question and answer sheet as described in s. 718.504, F.S.
- A copy of the milestone inspection and turnover inspection reports and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.
- Bids for materials, equipment, or services.
- All affirmative acknowledgments made pursuant to s. 718.121(4)(c), F.S.
- All other written records of the association which are related to the operation of the association.

An association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.<sup>18</sup>

Unit owners may request to inspect and make copies of an association's official records. An association must make the records available for inspection within 10 business days of receiving a written request. Failure to provide an owner or renter the requested records within 10 business days of receiving a request creates a rebuttable presumption that the association willfully failed to provide the records. An owner who is denied access to the records is entitled to damages and costs.<sup>19</sup>

Any person who knowingly or intentionally defaces or destroys accounting records that were required to be maintained for a certain period of time, or who knowingly or intentionally fails to create or maintain accounting records with the intent of causing harm to the association or one or more of its members, is subject to a civil penalty.<sup>20</sup>

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or in an electronic format viewable on a computer screen.<sup>21</sup> Additionally, condominium associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.<sup>22</sup>

However, the following records are not available for inspection by owners:<sup>23</sup>

- Records protected by the lawyer-client privilege;
- Information obtained by an association in connection with the transfer of a unit or parcel;
- Personnel records of association or management company employees;
- Unit owner medical records;
- Personnel identifying information such as social security numbers, driver license numbers, and credit card numbers;
- Electronic security measures that are used to safeguard data; and
- The software and operating system used by the association which allow the manipulation of data.

If a unit owner presents the Division with evidence that the association has failed or has refused to respond to two official records requests, the Division must issue a subpoena requiring the production of the requested records where the records are located.<sup>24</sup>

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<sup>18</sup> S. 718.111(12)(b)-(c), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> S. 718.111(12)(c)2., F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Ss. 718.111(12)(b), and (g), F.S.

<sup>23</sup> S. 718.111(12)(c), F.S.

<sup>24</sup> S. 718.501(1)(d)7., F.S.

## ***Official Records – Effect of the Bill***

The bill allows a condominium association to fulfill its obligation to let people copy and inspect official records if:

- The requested records are posted on the website or are available for download through an application on a mobile device, and
- The association directs all persons authorized to request access to the official records.

The bill provides that on January 1, 2026, a condominium association with **25 or more units**, instead of 150 or more units, is required to post digital copies of specified documents on its website or make such documents available through an application that can be downloaded on a mobile device.

Under the bill, **a copy of all building permits** is considered an official record which must be maintained for at least 7 years.

The bill adds a completed board member education certificate as an official record.

The bill clarifies an official record provision concerning the maintenance of e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The bill provides that the e-mail addresses and facsimile numbers are only accessible to owners if:

- Consent to receive notice by electronic transmission is provided, or
- The unit owner has expressly indicated that such personal information can be shared with other unit owners, and
- The unit owner has not provided the request to opt-out of such dissemination with other unit owners.

The bill requires an association 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. If such 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.

The bill provides that accounting records include:

- All invoices;
- Transaction receipts; or
- Deposit slips that substantiate any receipt or expenditure of funds by the association.

The bill requires that the official records must be maintained in an organized manner that makes the inspection of the records easier for the unit owner. The bill provides that in the event that the records are lost, destroyed, or otherwise unavailable, the obligation to maintain official records includes a good faith obligation to obtain and recover those records as may be reasonably possible.

Under the bill, the association must provide a checklist of the available official records for copying and inspecting and the records that are not available when a person provides a written request to inspect records. This checklist must be maintained for 7 years. An association delivering a checklist and affidavit creates a rebuttable presumption that the association has complied.

The bill provides criminal penalties for the association refusing to release or destroying official records. These include:

- A second-degree misdemeanor for any director or member of the board or association to knowingly, willfully, and “repeatedly”<sup>25</sup> violate any specified requirements relating to inspection and copying of official records of an association, he or she will be deemed removed from office and a vacancy declared.

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<sup>25</sup> In the bill, “repeatedly” means two or more violations within a 12-month period.



- A **first-degree misdemeanor**, a civil penalty, and he or she will be **deemed removed from office and a vacancy declared**, for a person who:
  - knowingly or intentionally defaces or destroys accounting records that were required to be maintained for a certain period of time, or
  - who knowingly or intentionally fails to create or maintain accounting records with the intent of causing harm to the association or one or more of its members.
- A third-degree felony for willfully and knowingly refusing 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, and he or she will be deemed removed from office and a vacancy declared.

The bill makes conforming changes.

The bill requires the Division to provide the official records to the unit owner at **no charge** when the association has failed to or refused to respond to a unit owner's record requests.

### ***Insurance- Current Situation***

Every residential condominium is required to maintain insurance or fidelity bonding for all persons who control or disburse funds of the association. "Persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association.

The insurance or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. The association must bear the cost of any such bonding.

### ***Insurance- Effect of the Bill***

The bill provides that if the Division receives a complaint:

- The Division must monitor the association's compliance with the maintenance of the required insurance or fidelity bond, and
- The Division is permitted to issue fines and penalties for the failure of an association to maintain the required insurance policy or fidelity bond.
- States that the fines and penalties will be established by the Division.

### ***Association Meetings- Current Situation***

Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The Division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency.<sup>26</sup>

### ***Association Meetings- Effect of the Bill***

The bill requires the board of a residential condominium association of more than 10 units:

- To meet at least once each quarter; and
- To include at least four times each year in the meeting agenda an opportunity for members to ask questions.

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<sup>26</sup> S. 718.112(2)(c), F.S.

The bill provides that the right to attend board of administration meetings includes the right to ask questions 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.

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

### ***Electronic Voting – Current Situation***

Condominium and cooperative associations are allowed 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 following requirements are met:

- The association provides each unit owner with:<sup>27</sup>
  - 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, that the unit owner's electronic device can successfully communicate with the online voting system.
- The association uses an online voting system that is:<sup>28</sup>
  - 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>29</sup>

The provisions regarding electronic voting only apply to an association that provides for and authorizes an online voting system that meets the requirements above by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent.<sup>30</sup>

A unit owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration.<sup>31</sup>

These provisions do not apply to members of a timeshare condominium association.<sup>32</sup>

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<sup>27</sup> Ss. 718.128 (1) and 719.129(1), F.S.

<sup>28</sup> Ss. 718.128(2) and 719.129(2), F.S.

<sup>29</sup> Ss. 718.128(3) and 719.129(3), F.S.

<sup>30</sup> Ss. 718.128(4) and 719.129(4), F.S.

<sup>31</sup> Ss. 718.128(5) and 719.129(5), F.S.

<sup>32</sup> Ss. 718.128(6) and 719.129(6), F.S.

## ***Electronic Voting – Effect of the Bill***

The bill allows a condominium and cooperative unit owner to electronically consent to electronic voting, in addition to doing so by written consent. The bill requires a board that authorizes online voting to honor a unit owner's request to vote electronically at all subsequent elections, unless such unit owner opts-out of online voting.

## ***Powers and Duties of Officers and Directors- Current 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. "An officer [or director] may be liable to the association members for breaches of trust, fraud, negligence,<sup>33</sup> and he or she may be subject to removal from office and other civil penalties imposed by the Division of Florida Condominiums, Timeshares, and Mobile Homes for a willful and knowing violation of Condominium Act or a rule of the Division.<sup>34</sup><sup>35</sup>

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
- Recklessness<sup>36</sup> 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.

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>37</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.

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.<sup>38</sup>

### Criminal Penalties

A directors and officers are subject to criminal penalties for the following:

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<sup>33</sup> S. 718.111(1)(d), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> Peter M. Dunbar, *The Condominium Concept*, Pineapple Press (2022), p. 94.

<sup>36</sup> Section 617.0834(2)(a), F.S. defines "recklessness" as the acting, or omission to act, in conscious disregard of a risk:

- Known, or so obvious that it should have been known, to the officer or director; and
- Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

<sup>37</sup> S. 718.111(1)(a), F.S.

<sup>38</sup> S. 718.111(12)(c)2., F.S., see *also*, s. 718.501(1), F.S.

- A third-degree felony for forgery of a ballot envelope or voting certificate used in a condominium association election; and<sup>39</sup>
- Theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, F.S.

### Removal from Office

A director or officer charged with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt, the director or officer will be reinstated for the remainder of his or her term of office, if applicable.<sup>40</sup>

Directors or officers charged with 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 must be removed from office, and the vacancy<sup>41</sup> must be filled 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 applicable.

### Debit Card Usage

An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.<sup>42</sup> Use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud.<sup>43</sup>

### Conflicts of Interest for Directors and Officers

An officer or director of an association, and their relatives, must disclose to the board any activity that may be construed as a conflict of interest. A rebuttable presumption of a conflict of interest exists if, without prior notice:<sup>44</sup>

- Any director, officer, or relative<sup>45</sup> of a director or officer enters into a contract for goods or services with the association; or
- Any director, officer, or relative 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 with the association.

Timeshare condominiums are exempted from this provision.<sup>46</sup>

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<sup>39</sup> S. 718.111(1)(d), F.S.

<sup>40</sup> S. 718.112(2)(q), F.S.

<sup>41</sup> Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. See s. 718.112(2)(d)2., F.S.

<sup>42</sup> S. 718.111(15)(a), F.S.

<sup>43</sup> S. 718.111(15)(b), F.S.

<sup>44</sup> S. 718.3027(1), F.S.

<sup>45</sup> "Relative" means in s. 718.3027, F.S. a relative within the third degree of consanguinity by blood or marriage.

<sup>46</sup> S. 718.3027(5), F.S.

If a director, officer, or relative of a director or officer proposes to engage in an activity that is a conflict of interest, the proposed activity must be listed on the meeting agenda and all contracts and transactional documents for the proposed activity must be attached to the meeting agenda. The board must provide all these documents to the unit owners as well. The interested director or officer may attend the meeting at which the contract is considered and may make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the room. Any director or officer who has an interest in the contract must recuse himself or herself from the vote.<sup>47</sup> Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present.<sup>48</sup>

If the board rejects the proposed contract, the director, officer, or relative must notify the board in writing of his or her intent not to pursue the contract further or the director or officer must withdraw from office. If the board finds that a director or officer has not notified it of his or her intent to pursue the contract further, the officer or director is deemed removed from office, and the vacancy must be filled according to general law.<sup>49</sup>

Any contract entered into between any director, officer, or relative that is not properly noticed before consideration by the board is voidable. The contract is terminated upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.<sup>50</sup>

### ***Officers and Directors- Effect of the Bill***

#### Criminal Penalties

In addition to current requirements, the bill provides that an association officer, director, or CAM that accepts a kickback:

- Commits a third-degree felony, and
- Is deemed removed from office and a vacancy declared.

The bill defines a “kickback” as any thing or service of value for which consideration has not been provided for an officer’s, director’s, or manager’s own benefit, or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association.

The bill provides that each of the following actions relating to condominium association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:

- 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

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<sup>47</sup> S. 718.3027(4), F.S.

<sup>48</sup> S. 718.3027(2), F.S.

<sup>49</sup> S. 718.3027(3), F.S.

<sup>50</sup> S. 718.3027(5), F.S.

- consumed at an election rally or a meeting or to any item of 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:

- 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. This does not apply to a licensed attorney giving legal advice to a client.

### Removal from Office

The bill expands the criminal offenses for which an officer or director charged by information or indictment must be removed from office to include:

- 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.; 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 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.
- Any criminal violation under the Condominium Act.

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.

### Debit Card Usage

The bill provides that a person using a debit card that is issued to the association or billed to the association for any expense that is not a lawful obligation of the association:

- Commits **theft under s. 812.014, F.S.**, instead of being prosecuted as credit card fraud, and
- Shall be deemed removed from office and a vacancy declared.

The bill defines “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.

### Conflicts of Interest for Directors and Officers

The bill provides that the attendance of a director or an officer with a possible conflict of interest at the meeting of the board counts for purposes of quorum for the meeting. However, the vote on such matters containing a possible conflict of interest must occur in his or her absence on the proposed activity.

### ***Director Education- Current Situation***

Newly elected or appointed directors of the board of a residential condominium association are required to complete an educational curriculum or written certification. Within 90 days after being elected or appointed, a newly elected or appointed director for a condominium must certify that he or she:<sup>51</sup>

- 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 election or 90 days after the election or appointment.<sup>52</sup> The curriculum must be administered by a condominium education provider approved by the Division.<sup>53</sup> A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board. The association is required to retain the educational certificates of the directors for 5 years.

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>54</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>55</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>56</sup>

### ***Director Education- Effect of the Bill***

The bill provides that:

- An existing director and a newly elected or an appointed director is required to submit both the writing certification and a certificate of completing the educational curriculum.
- Such educational curriculum may also be administered by the Division.
- Requires 4 hours of instruction for the initial education and the renewal of the education certificate. Such instruction to include milestone inspections, structural integrity reserve studies, elections, recordkeeping, financial literacy and transparency, levying fines, and notice and meeting requirements.
- A director of a residential condominium that was elected or appointed before July 1, 2024 must comply with the written certification and educational certificate requirement by June 2025.
- The written certification **and** educational certificate are valid **for 7 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 **7-year period**.
- 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 7 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 7-year period.
- After the certificates are submitted, directors are required to annually submit to the secretary of the association a certificate of having satisfactorily completed a one-hour of continuing education administered by the Division, or Division-approved condominium education provider, relating to any recent changes.

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<sup>51</sup> S. 718.112(2)(d)4.b., F.S.

<sup>52</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. 30, 2024).

<sup>53</sup> S. 718.112(2)(d)4.b., F.S.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

- The association is required to retain the educational certificates of the directors for **7 years**, instead of 5 years.
- On the certification form provided by the Division, the directors of the association must certify that each director of the association has completed the written certification and educational certificate requirements. This certification requirement does not apply to the directors of an association governing a timeshare condominium.

### ***Condominium Fines and Suspensions- Current Situation***

Condominium associations may levy fines against or suspend the right of an owner, occupant, or an owner or occupant's guest, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.<sup>57</sup>

A board may not impose a fine or suspension without giving at least 14 days' written notice of the fine or suspension and the opportunity for a hearing. The hearing must be held before a committee of unit or parcel owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.<sup>58</sup>

If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.<sup>59</sup>

An association may 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. Proof of such obligation must be provided to the unit owner or member 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.<sup>60</sup>

### ***Condominium Fines and Suspensions- Effect of the Bill***

The bill provides that at least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of any fee, or monetary obligation.

### **Structural Integrity Reserve Study and Reserves – Current Situation**

A reserve study is a budget-planning tool for community associations. Generally, a reserve study consists of the following two parts: physical analysis and financial analysis.<sup>61</sup>

In Florida law, "structural integrity reserve study" (SIRS) means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A SIRS may be performed by any person qualified to perform such study. However, the visual inspection portion of the SIRS must be performed or verified by a:<sup>62</sup>

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<sup>57</sup> S. 718.303(3) F.S.

<sup>58</sup> S. 718.303(3)(b), F.S.

<sup>59</sup> *Id.*

<sup>60</sup> S. 718.303(4), F.S.

<sup>61</sup> Cedar Management Group, *HOA Reserve Study: Why Does Your Community Need It?*, <https://cedarmanagementgroup.com/hoa-reserve-study-community/#what> (last visited Jan. 29, 2024); Kevin Leonard and Robert Nordlund, *Understanding Reserves: A guide to your association's reserve fund & reserve study*, 26-29 (1st ed. 2021); Community Associations Institute, *National Reserve Study Standards*, <https://www.reservestudy.com/wp-content/uploads/2019/01/NRSS-998-CAI-version-updated-2016.pdf> (last visited Jan. 29, 2024).

<sup>62</sup> S. 718.112(2)(g)2., F.S.



- Licensed engineer,
- Licensed architect, or
- person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts (CAIAPRA).

At a minimum, a SIRS must:<sup>63</sup>

- Identify each item of the condominium property being visually inspected,
- State the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and
- Provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item.

The SIRS may recommend for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined or with an estimated remaining useful life of greater than 25 years:<sup>64</sup>

- That reserves do not need to be maintained, or
- A deferred maintenance expense amount for such item.

A condominium or cooperative must have a SIRS completed at least every 10 years after the condominium's or cooperative's creation for each building on the condominium or cooperative property that is three stories or higher in height which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building (SIRS items):<sup>65</sup>

- Roof.
- Structure, including load-bearing walls and other primary structural members and primary structural systems.
- Fireproofing and fire protection systems.
- Plumbing.
- Electrical systems.
- Waterproofing and exterior painting.
- Windows and exterior doors.
- Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the items listed above as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

The SIRS requirements do not apply to:<sup>66</sup>

- Buildings less than three stories in height;
- Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground;
- Any portion or component of a building that has not been submitted to the condominium form of ownership; or
- Any portion or component of a building that is maintained by a party other than the association.

Condominium or cooperative associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a SIRS completed by December 31, 2024, for each building on the condominium or cooperative property that is three stories or higher in height. However, an association that is required to complete a milestone inspection on or before December 31, 2026,

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<sup>63</sup> S. 718.112(2)(g)3., F.S.

<sup>64</sup> *Id.*

<sup>65</sup> S. 718.112(2)(g)1., F.S.

<sup>66</sup> S. 718.112(2)(g)4., F.S.

may complete the SIRS simultaneously with the milestone inspection. In no event may the SIRS be completed after December 31, 2026.<sup>67</sup>

If a condominium or cooperative association willfully and knowingly fails to complete a SIRS, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners.<sup>68</sup> Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report for each building on the condominium or cooperative property that is three stories or higher in height.<sup>69</sup>

### Reserves

Every condominium and cooperative association must have a budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the association. The budget is adopted for a 12-month period reflecting an association's fiscal year, and it must provide a detailed listing of the estimated revenues and expenses that the association reasonably projects for the coming fiscal year. The annual budget is made up of two parts, the part covering the regular operations of the association and the part covering the cost for capital expenses and deferred maintenance (reserves).<sup>70</sup>

Reserves are funds that are set aside for capital expenses and deferred maintenance. Reserves provide funds for major capital repairs or replacements that are needed intermittently such as replacing a roof. The reserves are designed to ensure that an association will have the funds when the repairs are needed and will not have to do a large special assessment.<sup>71</sup>

The amount of funds that must be placed in reserve is determined by the condominium or cooperative association's most recent structural integrity reserve study. If the amount to be reserved for an item is not in the association's most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, then the association may use the traditional formula or alternative formula to determine the amount of funds to reserve.

Current law also requires associations to have and fund reserve accounts for roof replacement, building painting, pavement resurfacing, and any item for which the deferred maintenance expense or replacement cost is greater than \$10,000.<sup>72</sup> There are two methods of calculating these reserves.

The first is the traditional formula, and the second is the alternative formula. The traditional formula takes into account the estimated deferred maintenance or capital expenditure amount, estimated fund balance, and number of years remaining until deferred maintenance or a capital expenditure is needed.<sup>73</sup>

The alternative formula allows associations to maintain a pooled account for multiple reserve assets that are similar or related.

### Waiver of Reserves

For a budget adopted on or after December 1, 2024, a unit-owner controlled association that must obtain a structural integrity reserve study may not waive collecting reserves or collect less reserve funds than required for items that are required to be inspected in a SIRS for an association building that is three stories or higher in height. These items are included in the list provided in s. 718.112(2)(g), F.S., related to structural components. In addition, unit-owner controlled associations may not use such

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<sup>67</sup> S. 718.112(2)(g)6., F.S.

<sup>68</sup> S. 718.112(2)(g)8., F.S.

<sup>69</sup> S. 718.112(2)(g)5., F.S.

<sup>70</sup> S. 718.112(2)(f), F.S.

<sup>71</sup> S. 718.112(2)(f), F.S.

<sup>72</sup> *Id.*, Rule 61B-76.005(1), F.A.C.

<sup>73</sup> *Id.*; Rules 61B-22.005(3), and 61B-76.005(1), F.A.C.

reserve funds for purposes other than their intended purpose. Associations operating a multicondominium may provide no reserves or less reserves than required by the SIRS if such multicondominium uses an alternative funding method<sup>74</sup> approved by the Division. This is not applicable to cooperatives.

For reserves for non-SIRS items, unit owner-controlled associations may waive funding reserves for capital expenditures and deferred maintenance or provide funds that are less than the required amount by a majority of the voting interests present at a properly called meeting. The waiver of reserves by the membership is only for the current year, and a separate vote must be taken each year to waive the reserves or fund less than the required amount.<sup>75</sup>

## **Structural Integrity Reserve Study and Reserves – Effect of the Bill**

### Structural Integrity Reserve Study (Condominiums and Cooperatives)

The bill provides that the association is required within 45 days after the receipt of a SIRS to:

- Distribute a copy of the SIRS to each unit owner; or
- Deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request.

The bill provides the manner in which the copy or the notice may be distributed. Distribution of a copy of the study or notice must be made by:

- United States mail or personal delivery to the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements or,
- By electronic transmission to the e-mail address or facsimile number on file.

The bill requires that the SIRS be included in the turnover inspection report that is delivered to the association once the developer turns over control of the association.

The bill requires a condominium and cooperative association within 45 days after receiving the structural integrity reserve study 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 owner. Such statement must be provided to the Division in a manner prescribed by the Division by using a form posted on the Division's website.

The bill requires the Division to create a database on its website of the condominium and cooperative associations that have completed their structural integrity reserve study by January 1, 2025.

### Reserves (Condominiums)

The bill provides that:

- The board, upon the approval of a majority of its members, may pause its contributions to its reserves or reduce reserve funding if the local building official<sup>76</sup> determines that the entire condominium building is uninhabitable due to a natural emergency until the local building official determines that such building is habitable.<sup>77</sup>

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<sup>74</sup> "Alternative funding method" is defined as "a method approved by the Division for funding the capital expenditures and deferred maintenance obligations for a multicondominium association operating at least 25 condominiums which may reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget."

<sup>75</sup> S. 718.112(2)(f), F.S.; Rule 61B-22.005(8), F.A.C.

<sup>76</sup> See definition of building official in s. 468.603(2), F.S.

<sup>77</sup> "Natural emergency" means 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. S. 252.34(8), F.S.

- Any reserve account funds held by the association may be expended to make such building and structures habitable, pursuant to the board determination.
- The association must immediately resume contributing to its reserves once the building official determines that the building is habitable.

### ***Financial Reporting- Current Situation***

Condominium associations are required to complete an annual financial report of the previous year's financial activities and provide the report to unit owners. To comply with financial reporting requirements, associations must:<sup>78</sup>

- Complete an annual financial report for the previous fiscal year within 90 days after the end of the fiscal year, calendar year, or annually on a date provided in the bylaws;
- Provide unit or parcel owners the financial report or notice that the report is available upon request without charge within 21 days after the final financial report is completed by the condominium or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws; and
- Prepare financial statements according to generally accepted accounting principles and in a manner dictated by the total revenue of the association, specifically:
  - An association having total annual revenues between \$150,000 and \$300,000 must prepare compiled financial statements;
  - An association having total annual revenues between \$300,000 and \$500,000 must prepare reviewed financial statements;
  - An association having total revenues more than \$500,000 must prepare audited financial statements; and
  - An association with total annual revenue of less than \$150,000 must prepare a report of cash receipts and expenditures.

If a unit owner does not receive the financial report, he or she may contact the Division to report an association's failure to provide a copy of the financial report within the required time. If the Division determines that the association failed to provide the financial report in a timely manner, the Division requires the association to provide the financial report to the unit owner and the Division within 5 business days. If the association fails to comply with the Division's request, the association is prohibited from waiving the financial annual financial reporting requirements for the fiscal year in which the unit owner's request is made and the following fiscal year.

An association may vote to waive the annual financial reporting requirements and prepare a report of cash receipts and expenditures by approval of a majority of voting interests. Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year.

### ***Financial Reporting- Effect of the Bill***

The bill prohibits an association from waiving the annual financial reporting requirements and preparing a report of cash receipts and expenditures by approval of a majority of voting interests for consecutive fiscal years.

### ***Hurricane Protection- Current Situation***

Each board of administration of a residential condominium is required to adopt specifications for each building within each condominium operated by the association which include:<sup>79</sup>

- Color;
- Style; and

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<sup>78</sup> S. 718.111(13), F.S.

<sup>79</sup> S. 718.113(5), F.S.

- Other factors deemed relevant to the board.

All specifications adopted by the board must comply with the applicable building code. The board may, subject to the bidding process for contracts for goods and services and the approval of a majority of the voting interests of the residential condominium, install hurricane shutters, impact glass, code-complaint windows, or doors, or other types of code-complaint hurricane protection that comply or exceed the applicable building code.<sup>80</sup>

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 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.<sup>81</sup>

The board is authorized to operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed without the permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or and association property.<sup>82</sup> 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 are not a material alteration to the common elements or association property.<sup>83</sup>

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.<sup>84</sup>

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 constitutes a common expense and shall be collected by the association 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.<sup>85</sup>

Further, 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.<sup>86</sup> 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.

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<sup>80</sup> S. 718.113(5)(a), F.S.

<sup>81</sup> S. 718.113(5)(b), F.S.

<sup>82</sup> S. 718.113(5)(c), F.S.

<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."

<sup>84</sup> S. 718.113(5)(d), F.S.

<sup>85</sup> S. 718.115(1)(e), F.S.

<sup>86</sup> S. 718.115(1)(e), F.S.

## ***Hurricane Protection- Effect of the Bill***

The bill defines “hurricane protection” 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.

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 requires the declarations of residential condominiums and mixed-use condominiums to describe the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections. The bill provides that 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.

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 certificate must:

- Be recorded in the public records of the county where the condominium is located.
- 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 provides that if hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install the **same type of hurricane protection or require that unit owners install the same type of hurricane protection unless the unit owners installed hurricane protection has reached the end of its useful life or it is necessary to prevent damage to the common elements or the unit.**

The 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 the 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 installation is completed by the association, the association may not charge that cost to the unit owner. If such installation 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 as such.

The bill deletes the requirement that the expense of installation, replacement, operation, repair, and maintenance of hurricane protection by the board 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.

The bill deletes the requirement that a unit owner who previously installed hurricane shutters that comply with the current applicable building codes receive a credit when the shutters are installed. The bill provides that 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 bill provides, notwithstanding the limitation in s. 718.116(9), F.S., and regardless of what the declaration states about the responsibility of hurricane protection, an owner **of a unit in which** hurricane protection that **complies** with the current applicable building code **has been installed is excused from any assessment levied by the association** or will receive a credit **if** the same type of hurricane protection is installed **by the association**.

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.

### **Prohibition against SLAPP Suits- Current Situation**

Generally, "strategic lawsuits against public participation" (SLAPP) are legal actions brought against individuals for speaking out on issues that are important to the public in an effort to silence or discourage such individuals from speaking out. In the association context, a SLAPP suit may be related to an association member's exercise of their rights of free speech and assembly, which may be based on their appearance and presentation before a governmental entity on matters related to the condominium association.<sup>87</sup>

Florida has adopted anti-SLAPP laws<sup>88</sup> in the association context which prohibit governmental entities, business organizations, and individuals 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 Constitution.<sup>89</sup>

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<sup>87</sup> S. 718.1224(1), F.S.

<sup>88</sup> Florida also has general anti-SLAPP laws that prohibit suits for exercising their right to free speech and assembly. S. 768.295, F.S.

<sup>89</sup> S. 718.1224, F.S.

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.

The unit owners sued by a governmental entity, business organization, or individual 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, individuals, and condominium associations<sup>90</sup> are barred from expending funds in prosecuting a SLAPP suit against a unit owner.

### **Prohibition against SLAPP Suits and Other Prohibited Actions- Effect of the Bill**

The bill clarifies that a condominium association cannot engage in SLAPP suits.

The bill specifically prohibits condominium associations from:

- Retaliating against a unit owner, by imposing or threatening:
  - A fine,
  - An increase in a unit's assessments,
  - To bring or bringing an action for possession, or
  - other civil action, including a defamation, libel, slander, or tortious interference action.
- Spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

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. The bill provides that a unit owner may use the defense of retaliatory conduct if the unit owner acted in good faith and not for any improper purposes. The bill provides that an improper purpose includes:

- Harassment;
- Cause unnecessary delay or for frivolous purpose; or
- Needless increase in the cost of litigation.

The bill provides examples of conduct for which a condominium association, an officer, a director, or an agent of an association are prohibited from retaliating include, but are not limited to, situations in which:

- 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 the Condominium Act or rules of the Division, with:
  - The Division;
  - 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 the Condominium Act;
- The unit owner has complained to the association or any of the association's representatives for the failure to comply with the Condominium Act or Corporations Not For Profit Act; or
- The unit owner has made public statements critical of the operation or management of the association.

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<sup>90</sup> S. 718.1224(4), F.S.



In addition, the bill prohibits associations from expending association 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 such retaliatory conduct.

### **The Division's Duties and Authority – Current Situation**

For condominium associations, the Division has jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee. Once a developer has turned over control of the condominium to the association, the Division only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records, and the procedural completion of structural reserve studies.<sup>91</sup>

If a person believes there is a violation of the Condominium Act, he or she may file a complaint with the Division. If the complaint is within the Division's jurisdiction, the Division assigns an investigator to the complaint. For purposes of any investigation, the Division director or any officer or employee designated by the Division director may:<sup>92</sup>

- Administer oaths or affirmations,
- Subpoena witnesses and compel their attendance,
- Take evidence, and
- Require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

After investigating the complaint, if the Division has reasonable cause to believe that a violation occurred, it may initiate an enforcement proceeding in its own name as follows:<sup>93</sup>

- Enter into a voluntary consent proceeding with the person who violated the Condominium Act where he or she consents to stopping the violation.
- Issue a cease and desist order.
- File an administrative complaint against the person.
- File an enforcement action in circuit court to seek declaratory or injunctive relief on behalf of the unit owners.
- Remove an individual from his or her position as an officer or board member of a condominium or cooperative.
- Impose civil penalties in the amount of up to \$5,000 per violation.

In order to enforce the Condominium Act, the Division may conduct investigations, take sworn statements, receive evidence, and subpoena individuals and documentation. If the Division believes a person has destroyed or altered association documents or impaired the availability of association documents during an investigation, the Division must refer it to local law enforcement.<sup>94</sup>

### ***Annual Report***

The Division is required to submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report by September 30 following the end of the fiscal year that includes:<sup>95</sup>

- The number of training programs provided for condominium association board members and unit owners;

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<sup>91</sup> S. 718.501(1), F.S.

<sup>92</sup> S. 718.501(1)(c), F.S.

<sup>93</sup> S. 718.501(1)(d), (m), F.S.

<sup>94</sup> S. 718.501(1)(c), F.S.

<sup>95</sup> S. 718.501(1)(s), F.S.

- The number of complaints received by type;
- The number and percent of complaints acknowledged in writing within 30 days;
- The number and percent of investigations acted upon within 90 days;<sup>96</sup>
- The number of investigations exceeding the 90-day requirement;
- An evaluation of the Division's core business processes; and
- Make recommendations for improvements, including statutory changes.

### *Alternative Dispute Resolution*

There is an alternative dispute resolution process for certain disputes between unit owners and condominium or cooperative associations. Before the institution of court litigation, a party to certain disputes must either petition the Division for nonbinding arbitration or initiate pre-suit mediation.<sup>97</sup> Alternative dispute resolution offers a more efficient, cost-effective option to court litigation, but alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.<sup>98</sup>

Alternative dispute resolution is required for any disagreements between two or more parties that involves:<sup>99</sup>

- The authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements;<sup>100</sup>
- The board of directors' failure to:
  - Properly conduct elections;
  - Give adequate notice of meetings or other actions;
  - Properly conduct meetings;
  - Provide access to association books and records; and
- A plan of termination.

The Division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve:<sup>101</sup>

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for pre-suit mediation and must be arbitrated by the Division or filed directly with a court of competent jurisdiction.<sup>102</sup>

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,<sup>103</sup> or if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days after the arbitration decision is rendered.<sup>104</sup>

<sup>96</sup> In accordance with s. 718.501(1)(m), F.S.

<sup>97</sup> S. 718.1255, F.S.

<sup>98</sup> S. 718.1255(3)(b), F.S.

<sup>99</sup> S. 718.1255(1)(a), F.S.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> S. 718.1255(5), F.S.

<sup>103</sup> S. 718.1255(4)(a), F.S.

<sup>104</sup> S. 718.1255(4)(k), F.S.

The filing fee for a petition to the Division to initiate nonbinding arbitration or pre-suit mediation is \$50.<sup>105</sup> The Division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center.<sup>106</sup>

The mediation of disputes in condominium and cooperative associations is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowners' association disputes. An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.<sup>107</sup>

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.<sup>108</sup>

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.<sup>109</sup>

### **The Division's Duties and Authority – Effect of the Bill**

The bill clarifies, changes, and adds to the Division's jurisdiction after turnover occurs to include the following:

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

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<sup>105</sup> S. 718.1255(4)(a), F.S.

<sup>106</sup> S. 718.1255(2), F.S.

<sup>107</sup> *Id.*

<sup>108</sup> S. 720.311(2)(b), F.S.

<sup>109</sup> S. 718.112(2)(k), F.S.

The bill allows the Division to:

- Issue citations;
- Make rules to provide for citation bases and citation procedures in accordance in the Division's authority, responsibilities, and duties outlined in section 718.501, F.S.

The bill provides that after December 31, 2024, the division must include a list of the condominium associations who have completed their structural integrity reserve study in its annual report.

The bill requires the Division to 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.

The bill provides that the Division director, any officer or employee of the Division, the condominium ombudsman, or employee of the Office of the Condominium Ombudsman,<sup>110</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.

The bill provides that if the Division receives a complaint about access to official records on the association website under s. 718.111(12)(g), F.S., the Division may implement rules to carry out this process.

The bill requires the Division to provide a division-approved education provider with a template certificate for issuance directly to the association board of directors who have completed the education requirements. The bill provides the Division with rulemaking authority to carry out such process.

The bill requires the Division submit 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.

### **The Office of the Condominium Ombudsman- Current Situation**

The Office of the Condominium Ombudsman was established to be a neutral resource for unit owners, board members, condominium associations, and others. The ombudsman is authorized to prepare and issue reports and recommendation to the Governor, DBPR, the Division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the Division.<sup>111</sup> The Ombudsman is an attorney appointed by the Governor who is charged with certain duties, including but not limited to:

- Preparing and issuing reports and recommendations to the Governor, the Department, the Division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division;
- Acting as a liaison between the Division, unit owners, boards of directors, board members, community association managers, and other affected parties;
- Monitoring and reviewing procedures and disputes concerning condominium elections or meetings, including enforcement when the Ombudsman believes election misconduct has occurred;
- Making recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers;

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<sup>110</sup> Ss. 718.5011-718.5014, F.S

<sup>111</sup> S. 718.5012(3), F.S.

- Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with the statutes, Division rules, and the condominium documents governing the association;
- Encouraging and facilitating voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy; and
- Assisting with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the Division to resolve.<sup>112</sup>

### **The Office of the Condominium Ombudsman- Effect of the Bill**

The bill provides that:

- The Secretary of the Division, instead of the Governor, shall appoint the ombudsman; and
- The ombudsman does not have to be an attorney.

### **Limitations on Actions by Condominium and Cooperative Associations- Current 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>113</sup> A statute of limitations provides a specific time period in which an individual must bring a lawsuit, measured from the time of accrual of the cause of action.<sup>114</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>115</sup> Currently, this turnover provision is not applicable to statutes of repose for any actions in law or equity.<sup>116</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>117</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>118</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>119</sup>

### *Construction Defect Claims*

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<sup>112</sup> S. 718.5012, F.S.

<sup>113</sup> S. 718.124, F.S.

<sup>114</sup> STATUTE OF LIMITATIONS, Black's Law Dictionary (11th ed. 2019).

<sup>115</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>116</sup> *Sabal Chase Homeowners Ass'n, Inc. v. Walt Disney World Co.*, 726 So. 2d 796, 798 (Fla. 3d DCA 1999).

<sup>117</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. 22, 2024); *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

<sup>118</sup> *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997).

<sup>119</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).

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>120</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>121</sup>

### *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>122</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>123</sup>

However, for a latent defect,<sup>124</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>125</sup> It is the responsibility of the association to conduct an exhaustive property evaluation and determine if construction defects exist.<sup>126</sup>

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<sup>120</sup> “Real property” means land that is improved and the improvements thereon, including fixtures, manufactured housing, or mobile homes. S. 558.002(8), F.S.

<sup>121</sup> S. 558.002(5), F.S.

<sup>122</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. 22, 2024).

<sup>123</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. S. 95.11(3)(C), F.S.

<sup>124</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. 22, 2024).

<sup>125</sup> Ss. 718.301(4)(p) and 719.301(4)(p), F.S.

<sup>126</sup> In any claim against a developer, if a defect is found in a condo’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 chapters 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 condo or co-op association should also reference its governing documents to determine whether any restrictions exist that would impair its right to initiate litigation. S. 718.301(7), F.S.

## **Limitations on Actions by Condominium and Cooperative Associations- Effect of Bill**

The bill includes the statute of repose in section 718.124, F.S., so that the statute of repose also begins to run once the unit owners elect the association board.

### **Mixed-Use Condominiums- Current Situation**

#### **Background**

As discussed above, a condominium is a form of real property ownership created under ch. 718, F.S., the “Condominium Act.”

The term “condominium” is defined in the Condominium Act to mean:<sup>127</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>128</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>129</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>130</sup>

#### **Types of Condominiums**

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>131</sup>
- Mixed-use condominiums in which the condominium contains both commercial and residential units.<sup>132</sup>
- Multi- condominiums in which the real property contains two or more condominiums, all of which are operated by the same association.<sup>133</sup>
- Condominiums created with a condominium parcels, i.e., a condominium is created with a condominium unit with an undivided share in the appurtenant common elements.<sup>134</sup>

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<sup>127</sup> S. 718.103(12), F.S.

<sup>128</sup> S. 718.103(14), F.S.

<sup>129</sup> S. 718.108(1), F.S.

<sup>130</sup> S. 718.108(2), F.S. S. 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>131</sup> S. 718.403, F.S.

<sup>132</sup> See ss. 718.103(24) and 718.404, F.S.

<sup>133</sup> See ss. 718.103(21) and 718.405, F.S.

<sup>134</sup> S. 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.

## Mixed Condominium Case Law

In a recent decision by the Florida Third District Court of Appeals, the court held in 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>135</sup>

In *IconBrickell*, a mixed-use condominium was made up 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” included the balconies, lobby, elevators, and the infrastructure for utilities, such as wires and pipes.

Even though the residential unit owners did not have a common ownership interest in the “shared facilities,” the declaration burdened the residential unit owners, instead of 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 of common elements as “shared facilities” owned by the hotel in the declaration of condominium was contrary to the Condominium Act.<sup>136</sup>

### **Mixed-Use Condominiums- Effect of the Bill**

The bill revises the definition of condominium property to mean the lands, leaseholds, improvements, any personal property, and all easements and rights appurtenant thereto, regardless of whether contiguous, which that are subjected to condominium ownership.

Condominiums created within a portion of a building or within a multiple parcel building must include the name by which the condominium is to be identified and be followed by “a condominium within a portion of a building or within a multiple parcel building.”

The bill allows a condominium to be created within a portion of a building or within a multiple parcel building. A “multiple parcel building” means 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.<sup>137</sup>

The bill provides that common elements of a condominium created within a portion of a building or a multiple parcel building are only those portions of the building submitted to the condominium form of ownership, excluding the units of such condominium.

The bill provides that a 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 applicable recorded instrument to specify the following:

- The portions of the building which are included in the condominium and the portions of the building which are excluded.
- The party responsible for maintaining and operating those portions of the building which are shared facilities, which may include, among other things, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.
- The party responsible for collecting the shared expenses.
- The rights and remedies that are available to enforce payment of the shared expenses.
- The manner in which the expenses for the maintenance of the shared facilities will be apportioned.

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<sup>135</sup> *IconBrickell Condo. No. Three Ass'n, Inc. v. New Media Consulting, LLC*, 310 So. 3d 477 (Fla. 3d DCA 2020).

<sup>136</sup> *Id.* at 481.

<sup>137</sup> S.193.0237(1)(a), F.S.



The bill provides that owner of a portion of a building which is not submitted to condominium form of ownership, or the condominium association, as applicable to the portion of the building submitted condominium form of ownership, must approve any increase in the apportionment of expenses to such portion of the building. The apportionment of the expenses for the maintenance and operation of the shared facilities may be based on any of the following criteria or any combination:

- The area or volume of each portion of the building in exclusive of the shared facilities.
- The initial estimated market value of each portion of the building in comparison to the total initial estimated market value of the entire building.
- The extent to which the owners are permitted to use various shared facilities.

However, the bill allows an alternative apportionment of expenses if it is stated in the applicable recorded document.

The bill permits an applicable condominium 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.

The bill requires each sale contract of a unit in condominium within a portion of a building or within a multiple parcel building to include a disclosure summary. The disclosure summary must include:

- That the unit is in a within a portion of a building or within a multiple parcel building, and that the common elements of the condominium consist only of the portions of the building that are submitted to the condominium.
- Acknowledgements from the buyer that:
  - The unit may have minimal common elements;
  - Portions of the building that are not subject to the condominium ownership are governed by a separate record instrument.
  - 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 such portions. However, the condominium association and unit owners still responsible for their share of such expenses.
  - The cost distribution between the unit owners and the owner of the portions of the building that are not a condominium to maintain and operate portions of the building that are not part of condominium can be found in the declaration of the condominium or other recorded instrument.

The bill clarifies that the creation of a multiple parcel building is not a subdivision of the land upon which such building is located provided the land itself is not subdivided.

These provisions are effective on October 1, 2024.

### **Developer and Non-developer Disclosures Prior to Sale- Current Situation**

Developers and non-developer owners of condominium units must give certain documents to a prospective buyer or lessee before the execution of a contract for the sale of a residential unit.<sup>138</sup> Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of all the following:

- The declaration of condominium;
- Articles of incorporation of the association;
- Bylaws and rules of the association;
- Financial Information;
- The inspector-prepared summary of the milestone inspection report, if applicable;

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<sup>138</sup> S. 718.503(1), F.S.

- The association's most recent SIRS or a statement that the association has not completed a SIRS;
- The inspection report for a turnover inspection performed on or after July 1, 2023;
- The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

A developer may not close for 15 days following the execution of a purchase contract or certain lease contracts, or the delivery of the required documents to the buyer. A prospective purchaser may void the contract within 15 days of his or her receipt of all the required documents.<sup>139</sup>

There are also other required disclosures regarding the sale or lease of a condominium unit.

### *Prospectus or Offering Circular*

Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, must prepare a prospectus or offering circular and file it with the Division prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than five years. A copy of the prospectus or offering circular must be provided to each buyer.

The prospectus or offering circular must contain certain information about the condominium, including an estimated operating budget for the condominium association, and a schedule of the unit owner's expenses.<sup>140</sup>

### **Developer and Non-developer Disclosures Prior to Sale- Effect of the Bill**

The bill removes the financial information from the list of what copies a prospective purchaser is entitled to, and replaces financial information with an annual financial statement and an annual budget of the condominium association.

The bill requires a developer or nondeveloper condominium unit owner to provide a certain disclosure if a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building.

The bill requires 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 bill makes conforming changes.

These provisions are effective on October 1, 2024.

### **Condominium Sales or Reservation Deposits- Current Situation**

If a developer contracts to sell a condominium unit and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed, the developer must pay into an escrow account all payments up to ten percent of the sale price received by the developer from the buyer toward the sales price.<sup>141</sup> The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements.

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<sup>139</sup> S. 718.503(1), F.S.

<sup>140</sup> See s. 718.504(21), F.S.

<sup>141</sup> S. 718.202(1), F.S.

All payments in excess of the ten percent of the sale price described above which have been received by the developer before construction completion must be held in a special escrow account controlled by an escrow agent and may not generally be used by the developer before closing the transaction, except if the contract to refund the buyer.<sup>142</sup>

However, if the sale contract so provides, the developer may withdraw escrow funds in excess of ten percent of the purchase price from the special account when construction of improvements has begun, and may use the funds for the actual costs incurred by the developer in the construction and development of the condominium property in which the unit to be sold is located.<sup>143</sup> “Actual costs” includes expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees directly relating to condominium property construction and development. No part of the funds may be used for salaries, commissions, or expenses of salespersons; for advertising, marketing, or promotional purposes; or for loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.<sup>144</sup>

### **Condominium Sales or Reservation Deposits- Effect of the Bill**

The bill clarifies that in lieu of the foregoing **concerning residential condominiums**, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements.

The bill provides that with respect to nonresidential condominiums, the developer may deliver to the escrow agent a surety bond or an irrevocable letter of credit in an amount equivalent to the aggregate of some or all of the payments up to 10 percent of the sale price received by the developer from all buyers toward the sale price. In all cases, the aggregate of the 10 percent deposits being released must be secured by a surety bond or irrevocable letter of credit in an equivalent amount.

The bill makes conforming changes.

These provisions are effective on October 1, 2024.

### **Florida Building Commission and Water Intrusion Prevention Standards- Current Situation**

#### *Florida Building Code*

In response to the destruction of Hurricane Andrew, in 1998, the Legislature approved a single state building code and enhanced the oversight role of the state over local code enforcement. In 2000, the Legislature authorized the implementation of the Building Code (Code), and that first edition replaced all local codes on March 1, 2002, making it the first statewide building code in the United States.<sup>145</sup>

The “Florida Building Codes Act” was created to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state Code. The Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>146</sup>

The Florida Building Commission (FBC) was statutorily created to implement the Code. The Building 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 Code. The Building Commission reviews several International Codes published by the International Code Council,

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<sup>142</sup> S. 718.202(2), F.S.

<sup>143</sup> S. 718.202(3), F.S.

<sup>144</sup> *Id.*

<sup>145</sup> *Hollywood Towers Condominium Association v. Hampton*, 40 So. 3d 784, 787 (Fla. 4th DCA 2010).

<sup>146</sup> See s. 553.72(1), F.S.

the National Electric Code, and other nationally adopted model codes (model codes) to determine if the Code needs to be updated and adopts an updated Code every three years.<sup>147</sup>

### *Building Code Standards for Sliding Glass Doors*

The FBC establishes standards for exterior windows and glass doors installed in wall systems. Under the Code, sliding glass doors that are installed in Florida must go through water and wind testing in order to prevent flooding and damage. Additionally, in some regions sliding glass doors must be able to resist or be protected from impact due to flying debris.<sup>148</sup>

### **Florida Building Commission and Water Intrusion Prevention Standards- Effect of the Bill**

The bill requires the FBC:

- To conduct a study on standards to prevent water intrusion through the tracks of sliding glass doors, including the consideration of devices designed to prevent such water intrusion, and
- Submit a written report of its recommendations by December 1, 2024 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of the legislative appropriations committees and appropriate substantive committees with jurisdiction over chapter 718, Florida Statutes.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
None.
2. Expenditures:  
For the 2024-2025 fiscal year, the bill appropriates \$6.1 million in recurring and \$1.3 million in nonrecurring from the General Revenue Fund and 65 positions for the purpose of implementing the act.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The condominium association may have to employ additional staff to make certain records available on a website or mobile device application, as well as carrying out other provisions in the bill.

### **D. FISCAL COMMENTS:**

None.

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<sup>147</sup> Ss. 553.73 and 553.74, F.S.

<sup>148</sup> S. 1709.5.1 of the Eighth edition of the Florida Building Code (Code).