

COMMUNITY ASSOCIATION LEGISLATIVE UPDATE

<u>CHAPTER:</u>	<u>BILL #:</u>
1. CHAPTER 2023-203, LAWS OF FL	SB 154: Condominium and Cooperative Associations
2. CHAPTER 2023-224, LAWS OF FL	CS/CS/HB 327: Fire Sprinkler System projects
3. CHAPTER 2023-226, LAWS OF FL	CS/CS/HB 331: Liens and Bonds
4. CHAPTER 2023-228, LAWS OF FL	CS/CS/HB 919: Homeowners' Associations
5. CHAPTER 2023-64, LAWS OF FL	CS/CS/HB 437: Property Owners' Right to Install, Display, And Store Items
6. CHAPTER 2023-175, LAWS OF FL	CS/CS/CS/HB 799: Property Insurance
7. CHAPTER 2023-172, LAWS OF FL	CS/SB 7052: Insurer Accountability

2024 COMMUNITY ASSOCIATION LEGISLATIVE UPDATE

The following is a brief summary of the new laws. The following is only summary in nature and it is recommended that you download and read the new laws before taking action. The text of the new law may be downloaded free of charge via the internet at: http://laws.flrules.org/node?field_list_year_nid=8473.

CHAPTER 2023-203, LAWS OF FL SB 154

Section 553.899(2)(a), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has clarified who is permitted to perform the milestone inspection as follows:

“(a) “Milestone inspection” means a structural inspection of a building, including an inspection of load-bearing ~~elements~~ walls and the primary structural members and primary structural systems as those terms are defined in s. 627.706, by ~~an a-licensed~~ an architect licensed under chapter 481 or engineer licensed under chapter 471 authorized to practice in this state for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the fire safety code. The milestone inspection services may be provided by a team of professionals with an architect or engineer acting as registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.”

Section 553.899(2)(b), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has expanded the definition of “substantial structural deterioration to include, “...substantial structural weakness.

Section 553.899(3), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has clarified that which type of condominium buildings are subject to a “milestone inspection” and clarifies the deadline to perform such “milestone inspection”:

“(3)(a) An owner or owners of a building that is three stories or more in height as determined by the Florida Building Code and that is subject, in whole or in part, to the condominium or cooperative form of ownership as a residential condominium association under chapter 718 or and a residential cooperative association under chapter 719 must have a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If a building reached 30 years of age before July 1, 2022, the building’s 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 initial milestone inspection must be performed before December 31, 2025. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building’s certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.

Section 553.899(3)(b), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has deleted the fixed-location requirement (e.g. 3 miles from the coastline) and instead provided discretion to the local enforcement agency to require that a milestone inspection must be completed for buildings which reach 25 years of age by December 31 of the year where such building reaches 25 years of age, which includes environmental factors such as salt water as that term is defined by statute.

Section 553.899(3)(c), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has delegated authority to the local enforcement agency to extend the deadline for which a milestone inspection must be completed only upon a showing of good cause by the Owner(s) of such building that such inspection cannot be timely completed and if the Owner(s) have entered into a contract with an architect or engineer to perform such inspection and the inspection cannot be reasonably **be** completed before the deadline or other circumstances to justify an extension.

Section 553.899(3)(d), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has created a provision for acceptance of a substitute inspection report as follows:

“(d) The local enforcement agency may accept an inspection report prepared by a licensed engineer or architect for a structural integrity and condition inspection of a building performed before July 1, 2022, if the inspection and report substantially comply with the requirements of this section. Notwithstanding when such inspection was completed, the condominium or cooperative association must comply with the unit owner notice requirements in subsection (9). The inspection for which an inspection report is accepted by the local enforcement agency under this paragraph is deemed a milestone inspection for the applicable requirements in chapters 718 and 719. If a previous inspection and report is accepted by the local enforcement agency under this paragraph, the deadline for the building’s subsequent 10-year milestone inspection is based on the date of the accepted previous inspection.”

Section 553.899(4), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has clarified which entities are responsible to obtain a “milestone inspection” and further clarified the allocation of financial responsibility to obtain such “milestone inspection”:

“(4) The milestone inspection report must be arranged by a condominium or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership. The condominium association or cooperative association and

any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership are each must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the milestone inspection attributable to the portions of a building which the association is responsible to maintain under the governing documents of the association. This section subsection does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.”

Section 553.899(5), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has created a notice provision requiring the Association to notify unit owners of the required “milestone inspection” within 14 days after receipt of the written notice from the local enforcement agency and provide the date that such “milestone inspection” must be completed. The Legislature has also authorized that such notice may be delivered electronically to those owners who consent to receive notice by “electronic submission” or by posting on the Association’s website.

Section 553.899(6), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has amended the general deadline to complete Phase One of the “milestone inspection” within 180 days that the owner(s) of the building receive the written notice described in Section 559.899(5), Florida Statutes.

Section 553.899(7)(b), Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has added a requirement that if a Phase Two inspection is required, within 180 days after submitting a Phase One inspection report, the architect or engineer performing the Phase Two inspection must submit a phase two progress report to the local enforcement agency with a timeline for completion of the Phase Two inspection.

Section 553.899(8) Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has amended this section to create a requirement that upon completion of a Phase One or Phase Two inspection report, such inspection report must be provided to any other Owner of any portion of the building which is not subject to the condominium or cooperative form of ownership.

Section 553.899(9) Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has amended this section to require that the Association distribute a copy of the applicable inspection report to the unit owners within 45 days after the Association receives the applicable inspection report to any unit owner physical address, email address, or facsimile address provided to the Association to fulfill the Association’s general notice requirements.

Section 553.899(10) Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has amended this section to permit a municipal governing body to adopt an ordinance requiring the Association or any other owner that is subject to Section 553.899, Florida Statutes to schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report.

Section 553.899(12) Florida Statutes – Mandatory structural inspections for condominium and cooperative buildings.—

The Legislature has amended this section to provide a deadline of December 31, 2024 for the Florida Building Commission to adopt rules to establish a building safety program for the implementation of this section within the Florida Building Code and describes the minimum requirements for such building safety program.

Section 627.351(6)(aa), Florida Statutes – Insurance risk apportionment plans.—

The Legislature has amended this section to exempt Citizens unit owner policies from the flood insurance requirement for Citizens personal lines property coverage. The bill also revises the provision requiring flood insurance coverage by specified dates to base the dates by which flood insurance coverage must be obtained on the dwelling replacement cost instead of property value.

Section 718.103(1), Florida Statutes – Definitions

The Legislature has created a definition for “alternative funding method” only applicable to multi-condominium associations who operate at least 25 condominiums for funding of deferred maintenance and capital expenditures which are reasonably expected to “fully satisfy” such association’s reserve funding obligations.

Section 718.103(26), Florida Statutes – Definitions; Section 719.103(24), Florida Statutes -- Definitions

The Legislature has amended the definition of “structural integrity reserve study” to mirror the substantive requirements of Section 718.112(2)(g), Florida Statutes and Section 719.106(1)(k), Florida Statutes.

Section 718.111(12)(c)(1), Florida Statutes – Official Records; Section 719.104(2)(c), Florida Statutes – Official Records

The Legislature has amended this section to require that the official records of the association are open to inspection any copying by, “any person authorized by an Association member as a representative of such member”.

Section 718.112(2)(e)(2)(b), Florida Statutes – Budget Meeting

The Legislature has amended this section to exclude “insurance premiums” from the items which are not permitted to be included in the calculation for whether assessments exceed 115% of assessments from the prior fiscal year.

*****SECTION 718.112(2)(f)(2)(a), FLORIDA STATUTES – ANNUAL BUDGET;
SECTION 719.106(1)(j), FLORIDA STATUTES *****

“In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved ~~for an item is determined by the association’s most recent structural integrity reserve study that must be completed by December 31, 2024. If the amount to be reserved for an item is not in the association’s initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount~~ must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g) for which the association is responsible pursuant to the declaration of condominium, and the reserve amount for such items must be based on the findings and recommendations of the association’s most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The members of a unit-owner controlled association may determine, by a majority vote of the total voting interests at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection. For a budget adopted on or after Effective December 31, 2024, the members of a unit-owner controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g), except that members of an association operating a multi-condominium may determine to provide no reserves or less reserves than required by this subsection if an alternative funding method has been approved by the division.”

*****SECTION 718.112(2)(f)(3), FLORIDA STATUTES – ANNUAL BUDGET; SECTION
719.106(1)(j), FLORIDA STATUTES*****

“Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote ~~of all the total voting interests at a duly called meeting~~ of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. For a budget adopted on or after Effective December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (g) for any other purpose other

than the replacement or deferred maintenance costs of the components listed in paragraph (g).
Their intended purpose."

*****SECTION 718.112(2)(g), FLORIDA STATUTES – STRUCTURAL INTEGRITY RESERVE STUDY (“SIRS”); SECTION 719.106(1)(K), FLORIDA STATUTES *****

The Legislature has amended the SIRS requirements in ss. 718.112(2)(g) and 719.106(1)(k), Florida Statutes relating to condominiums and cooperative associations, respectively, to:

- Limit the SIRS requirement to residential condominium.
- Clarifies that the three-story building threshold for a SIRS is determined by the Florida Building Code.
- Replace the term “common areas” with “condominium property” or “cooperative property,” where appropriate.
- Clarify that the SIRS recommendation must include a reserve funding schedule.
- Delete “floor” from the list of building components that must be visually inspected in the SIRS.
- Permit the visual inspection portion of the SIRS to be verified by an engineer or architect.
- Permit persons who have been certified as a Reserve Specialist, or Professional Reserve Analyst by the Community Associations Institute or the Association of Professional Reserve Analysts to perform or verify the visual inspection portion of the SIRS.
- Clarify that the SIRS may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost or deferred maintenance expense cannot be determined.
- Require reserves for deferred maintenance for the amount recommended by the SIRS, including for items for which there is no ascertainable estimate of useful life.
- Exempt from the SIRS requirement:
 - o Buildings less than three stories in height;
 - o Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; and
 - o Any portion or component of a building that has not been submitted to the condominium or cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the condominium or cooperative association.

An association that is required to complete a milestone inspection in accordance with Section 553.899, Florida Statutes on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

If the milestone inspection required by Section 553.899, Florida Statutes, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

The Legislature has amended the fiduciary duty requirement of this section to provide that if the officers and directors willfully and knowing fail to complete the SIRS, that such failure is a breach of such fiduciary duty under Section 718.111(1), Florida Statutes.

Section 718.112(2)(h), Florida Statutes – Mandatory milestone inspection

The Legislature has amended this section to clarify that the Association is responsible for all costs associated with such “milestone inspection” attributable to the portions of the building which the Association is responsible for maintaining under the governing documents of the Association.

The Legislature has also amended this section to mirror the notice requirements of Section 553.899(5), Florida Statutes.

Section 718.1255(1)(d), Florida Statutes – Alternative dispute resolution; mediation; nonbinding arbitration; applicability

Effective July 1, 2027, the Legislature has amended the definition of the word “dispute” to include the failure of the Board (when required by Chapter 718 or an association documents) to:

- Obtain the “milestone inspection” required under Section 553.899, Florida Statutes; or
- Obtain the SIRS required under Section 718.112(g), Florida Statutes; or
- Fund reserves as required for an item identified Section 718.112(g), Florida Statutes; or
- Make or provide necessary maintenance or repairs of condominium property recommended by a milestone inspection or a structural integrity reserve study.

This amendment is also found in Section 719.1255, Florida Statutes.

Section 718.1255(5), Florida Statutes – Alternative dispute resolution; mediation; nonbinding arbitration; applicability

The Legislature has amended this section to provide that the “disputes” listed in Section 718.1255(1)(d), Florida Statutes are not subject to nonbinding arbitration and must be submitted to pre-suit mediation in accordance with Section 720.311, Florida Statutes.

Section 718.113(1), Florida Statutes – Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

The Legislature has amended this section to clarify Association responsibility to maintain common elements other than limited common elements assigned to the unit owner by the Declaration. This section was further amended to provide that the Association shall provide for the maintenance, repair, and replacement of the condominium property for which it bears responsibility pursuant to the declaration of condominium.

The Legislature has also amended this section to require that upon turnover of control of the association to the unit owners, the Association must perform any required maintenance identified by the Developer pursuant to Section 718.301(4)(p), Florida Statutes and Section 718.301(4)(q), Florida Statutes until the Association obtains new maintenance protocols from a licensed professional engineer or architect or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analyst.

The legislature also amended Section 719.105(5), Florida Statutes to provide for identical obligations for cooperative Associations.

Section 718.301(4)(p), Florida Statutes -- Transfer of association control; claims of defect by association.—

The Legislature has revised this section to clarify the requirement for a “turnover inspection report” to be and amends such section to permit completion of such report by a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analyst.

The Legislature has amended Section 718.301(4)(p)(1), Florida Statutes to revise the substantive requirements for a “turnover inspection report” to include the following items of condominium property:

1. Roof.
2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.
3. Fireproofing and fire protection systems.
4. Plumbing ~~Elevators~~.
5. Electrical systems ~~Heating and cooling systems~~.
6. Waterproofing and exterior painting ~~Plumbing~~.
7. Windows and exterior doors ~~Electrical systems~~.
8. ~~Swimming pool or spa and equipment.~~
9. ~~Seawalls.~~
10. ~~Pavement and parking areas.~~
11. ~~Drainage systems.~~
12. ~~Painting.~~
13. ~~Irrigation systems.~~

The Legislature has created Section 718.301(4)(q)(1), Florida Statutes which provides as follows:

“(q) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property comprising a turnover inspection report:

1. Elevators.
2. Heating and cooling systems.
3. Swimming pool or spa and equipment.
4. Seawalls.
5. Pavement and parking areas.
6. Drainage systems.

7. Irrigation systems.

Section 718.503(1), Florida Statutes -- DEVELOPER DISCLOSURE.— Copies of documents to be furnished to prospective buyer or lessee

The Legislature has revised these sections to provide additional presale notice requirements in contracts for sales of a unit by a developer or non-developer. These new provisions are similar to current contract notices related to developer and non-developer unit owners' obligations to furnish certain governing documents to the prospective buyer of a unit more than 3 days before execution of the contract for sales by a non-developer or 15 days before execution of the contract for sales by a developer. The bill:

- Requires a presale contract notice advising that the association has failed to complete a required milestone inspection or SIRS, as appropriate, or advising that a milestone inspection or SIRS is not required;
- Creates a contract notice for associations that have completed the milestone inspection and SIRS in which the prospective buyer acknowledges that he or she has been provided a copy of the most recent structural integrity reserve study and milestone inspection report, if applicable;
- Creates a contract notice that advises the prospective buyer that the sales contract is voidable if the buyer has not been provided with a current copy of the SIRS or the inspector-prepared summary more than 15 days before the execution of a contract with a developer or 3 days before the execution of the contract with a non-developer; and
- Provides that a contract that does not conform to these notice requirements is voidable at the option of the purchaser prior to closing.

The legislature also amended Section 719.503(1), Florida Statutes to provide for identical obligations for cooperative Associations.

Section 718.503(2), Florida Statutes -- NONDEVELOPER DISCLOSURE.— Copies of documents to be furnished to prospective buyer or lessee

The Legislature has revised these sections to provide additional presale notice requirements in contracts for sales of a unit by a developer or non-developer. These new provisions are similar to current contract notices related to developer and non-developer unit owners' obligations to furnish certain governing documents to the prospective buyer of a unit more than 3 days before execution of the contract for sales by a non-developer or 15 days before execution of the contract for sales by a developer. The bill:

- Requires a presale contract notice advising that the association has failed to complete a required milestone inspection or SIRS, as appropriate, or advising that a milestone inspection or SIRS is not required;
- Creates a contract notice for associations that have completed the milestone inspection and SIRS in which the prospective buyer acknowledges that he or she has been provided a copy of the most recent structural integrity reserve study and milestone inspection report, if applicable;
- Creates a contract notice that advises the prospective buyer that the sales contract is voidable if the buyer has not been provided with a current copy of the SIRS or the inspector-prepared summary more than 15 days before the execution of a contract with a developer or 3 days before the execution of the contract with a non-developer; and

- Provides that a contract that does not conform to these notice requirements is voidable at the option of the purchaser prior to closing.

The legislature also amended Section 719.503(2), Florida Statutes to provide for identical obligations for cooperative Associations.

Section 718.504(7)(a), Florida Statutes -- Prospectus or offering circular

The Legislature has amended this section to require disclosure of a summary description of the structural integrity of each building for which reserves are required pursuant to Section 718.112(2)(g), Florida Statutes.

CHAPTER 2023-224, LAWS OF FL CS/CS/HB 327 -- EFFECTIVE 07/1/2023

Section 553.7932(1)(a), Florida Statutes -- Simplified permitting processes

The Legislature has amended this section to create a definition of “Component” as component” to mean valves, fire sprinklers, escutcheons, hangers, compressors, or any other item deemed acceptable by the local enforcing agency. A valve does not include pressure-regulating, pressure-reducing, or pressure-control valves.

Section 553.7932(1)(b), Florida Statutes -- Simplified permitting processes

The Legislature has amended this section to add to the definition of “Contractor” to include a person that is qualified to engage in the business of fire protection system contracting pursuant to a license or certificate issued by the State Fire Marshal in the definition of contractor.

Section 553.7932(1)(d), Florida Statutes -- Simplified permitting processes

The Legislature has amended this section to create to the definition of “Fire sprinkler system project” to mean a fire protection system alteration of a total of 20 or fewer fire sprinklers in which the sprinklers are of the same K-factor and located in spaces where there is no change of hazard classification or increased system coverage area, or the installation or replacement of an equivalent fire sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building. A component is equivalent if the component has the same or better characteristics, including electrical, hydraulic, pressure losses, and required listings and spacing as the component being replaced.

Section 553.7932(2)(a), Florida Statutes -- Simplified permitting processes

The Legislature has amended this section to require a contractor, as a condition of obtaining a permit for a fire sprinkler system project, to submit a completed application and payment.

Section 553.7932(2)(b), Florida Statutes -- Simplified permitting processes

The Legislature has amended this section to prohibit local enforcement agencies from requiring a contractor to submit plans or specifications as a condition of obtaining a permit for a fire sprinkler system project.

Section 553.7932(3) Florida Statutes -- Simplified permitting processes

The Legislature has amended this section to require local enforcement agencies to issue a permit for a fire sprinkler system project in person or electronically.

Section 553.7932(4) Florida Statutes -- Simplified permitting processes

The Legislature has amended this section to require local enforcement agencies to require at least one inspection of a fire sprinkler system project to ensure compliance with applicable codes and standards.

The Legislature has also amended this section to provide that if a fire sprinkler system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

Section 553.7932(5) Florida Statutes -- Simplified permitting processes

The Legislature has also amended this section to require fire protection system contractors to keep a copy of the plans and specifications at the fire sprinkler system project worksite and make such plans and specifications available to the inspector at each inspection for a:

- Fire sprinkler system project to alter an existing fire protection system; and
- Fire alarm system project.

The Legislature has also amended this section to require for a fire sprinkler system project to install or replace a component, the bill requires contractors to keep the following documents at the fire sprinkler system project worksite and make them available to the inspector at each inspection:

- A copy of the manufacturer's installation instructions; and
- Any pertinent testing instructions needed to certify or accept the component

Section 633.102(3), Florida Statutes – Definitions

The Legislature has also amended this section to clarify that a Contractor I or II is authorized to design new fire protection systems of up to 49 sprinklers; design the relocation, addition, or deletion of existing fire sprinkler systems of up to 49 sprinklers; “**and**” design the relocation or deletion of existing fire sprinkler systems of 249 or fewer sprinklers and the addition of up to 49 or fewer sprinklers, as long as the cumulative total number of fire sprinklers being added, relocated, or deleted does not exceed 249.

CHAPTER 2023-226, LAWS OF FL CS/CS/HB 331 -- EFFECTIVE 10/1/2023

Section 255.05(2)(a)(1), Florida Statutes -- Bond of contractor constructing public buildings; form; action by claimants.—

The Legislature has amended this section to provide for service requirements for a notice of contest of claim against a payment bond to require that, after the contractor serves the notice on the person claiming against the payment bond (“the claimant”) and records the notice with the clerk’s office along with a certificate of service, the clerk must serve a copy of such recorded notice on the claimant and the contractor or his or her attorney and charge for such services as provided in Section 713.18, Florida Statutes.

Section 255.05(2)(a)(2), Florida Statutes -- Bond of contractor constructing public buildings; form; action by claimants.—

The Legislature has amended this section to provide that if the payment bond is not recorded before the commencement of work or before the recommencement of work after a default or abandonment as required by subsection (1), the claimant may serve the contractor with such written notice up to 45 days after the date that the claimant is served with a copy of the bond. The Legislature also amends this section to require that a claimant not in privity with the contractor and who has not received payment must also serve a copy of the notice of nonpayment on the surety of the payment bond. The Legislature has amended this section to permit online notarization of the Notice of Nonpayment form.

Section 255.05(2)(7), Florida Statutes -- Bond of contractor constructing public buildings; form; action by claimants.—

The Legislature has amended this section to expand the alternative forms of security available to a contractor other than a bond to include, a domestic corporate bond, note, or debenture as authorized in Section 625.317, Florida Statutes and provides that the appropriate jurisdiction shall determine the required value of such alternate forms of security.

Section 255.05(2)(7), Florida Statutes -- Bond of contractor constructing public buildings; form; action by claimants.—

The Legislature has amended this section to require that service of any document must be made in accordance with Section 713.18, Florida Statutes unless otherwise provided in Section 255.02, Florida Statutes.

Section 337.18(1)(c), Florida Statutes -- Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

The Legislature has amended this section to require that service of any document must be made in accordance with Section 713.18, Florida Statutes.

Section 337.18(6), Florida Statutes -- Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

The Legislature has amended this section to require that service of any document must be made in accordance with Section 713.18, Florida Statutes.

Section 713.01(4), Florida Statutes – Definitions -- "Clerk's office"

The Legislature has amended this section to expand the definition of Clerk's Office to include another office serving as the county recorder as provided by law.

Section 713.01(8), Florida Statutes – Definitions -- "Contractor"

The Legislature has amended this section to expand the definition of "Contractor" to include a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), respectively, who provides construction management services, which include scheduling and coordinating preconstruction and construction phases for the construction project, or who provides program management services, which include schedule control, cost control, and coordinating the provision or procurement of planning, design, and construction for the construction project.

Section 713.01(13), Florida Statutes – Definitions -- "Finance Charge"

The Legislature has amended this section to create the definition of "Finance Charge" as, “a contractually specified additional amount to be paid by the obligor on any balance that remains unpaid by the due date set forth in the credit agreement.”.

Section 713.011, Florida Statutes – Computation of time

The Legislature has amended this chapter to provide that, in computing any time period relating to the construction lien law, if the last day of the time period is a Saturday, Sunday, legal holiday, or any day observed as a holiday by the clerk’s office or designated as such by the chief judge of the circuit, the time period is extended to the end of the next business day.

The Legislature also provides that, if the clerk’s office is closed in response to an emergency for one or more days, so that a person may not present a document for recording or an action for filing in person with the clerk’s staff, the time period for recording a document or filing an action with the clerk’s office relating to the construction lien law is tolled. When the clerk’s office reopens, the time period is extended by the number of days the clerk’s office was closed.

Section 713.13(1)(a), Florida Statutes -- Notice of commencement.

The Legislature has amended this section to provide that an acknowledgment of a Notice of Commencement may be accomplished via online notarization.

The Legislature has amended this section to provide an authority issuing a building permit must accept a recorded Notice of Commencement from an owner or owner’s authorized agent if the Notice of Commencement is in the form provided by statute.

Section 713.132, Florida Statutes -- Notice of termination.

The Legislature has amended this section to specify that a notice of termination must include a statement that the owner will serve a copy of the notice on all lienors who timely serve a notice to owner after the notice of termination’s recording.

The Legislature has amended this section to delete a provision specifying that an owner may only record a notice of termination after construction completion or when construction ceases before completion and all lienors have been paid, specifying instead that such notice may be recorded after all lienors have been paid.

The Legislature has amended this section to require that a notice of termination be served before recording on each lienor in privity with the owner and on each person who timely served a notice to owner before the recording of the notice of termination. Under the bill, if it is thus served, a notice of termination terminates the notice of commencement 30 days after it is recorded. However, the bill also requires an owner to serve a copy of the notice of termination on any lienor who began work under a notice of commencement before its termination, lacks a direct contract with the owner, and timely serves a notice to owner after the notice of termination is recorded. Under the bill, the notice of termination is effective as to such lienors 30 days after service.

713.135 Notice of commencement and applicability of lien.—

The Legislature has amended this section to increase the contract amount which excuses a building permit applicant from filing a copy of the notice of commencement or an authorized alternative with the issuing authority, from \$2,500 to \$5,000.

The Legislature has amended this section to add that it does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than \$15,000.

The Legislature has amended this section to provide that the building permit issuing authority is not liable in any civil action for failing to verify that the building permit applicant submitted one of the acceptable forms of proof that the applicant filed a notice of commencement.

Section 713.189(9) -- Manner of serving documents

The Legislature has amended this section to provide that all documents allowed or required under the construction lien law must be served as provided in s. 713.18, F.S., relating to manner of serving documents.

The Legislature has amended this section to provide that “actual delivery” of a notice means “hand delivery.”

The Legislature has amended this section to provide that service by mail must be made to the person to be served.

The Legislature has amended this section to provide that service of a notice sent through the mail is effective upon mailing or shipping.

The Legislature has amended this section to provide that service to a partnership, corporation, or limited liability company may be made on an employee or agent authorized by the business to receive service.

Section 713.21, Florida Statutes -- Discharge of lien

The Legislature has amended this section to provide that the methods specified for discharging a lien may also be used to release a lien, in whole or in part.

The Legislature has amended this section to provide that if a satisfaction or release of lien is filed with the clerk’s office, the satisfaction or release must include the lienor’s notarized signature and the official reference number and recording date affixed by the recording office on the subject lien.

The Legislature has amended this section to provide upon the filing of a complaint for satisfaction or release of lien, and the issuance of a summons to the lienor to show cause within 20 days, the 20-day deadline is tied to the lienor’s receipt of the summons.

Section 713.22, Florida Statutes -- Duration of lien

The Legislature has amended this section to provide that after the Clerk records the Notice of Contest of Lien with the certificate of service, the clerk shall serve, in accordance with s. 713.18, a copy of such recorded notice on the lienor and the owner or the owner's attorney and the Clerk shall charge fees for such services as provided by law.

Section 713.23, Florida Statutes -- Payment bond

The Legislature has amended this section to provide that a lienor's written Notice of Nonpayment must be served upon the contractor and a copy of the notice of nonpayment must also be served upon the surety.

The Legislature has amended this section to provide that a Notice of Nonpayment may be sworn to by means of online notarization.

The Legislature has amended Section 713.23(1)(e), Florida Statutes to provide as follows:

“An action ~~may not~~ must be instituted or prosecuted against the contractor or against the surety on the bond under this section within ~~after~~ 1 year after ~~from~~ the performance of the labor or completion of delivery of the materials and supplies. The time period for bringing an action against the contractor or surety on the bond ~~is shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor.”

The Legislature has amended this section to provide that a Notice of Contest of Claim Against Payment Bond must be served in accordance with Section 713.18, Florida Statutes.

The Legislature has amended this section to provide that once a Notice of Contest of Claim Against Payment Bond is filed with the Clerk with the certificate of service, the clerk shall serve, in accordance with s. 713.18, a copy of such recorded notice on the lienor and the owner or the owner's attorney and the Clerk shall charge fees for such services as provided by law.

Section 713.24, Florida Statutes -- Transfer of liens to security

The Legislature has amended this section to provide an increase for the amount required to be deposited or filed with the clerk's office to transfer a lien to the security demanded in the lien, plus interest at the legal rate for three years, plus \$5,000 or 25 percent of the amount demanded in the lien, whichever is greater.

The Legislature also amended this section to require that the clerk include a copy of the deposit or bond used for the transfer with the certificate made and recorded to show the lien's transfer.

Section 713.24, Florida Statutes -- Attorney Fees

The Legislature has amended this section to provide that a prevailing party in an action to enforce a lien transferred to a security may recover his or her reasonable attorney fees in an amount to be determined by the court.

The Legislature has amended this section to provide that, where a prevailing party is entitled to recover his or her reasonable attorney fees in an arbitration action to enforce a claim against a payment bond, the amount or the attorney fees to be awarded may be determined by the arbitrator.

Section 720.303(2)(c), Florida Statutes -- Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.— BOARD MEETINGS

The Legislature has amended this section to require that notices of all meetings of the Board of Directors must specifically identify agenda items of the meeting.

Section 720.303(4) Florida Statutes -- Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.— OFFICIAL RECORDS

The Legislature has amended this section to provide that the current roster of all members must include their “designated” mailing address and defines such “designated” mailing address to be the member’s property address unless the member has provided written notice to the Association requesting that a different mailing address be used for all required notices.

The Legislature has also amended this section to provide that the current roster of all members must include their “e-mail” address and “facsimile” numbers designed by such member to receive notices by electronic transmission. Such e-mail address is the e-mail address designated by such member to receive notices by electronic transmission, unless the member requests in writing to receive all required notices at a different e-mail address.

The Legislature has also amended this section to provide that such e-mail addresses and facsimile numbers provided by members must be removed from the Association’s records when the member revokes consent to receive notices by electronic transmission.

Section 720.303(8) Florida Statutes -- Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.— ASSOCIATION FUNDS; COMMINGLING.—

The Legislature has amended this section to provide that if the Association collects a deposit for any reason, including a deposit for Association expenses that may be incurred as a result of construction on a member’s parcel, that such funds must be maintained separately and may not be commingled with any other Association funds. Upon completion of the member’s construction project or other reason for which such deposit was collected, the member may request an accounting of the funds which were deposit and such accounting must be provide within 7 days after receiving the request for such account. The Association must remit payment of any unused funds to the member within 30 days after receiving notice that the construction or other purpose for which the deposit was collected has been completed.

Section 720.3033(3) Florida Statutes -- Officers and directors.—

The Legislature has amended this section to provide that if an officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value or kickback for which consideration has not been provided for their own benefit or that of their immediate family from any person providing services or goods to the Association is subject to monetary damages under Section 617.0834, Florida Statutes.

The Legislature has amended this section to provide that if a director is charged by information or indictment of the following crimes must be removed from office and such vacancy is filled in accordance with Section 720.306(9), Florida Statutes:

1. Forgery of a ballot envelope or voting certificate used in a homeowners' association election as provided in Section 831.01, Florida Statutes (third-degree felony).
2. Theft or embezzlement involving the Association's funds or property as provided in Section 812.014, Florida Statutes (various misdemeanors or felonies depending on circumstances and value of stolen funds or property).
3. Destruction of or the refusal to allow inspection and copying of official records, in furtherance of any crime. Such act constitutes tampering of physical evidence as provided in Section 918.13, Florida Statutes (third-degree felony, unless relating to criminal trial, proceeding, or investigation that relates to capital felony is a second degree felony).
4. Obstruction of justice as provided in Chapter 843, Florida Statutes (various crimes with varying penalties).

The Legislature has also amended this section to provide that if a director is charged by information or indictment of such crimes and such charges are pending against the officer or director, such person may not be appointed or elected to an director or officer position of any association and may not have access to the official records of any association, except pursuant to court order.

The Legislature has also amended this section to provide that a director or officer appointed by a Developer must disclose to the association the relationship with such Developer each calendar year in which they serve as an officer or director. Such officers and directors appointed by the Developer must disclose any other activity that may reasonably be construed to be a conflict of interest pursuant to statute. There is no presumption that a Developer's appointment of an officer or director creates a conflict of interest with regard to performance of official duties.

The Legislature has also amended this section to provide that such officer or director must disclose any activity that may be reasonably construed to be a conflict of interest within 14 days before voting on an issue or entering into a contract that the subject of the conflict.

The Legislature has also amended this section to create a rebuttal presumption of a conflict of interest for the following acts which occur without prior disclosure to the Association:

1. A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association; and
2. A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, Limited Liability Company, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

Section 720.305(2) Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

The Legislature has amended this section to provide that the Association may levy reasonable fines for violations of the Association's Declaration, Bylaws, or reasonable rules of the Association.

The Legislature has amended this section to provide that the Association must provide the notice of fining hearing to the parcel owner at their designated mailing or e-mail address and has stricken the language that an owner is entitled to an "opportunity" for a hearing and imposes a mandatory hearing requirement.

The Legislature has amended this section to provide that the notice for such fining hearing must include the following:

1. A description of the alleged violation;
2. The specific action required to cure such violation, if applicable; and
3. The date and location of the hearing.

The Legislature has amended this section to provide that the parcel owner has the right to attend a hearing by telephone or other electronic means.

The Legislature has amended this section to provide that the parcel owner has the right to attend a hearing by telephone or other electronic means.

The Legislature has amended this section to provide that the parcel owner is entitled to notice after such fining hearing at their designated mailing or email address in the Association's official records, and if applicable, any occupant, licensee, or invitee of the parcel owner of the following:

1. The committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected; and
2. How the parcel owner, occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable.

The Legislature has amended this section to require a majority vote of the fining committee to approve such fine.

Section 720.3065, Florida Statutes -- Fraudulent voting activities relating to association elections; penalties.

The Legislature has created this section to provide that the following activities fraudulent voting activity relating to association elections and are punishable as first-degree misdemeanor:

1. 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;
2. 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;
3. 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;
4. Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence deceive, or deter a member when the member is voting;
5. 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 does not apply to any food served which is to be 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; and

6. Using or threatening to use, 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 a particular ballot measure.

CHAPTER 2023-64, LAWS OF FL CS/CS/HB 437 -- EFFECTIVE 07/01/2013

Section 718.113(4), Florida Statutes -- Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations

The Legislature has amended this section to add Patriot Day (September 11) to the list of holidays where a unit owner may display one of the permitted flags under such statute.

Section 720.304(2)(a), Florida Statutes -- Right of owners to peaceably assemble; display of flags; SLAPP suits prohibited.—

The Legislature has amended this section to provide that notwithstanding any covenant, restriction, bylaw, rule, or requirement of an HOA, a homeowner may display up to two of the following flags in a respectful manner:

- The United States flag.
- The official flag of the State of Florida.
- A flag that represents the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
- A POW-MIA flag.
- A first responder flag as defined by such statute.

The Legislature has also amended this section to provide that a homeowner may fly one United States flag and one flag from the list above from a freestanding flagpole.

Section 720.3045, Florida Statutes -- Installation, display, and storage of items

The Legislature has created this section to provide as follows:

“Regardless of any covenants, restrictions, bylaws, rules, or requirements of an association, and unless prohibited by general law or local ordinance, an association may not restrict parcel owners or their tenants from installing, displaying, or storing any items on a parcel which are not visible from the parcel's frontage or an adjacent parcel, including, but not limited to, artificial turf, boats, flags, and recreational vehicles.”

CHAPTER 2023-175, LAWS OF FL CS/CS/CS/HB 799: PROPERTY INSURANCE -- EFFECTIVE 7/1/2023

The bill establishes that, in addition to mitigation measures to reduce hurricane losses, an insurer’s rate filing must allow for appropriate discounts for mitigation measures that policyholders undertake to reduce the potential for windstorm losses.

The bill adds wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance.

For residential and commercial property insurance policies issued or renewed on or after October 1, 2023, the bill establishes that if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage at the time of policy issuance or renewal.

If such verification was made and flood coverage is not in force at the time of loss, the insurer may deny a claim solely because the insured does not have coverage for the peril of flood. However, if the insurer fails to make such verification, the insurer is prohibited from denying a claim for wind solely because the insured does not have coverage for the peril of flood.

In addition to flood coverage directly obtained by the insured or applicant, the bill establishes that a master flood policy issued to someone other than the insured or applicant, but that covers the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

The bill eliminates the requirement that condominium owners insured by Citizens purchase flood insurance. It also makes technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements.

The bill provides that, in addition to any other method of alternative dispute resolution authorized by law, Citizens may adopt policy forms that allow both Citizens and Citizens' policyholders to request a hearing by DOAH to resolve claims disputes. It also establishes that attorney fees may be awarded to either party for raising unsupported claims or defenses during a DOAH proceeding and for the use of offers of judgment and demands for judgment. The bill prohibits either party from serving an offer earlier than 10 days after the filing of the request for a hearing with DOAH or later than 10 days before the date set for the final hearing at DOAH. Additionally, the bill prohibits the Florida Office of Insurance Regulation (FOIR) from approving a maximum hourly rate for attorney fees for hearings before DOAH.

CHAPTER 2023-172, LAWS OF FL CS/SB 7052: INSURER ACCOUNTABILITY – EFFECTIVE 7/1/2023

The bill reduces the time for providing documents to the Florida Office of Insurance Regulation regarding a complaint from 20 days after the receipt of written request to 14 days and increases the fines for non-compliance.

This bill requires new quarterly report of enforcement activity by the Florida Office of Insurance Regulation. The report must detail the insurer or other licensee or registrant against whom action was taken; whether the office found any violation of law or rule by such party, and, if so, details of such violation; and the resolution of such action, including any penalties imposed by the Florida Office of Insurance Regulation.

The bill expands current law prohibiting insurers from cancelling a residential property insurance policy until 90 days after repairs are completed. Under this bill, for all other types of losses, authorized insurance companies are prohibited from cancelling a property insurance policy during any pending claim until the earlier of when the property has been repaired or 1 year after the insurance company issues the final claim payment.

The bill requires authorized insurers to give written notice to the Florida Office of Insurance Regulation before any temporary suspension of writing new residential property insurance policies at least 20 business days before the effective date of the suspension or 5 business days before notifying its agents, whichever is earlier.

The bill clarifies if a roof deductible is applied, the prohibition on applying any other deductible under the policy encompasses any other loss to the property caused by the same covered peril.

This legislation requires Citizens Property Insurance Corporation to cover homes insured by insolvent insurance companies that have not been repaired.

SB 7052 requires every company to “create and use a claims-handling manual”. The manual must cover a list of subjects outlined in the bill, be furnished to the FOIR, and must be attested on or before August 1, 2023, and annually thereafter beginning on May 1 of each calendar year.

The new bill will require property insurance mitigation discounts be updated at least every 5 years and requires insurers to provide consumer-friendly information on their website describing hurricane mitigation discounts available to policyholders.

NOTES:

*The information provided herein is provided for informational purposes only and should not be construed as legal advice. The publication of this document does not create an attorney-client relationship between you and **LAW OFFICES OF WELLS | OLAH | COCHRAN, P.A.** or any of our attorneys. While we make every attempt to ensure that the information contained in the document is accurate, we are not responsible for any errors or omissions. You should not act or refrain from acting based upon the information contained in this document. If you have questions about any of the issues raised herein, you should contact your attorney.*