



# FLORIDA COMMUNITY ASSOCIATION 2021 LEGISLATIVE GUIDE

**CALL**

COMMUNITY ASSOCIATION  
LEADERSHIP LOBBY

POWERED BY

**Becker**  
Becker & Poliakoff



# A LETTER FROM THE EXECUTIVE DIRECTOR OF CALL

Dear CALL Members:

CALL'S annual Legislative Guide is designed to help your volunteer board and management professionals understand and implement the new laws which impact community associations each year.

Our 2021 Florida Legislative Guidebook contains four parts:

- **Part I:** We discuss the condominium, cooperative and homeowners' association bills which passed;
- **Part II:** We discuss bills related to the pandemic including the COVID-19 liability bill;
- **Part III:** We discuss miscellaneous bills that passed which can have a direct or an indirect impact on your residents; and finally,
- **Part IV:** We discuss the bills that did not pass but which may make a reappearance next year.



*Donna DiMaggio Berger,  
Founder & Executive Director*

The effective date for each bill that passed is listed under the bill heading. Please review our practical pointers which provide advice for our board members and managers on how to easily incorporate these new laws into your daily operations.

In the aftermath of the Surfside tragedy, it is more important than ever that boards, their management professionals and all association members become involved with the legislation that will shape their lives and association operations for decades to come. Stay tuned for future CALL Alerts discussing the many 2022 legislative proposals which will hopefully strengthen and empower our communities.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Donna DiMaggio Berger'.

**Donna DiMaggio Berger, Founder & Executive Director**  
Community Association Leadership Lobby

# TABLE OF CONTENTS

## PART I

CONDOMINIUMS, COOPERATIVES AND HOMEOWNERS' ASSOCIATIONS' BILLS THAT PASSED .....	1
CS/CS/SB 630, Relating to Community Associations .....	2
CS/CS/SB 56, Relating to Community Association Assessment Notices .....	17
CS/HB 463, Relating to Community Association Swimming Pools .....	24
CS/CS/SB 1966, Relating to Department of Business and Professional Regulation .....	25
CS/HB 649, Relating to Petitions for Objection to Tax Assessments .....	27
CS/SB 602, Relating to Business Organizations .....	30

## PART II

COVID-19 .....	31
CB/SB 72, Relating to Civil Liability for Damages Related to COVID-19 .....	32
CS/CS/SB 2006, Relating to Emergency Management (Vaccine Passports) .....	34

## PART III

MISCELLANEOUS BILLS THAT PASSED .....	37
---------------------------------------	----

## PART IV

BILLS THAT DID NOT PASS .....	39
-------------------------------	----

## 2021 LEGISLATIVE GUIDE EDITORIAL BOARD



**Donna DiMaggio Berger**  
Shareholder  
Ft. Lauderdale



**Yeline Goin**  
Senior Attorney  
Orlando



**Steven H. Mezer**  
Shareholder  
Tampa

## PART I

# CONDOMINIUMS, COOPERATIVES AND HOMEOWNERS' ASSOCIATIONS' BILLS THAT **PASSED**

# CS/CS/SB 630, Relating to Community Associations

This year's omnibus bill contains numerous changes to Chapters 718, 719, and 720, Florida Statutes

Chapter 2021-99, Laws of Florida

Effective Date: July 1, 2021

## CONDOMINIUMS

### INSURANCE SUBROGATION

Subrogation means that a third party assumes another party's legal right to collect from the party alleged to be responsible for some damage. In this context, a right of subrogation refers to the insurance carrier assuming the right of its insured to attempt to collect from the party alleged to be responsible for damage. This amendment to section 627.714(4), Florida Statutes, provides that:

- If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner in the association may not provide the right of subrogation against the condominium association.

#### NOTE:

- This law was enacted as a response to the practice of certain insurance companies that issue "HO-6" (individual unit) policies and routinely file "subrogation" lawsuits against condominium associations claiming that the association was negligent in maintaining the common elements whenever these companies paid the unit owners' claims for damage to their units.

#### PRACTICAL POINTERS:

- The board of the association should consult with the insurance agents and advisors to

review and confirm the policy language in the association's policies and to discuss potential risk management alternatives and strategies.

- On its face, this bill does not mention homeowners' associations or cooperatives, so its impact on other forms of community associations is uncertain.

### DEFINITIONS

Section 718.103(20), Florida Statutes

- "Multicondominium" means real property containing two or more condominiums, each of which is operated by the same association.

Section 718.103(21), Florida Statutes

- "Operation" or "operation of the condominium" includes the administration and management of the condominium property and the association.

#### NOTE:

- These are primarily administrative amendments that clarify existing condominium structures and operational protocols.

### OFFICIAL RECORDS

Sections 718.111(12) (a), (b), and (c), Florida Statutes, were amended to address the following record-keeping requirements and access provisions:

- Bids for work to be performed must be maintained for at least 1 year after receipt of the bid.
- A renter has a right to inspect and copy only the declaration of condominium, and the association's bylaws and rules.
- An association may not adopt rules requiring a member to demonstrate any purpose or state any reason for a record inspection.

#### NOTE:

- The previous law allowed a renter to inspect and copy the association's bylaws and rules, but not the declaration of condominium. As to the final bullet point above, this bill codifies a long-standing policy that owners in condominiums are not required to demonstrate a proper purpose to assert their right to inspect official records. However, associations may continue to pass reasonable rules which provide a framework for the official records inspection process.

### **WEBSITES AND AVAILABILITY OF OFFICIAL RECORDS THROUGH AN APPLICATION ("APP")**

Section 718.111(12)(g), Florida Statutes, was added to require certain condominium associations to maintain a website:

- For condominiums with 150 or more units, an association, in lieu of posting copies of certain required documents to a website, may alternatively make the documents available through an application ("app") that can be downloaded on a mobile device.

### **DISCRIMINATORY RESTRICTIONS**

Section 718.112(1)(c), Florida Statutes, is a new provision that allows boards to easily remove discriminatory provisions in their governing documents as follows:

- Condominium associations may extinguish discriminatory restrictions as provided in section 712.065, Florida Statutes, which provides that upon the request of a parcel owner, a discriminatory restriction may be removed by an amendment approved by a majority of the board.

#### NOTE:

- This law was enacted in response to racially restrictive subdivision covenants that appear in the county land records.

#### PRACTICAL POINTER:

- Unlawful restrictions in condominium documents are those involving race, color, national origin, religion, gender, or physical disability, and should be eliminated by action of the board when discovered. The board should also review age restrictions in a declaration or rules that could violate fair housing laws and should consult with counsel as to the applicability of this statute.

### **BOARD TERM LIMITS**

Section 718.112(2)(d)2., Florida Statutes, clarifies the term limits that were first added in 2018 but have been the subject of considerable debate regarding their applicability to board members whose term of service began before the statute was enacted. The amendment provides that:

- For calculating board term limits, the service start date will be on or after July 1, 2018.

#### NOTE:

- Prior to July 1, 2018, there were no term limits in the Condominium Act, but the statute permitted the bylaws to contain term limits. In 2018, the legislature amended the statute to include an 8-year term limit, but the effective date was left unanswered and the subject of conflicting interpretations. This provides a clear start date for calculating board term limits under the statute. Term limits set forth in bylaws are not affected.

### **NOTICE OF MEETINGS**

Sections 718.112(2)(d)3. & 4., Florida Statutes, fix a problem created by earlier legislation regarding the posting of notices of meetings, which required posting of notices on condominium property, without regard to the fact that many condominiums have other association-owned property, like a clubhouse, where notices were traditionally posted as these locations serve as a community center and

gathering place. The amendment allows posting of official notices on association property and sets a default standard for notice of special membership meetings as follows:

- Written notice of meetings, including an annual meeting, must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws.
- If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting.
- The second notice of the date of the election must be sent not less than 14 days and not more than 34 days before the date of the election.

#### NOTE:

- *The Condominium Act previously contained no notice requirement regarding special meetings of the members. The Not-For-Profit Corporation Act used to require 10 days' minimum notice, but that requirement has since been repealed. It is worth noting that the 14-day notice requirement is not a minimum standard for members' meetings, except elections. Accordingly, bylaws can provide for less than 14 days' notice for special membership meetings.*

#### PRACTICAL POINTER:

- Since this law is procedural, it will apply regardless of any provision in the bylaws to the contrary.

### **TRANSFER FEES**

Section 718.112(2)(i), *Florida Statutes*, was amended to allow for increases in transfer fees, if provided for in the condominium documents.

- Transfer fees may not exceed \$150 (increase from the current \$100 cap); and the DBPR must adjust the fee every 5 years per the Consumer Price Index ("CPI") for all urban consumers, U.S. city average, and publish the amount on its website.

#### PRACTICAL POINTERS:

- Many associations have written fee schedules and lease/sales applications based on the current \$100 fee, which has been the law for decades. These schedules and applications should be updated.
- Condominium documents which incorporate the \$100 fee may be amended to recognize the higher fee and associations are encouraged to consult with counsel to draft amendments that will keep the fee current with this new fee and future CPI increases.

### **RECALL OF BOARD MEMBERS**

Section 718.112(2)(j), *Florida Statutes*, was amended to address review of disputed recall efforts. Under the amendment:

- Recall disputes may be filed either in court or as a petition for arbitration with the Division of Condominiums, Timeshares and Mobile Homes ("division"). In other words, the petitioner may now choose to go directly to court with the dispute or to go to arbitration.

#### NOTE:

- Review of recall efforts is limited to the sufficiency of the vote to recall the board and the facial validity of the written agreement or ballots cast.

### **ALTERNATIVE DISPUTE RESOLUTION**

Section 718.112(2)(k), *Florida Statutes*, is a new provision that will permit condominium unit owners and associations to choose to mediate their disputes instead of arbitrating same. This new law requires an association's bylaws to provide or be deemed to provide for alternative dispute resolution.

#### NOTE:

- Section 718.1255, *Florida Statutes*, provides for arbitration or mediation of certain condominium disputes. This will allow associations, in consultation with counsel, to discuss the strategic advantages or disadvantages of a new alternative dispute resolution platform that will be available to resolve condominium disputes.



## SERVICE PROVIDERS; CONFLICTS OF INTEREST

Section 718.112(2)(p), *Florida Statutes*, on conflicts of interest was deleted.

- The provision that prohibited contracts with a service provider that is owned or operated by a board member (or certain relatives with a financial relationship) was removed.

### NOTE:

- Although section 718.112(2)(p), *Florida Statutes*, was removed from the statute, there are other conflict of interest statutes that still apply, if the association enters into a contract with a board member or a relative of a board member. See section 617.0832 and section 718.3027, *Florida Statutes*. These kinds of arrangements should be navigated carefully and only with the assistance of legal counsel.

## NATURAL GAS VEHICLES

Sections 718.113(8) & (9), *Florida Statutes*, are new sections that expand upon a legislative change from years ago that required associations to allow individual owners to install electric vehicle charging stations in their parking spaces. The law now also allows condominium owners to install natural gas fueling stations. The amendments provide:

- The board may not prohibit the installation of a natural gas fuel station and unit owners installing such stations must pay all costs associated with such installations, and comply with certain standards and practices, including compliance with all federal, state, and local laws.
- A board may make available, install, or operate an electric vehicle charging station or a natural gas fuel station on the common elements or association property and establish the charges or the manner of payments by the unit owners, residents, or guests who use such stations. The installation, repair, or maintenance of such stations by the board will not constitute a material alteration or substantial addition to the common elements or association property. It is notable that the ability to install a centralized station for electricity or natural gas does not allow the association to refuse to allow individual owner installations.

Section 718.121(2), *Florida Statutes*, provides for liens on the condominium property by contractors and precludes certain liens as follows:

- Labor performed on or materials furnished for the installation of a natural gas fuel station or electric vehicle charging station may not be the basis for filing a lien against the unit or condominium parcel of any unit owner who did not explicitly consent to or request the labor or materials of the association.

### NOTE:

- Although not entirely clear, the apparent intent of this amendment was to limit lien rights of contractors undertaking installations for individual owners, not those who undertake installation of central natural gas or electric stations for the association. These legislative changes continue to be problematic for certain communities with infrastructure issues.

## TERMINATION OF CONDOMINIUMS

Section 718.117(16), *Florida Statutes*, was amended to address challenges to termination of a condominium by providing:

- A challenge to a plan of termination must be filed in accordance with section 718.1255, *Florida Statutes*, which allows either arbitration or mediation of the dispute.

## ARBITRATION AND MEDIATION OF DISPUTES

Section 718.1255, *Florida Statutes*, was added to the Condominium Act many years ago to direct legal disputes on most issues to the division's arbitration program, instead of state courts. For several years, there was growing legislative momentum to require homeowners' association disputes to be subject to the same mandatory arbitration requirements as condominium and cooperative disputes; that change never materialized. Instead, the changes in this bill represent an interesting new direction by allowing condominium disputes to be mediated. While both are forms of alternative dispute resolution, the arbitration and mediation processes are very different with potentially different results. A conversation with legal counsel is necessary before



choosing one forum over the other. Under these latest amendments:

- The parties are required to go to arbitration or mediation of certain disputes before instituting litigation in court.
- The party bringing the suit (i.e., the petitioner) can choose either presuit mediation pursuant to section 720.311, *Florida Statutes*, or arbitration through the division.
- For election and recall disputes, mediation is not an option, and such disputes must be arbitrated by the division or filed in a court of competent jurisdiction.

## EMERGENCY POWERS

Section 718.1265(1), *Florida Statutes*, has been the subject of much attention and debate over the past year as the COVID-19 crisis forced boards to balance the interests and rights of owners against the board's obligation to safeguard residents and staff.

The amendments to section 718.1265, *Florida Statutes*, are summarized as follows:

- The board can use emergency powers in response to damage or injury caused by or anticipated in connection with an emergency, as defined in section 252.34(4), *Florida Statutes*.
- The term "emergency" is now defined in section 252.34(4), *Florida Statutes*, as any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results in or may result in substantial injury or harm to the population or substantial damage to or loss of property.
- The board may exercise its emergency powers to conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable.
- Such notice may be given in any practicable manner, including publication, radio, U.S. mail, the Internet, electronic transmission, public service announcements, and conspicuous posting on the condominium property or association property or any other means the board deems reasonable under the circumstances.

- The previous statute included a number of emergency powers related to implementing a disaster plan, determining whether the condominium property can be safely inhabited or occupied, mitigating further damage, and contracting for the items or services necessary to prevent further damage to the condominium property.
- The new law amends these provisions by adding language which clarifies that such powers can be used to address issues that may arise because of a pandemic or a public health emergency.
- For instance:
  - The board may implement an emergency plan before, during or following the event for which a state of emergency is declared. The previous statute only specifically mentioned a "disaster plan."
  - The board may rely on the advice of public health officials or licensed professionals otherwise available to the board to determine any portion of the condominium property or association property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety or welfare of such persons. The previous statute only mentioned "emergency management officials" and "licensed professionals retained by the board."
  - The board may mitigate injury or contagion and may contract, on behalf of any unit owner or owners, for items or services which are necessary to prevent further injury or contagion, including, without limitation, sanitizing the condominium property or association property. The previous statute only mentioned mitigating "damage" and contracting for items or services necessary to prevent further "damage."
- The emergency powers are limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs. This means (and has meant) that a board's emergency powers may extend beyond the expiration of the state's state of

emergency depending on the circumstances in a particular community.

- Perhaps the most puzzling changes are those set forth in sections 718.1265(1)(f)-(i), *Florida Statutes*, which provide that an association may not prohibit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:
  - a. the sale, lease, or other transfer of title to a unit; or
  - b. the habitability of the unit for the health and safety of such person unless a governmental order or determination, or public health directive from CDC has been issued prohibiting access to the unit. Any such access is subject to reasonable restrictions by the association.

#### NOTES:

- When the “emergency powers” statute was initially adopted, it was intended to deal primarily with natural disasters, such as hurricanes. One of the primary changes to the emergency powers statute is to broaden the scope to include other types of emergencies, such as pandemics and public health crises. However, the new legislation limits the scope of the board’s authority with respect to access to the condominium for the purpose of the sale, lease, or transfer of a unit. Surprisingly, this new requirement that real estate salespersons be allowed to show properties even in the midst of an emergency does not distinguish between a public health crisis and a building that has been damaged by a casualty event. It is possible that a board, on the advice of its engineer, could declare a storm-damaged building unsafe to enter and an owner or real estate salespersons could demand entry to show a unit.
- Previously, the statute did not specifically authorize membership meetings and elections to be held exclusively by remote means. Many communities passed the necessary resolutions to permit membership participation at virtual membership meetings during the pandemic. The addition of this new language will enable associations to continue to safely hold virtual meetings when the situation demands same.

## DEVELOPER ESCROW FUNDS

Section 718.202(3), *Florida Statutes*, addresses the developer’s use of deposits as follows:

- The developer may, if the sale contract so provides, use the funds withdrawn from the escrow account for the actual costs incurred by the developer in the construction and development of the condominium property.
- The term “actual costs” includes, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. The funds cannot 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.

#### NOTE:

- This provision will likely be of little interest to post-turnover associations that are no longer involved in any disputes with their developers.

## PAYMENT OF FINES

Section 718.303, *Florida Statutes*, clarifies the notice requirements for collecting a fine after approval under the Statute, as follows:

- Specifies that the fine 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 term “occupant” is stricken and replaced with “tenant” regarding the parties to whom notice of the fines or suspension must be given.

#### NOTES:

- The previous statute provided that the fine was due 5 days after the date of the committee meeting at which the fine was approved. This new change applies only to the payment of fines, not to suspensions of use rights.
- Under the previous law, notice of the fining hearing had to be given to the owner, occupant,

licensee, or invitee but “occupant” is stricken and replaced with “tenant.” These terms are legal terms of art. It is not clear why the Legislature deleted the word “occupant” and added the word “tenant.”

## MULTICONDOMINIUM ASSOCIATIONS

Section 718.405(5), *Florida Statutes*

- Multicondominium associations may adopt consolidated or combined declaration of condominium but cannot merge the condominiums or change the legal descriptions of the condominium parcels, unless accomplished in accordance with law. This amendment applies to associations existing on July 1, 2021.

### PRACTICAL POINTER:

- This will be a useful tool for multi-condominium associations wishing to update their condominium documents through the use of a single uniform declaration for the entire community. Condominium associations operating a multi-condominium should consult legal counsel regarding the application of this new law to an anticipated document update project. Nearly all multi-condominium associations were created so that the developer could sell off units in phases, but, for the most part, they all operate or should operate as an integrated community with restrictions and operational protocols that are consistent from building to building.

## JURISDICTION OF DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES, AND MOBILE HOMES

Section 718.501(1), *Florida Statutes*, expands the scope of the division’s investigative authority and provides:

- The division also has jurisdiction to investigate complaints related to the maintenance of and unit owner access to association records.

### NOTE:

- This law expands the scope of the division’s jurisdiction to also include the “maintenance of” association records.

## OMBUDSMAN LOCATION

Section 718.5014, *Florida Statutes*, now provides:

- The ombudsman must have a principal office in a place convenient to the offices of the division. There is no longer a requirement for a principal office in Leon County on the division’s premises.

---

# COOPERATIVES

---

## DEFINITION OF COOPERATIVE UNIT

Section 719.103(25), *Florida Statutes*, contains an amendment that may have significant impact on cooperatives, by providing as follows:

- The definition of “Unit” is amended to state that “an interest in a unit is an interest in real property.”

### NOTE:

- The purpose of this change is to lay to rest potentially conflicting court decisions on whether a cooperative parcel is a real property interest. See, *Estate of Wartels v. Wartels*, 357 So.2d 708 (Fla. 1978) (cooperative parcel was not homestead for the purposes of devise and descent because it was not real property); and *Southern Walls, Inc. v. Stilwell Corporation*, 810 So.2d 566 (Fla. 5th DCA 2002) (cooperative parcels are entitled to the homestead benefit of exemption from forced sale). In *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), the court reached the same conclusion as in the *Wartels* case (that cooperative parcels are not homestead for the purposes of devise and descent) but certified the decision to the Florida Supreme Court as a matter of great public importance. The Florida Supreme Court accepted jurisdiction, and the case is still pending. Depending upon the Supreme Court ruling, this legislation may have significant impact on cooperatives exercising a right to approve or disapprove transfers of title to cooperative units. Cooperative boards are encouraged to consult their legal counsel on how this new law may impact their screening practices.

## OFFICIAL RECORDS

Section 719.104(2)(c), *Florida Statutes*, is amended to address access to records provision:

- An association may not require a member to demonstrate any purpose or state any reason in order to inspect the official records.

### NOTE:

- This legislation codifies a long-standing policy that owners in cooperatives are not required to demonstrate a proper purpose in order to assert their right to inspect official records. However, associations may continue to pass reasonable rules which provide a framework for the document inspection process.

## BOARD AND COMMITTEE MEETINGS

Section 719.106(1)(b)5., *Florida Statutes*, was amended to conform to the Condominium Act regarding board member attendance at board meetings, as follows:

- A board or committee member participating in a meeting via telephone, real-time video conferencing, or similar real-time electronic or video communication counts towards a quorum and such member may vote as if physically present.

## RECALLS

Section 719.106(1)(f), *Florida Statutes*, is amended to remain consistent with the Condominium Act on recall procedures as follows:

- Recall disputes may be filed either in court or as a petition with the division for arbitration. In other words, the petitioner may now choose to either go directly to court with the dispute or to arbitration.

### NOTE:

- Review of recall efforts is limited to the sufficiency of the vote to recall the board and the facial validity of the written agreement or ballots cast.

## ALTERNATIVE DISPUTE RESOLUTION

Section 719.106(1)(l), *Florida Statutes*, is amended to remain consistent with the Condominium Act on alternative dispute resolution as follows:



- The bylaws must include a provision for alternative dispute resolution in accordance with section 719.1255, *Florida Statutes*.

NOTE:

- This is a parallel provision to the change to the Condominium Act. Section 719.1255, *Florida Statutes*, provides a choice of either arbitration or mediation of certain cooperative disputes. This will allow associations, in consultation with counsel, to discuss the strategic advantages or disadvantages of a new alternative dispute resolution platform that will be available to resolve cooperative disputes.

## DISCRIMINATORY RESTRICTIONS

Section 719.106(3), *Florida Statutes*, is amended to remain consistent with the Condominium Act to allow boards to easily remove discriminatory provisions in their cooperative documents as follows:

- Cooperative associations may extinguish discriminatory restrictions as provided in section 712.065, *Florida Statutes*, which provides that upon the request of a parcel owner, a discriminatory restriction may be removed by an amendment approved by a majority of the board.

NOTE:

- This law was enacted in response to racially restrictive covenants that appear in the county land records.

PRACTICAL POINTER:

- Unlawful restrictions in cooperative documents are those involving race, color, national origin, religion, gender, or physical disability, and should be eliminated by action of the board when discovered. The board should also review age restrictions in a cooperative document or Rules that could violate Fair Housing laws and consult with counsel as to the applicability of this statute.

## EMERGENCY POWERS

Section 719.128(1), *Florida Statutes*, has been the subject of much attention and debate over the past

year as the COVID-19 crisis forced boards to balance the interests and rights of the owners against their obligation to safeguard the residents and staff. The emergency powers statute was amended to remain consistent with this year's significant changes to the emergency powers provision of the Condominium Act, and the amendments are summarized as follows:

- The board can use emergency powers in response to damage or injury caused or anticipated in connection with an emergency, as defined in section 252.34(4), *Florida Statutes*.
- The term "emergency" is now defined in section 252.34(4), *Florida Statutes*, as any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.
- The board may exercise its emergency powers to conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable.
- Such notice may be given in any practicable manner, including publication, radio, U.S. mail, the internet, electronic transmission, public service announcements, and conspicuous posting on the cooperative property or any other means the board deems reasonable under the circumstances. Notice of decisions may also be communicated in the same manner.
- The previous statute included a number of emergency powers related to implementing a disaster plan, determining whether the cooperative property can be safely inhabited or occupied, mitigating further damage, and contracting for the items or services necessary to prevent further damage to the cooperative property.
- The new law amends these provisions by adding language which clarifies that such powers can be used to address issues that may arise because of a pandemic or a public health emergency.
- For instance:
  - The board may implement an emergency plan before, during or following the event for which a state of emergency is declared.

The previous statute only specifically mentioned a “disaster plan.”

- The board may rely on the advice of public health officials or licensed professionals otherwise available to the board, to determine any portion of the cooperative property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety or welfare of such persons. The previous statute only mentioned “emergency management officials” and “licensed professionals retained by the board”.
- The board may rely on the advice of public health officials or licensed professionals otherwise available to the board to determine whether the cooperative property, or any portion thereof, can be safely inhabited, accessed or occupied. The previous statute only mentioned “emergency management officials” and “licensed professionals retained by the board”.
- The board may mitigate injury or contagion and may contract, on behalf of any unit owner, for items or services which are necessary to prevent further injury or contagion, including, without limitation, sanitizing the cooperative property. The previous statute only mentioned mitigating “damage” and contracting for items or services necessary to prevent further “damage.”
- The emergency powers are limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners’ family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs. This means (and has meant) that a board’s emergency powers may extend beyond the expiration of the state’s state of emergency depending on the circumstances in a particular community.
- Perhaps the most puzzling changes are those set forth in sections 719.128(1)(f)-(i), *Florida Statutes*, which provide that an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and common elements and limited common

elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:

- a. the sale, lease, or other transfer of title to a unit; or
- b. the habitability of the unit for the health and safety of such person unless a governmental order or determination, or public health directive from CDC has been issued prohibiting access to the unit. Any such access is subject to reasonable restrictions by the association.

#### NOTES:

- When the “emergency powers” statute was initially adopted, it was intended to deal primarily with natural disasters, such as hurricanes. One of the primary changes to the emergency powers statute is to broaden the scope to include other types of emergencies, such as pandemics and public health crises. However, the new legislation limits the scope of the board’s authority with respect to access to the common elements for the purpose of the sale, lease, or transfer of a unit. Surprisingly, this new requirement that real estate salespersons be allowed to show properties even in the midst of an emergency does not distinguish between a public health crisis and a building that has been damaged by a casualty event. It is possible that a board, on the advice of its engineer, could declare a storm-damaged building unsafe to enter and an owner or real estate salespersons could demand entry to show a unit.
- Previously, the statute did not specifically authorize membership meetings and elections to be held exclusively by remote means. Many communities passed the necessary resolutions to permit membership participation at virtual membership meetings during the pandemic. The addition of this new language will enable associations to safely continue to hold virtual meetings when the situation demands same.

---

# HOMEOWNERS' ASSOCIATION

---

## DEFINITION OF GOVERNING DOCUMENTS

Section 720.301(8), Florida Statutes

- The statutory definition of governing documents will no longer include rules and regulations.

### NOTE:

- This means that the statute no longer requires that the rules and changes to the rules must be recorded in the public records of the county where the property is located. However, there may be a provision in the association's documents that requires recording. The association's counsel should be consulted to determine the impact in your community.

## POSTING OF BOARD MEETING NOTICE

Section 720.303(2)(c)1., Florida Statutes, is amended to remain consistent with the Condominium Act on the posting of records on a website or an app and provides:

- In addition to the authorized means of providing notice of a board meeting, the association may also adopt a rule for posting the meeting notice and agenda on the association's website or an application on which the meeting notice is posted and must send an electronic notice including the hyperlink to the website or application to members whose e-mail addresses are included in the association's official records.

### NOTE:

- The statute does not say "in lieu of" so it does not appear that the legislature intended this to be an alternative method to physical posting of notices, but rather it is an additional way notice can be provided.

## OFFICIAL RECORDS

Sections 720.303(4) and (5), Florida Statutes, are amended with regard to retention of voting records and to create a new confidential record category, and provides:

- The Association must maintain for at least 1 year after the date of the election, vote or meeting, the ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to the parcel owners' voting.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents are records not accessible to members or parcel owners.

## RESERVES

Section 720.303(6), Florida Statutes, clarifies when reserves for a homeowners' associations are required, and provides:

- Reserves are no longer considered "mandatory" if reserves "have been established by developer." However, reserves are considered "mandatory" if the declaration, articles or bylaws obligate the developer to create reserves.

Section 720.303(6)(c)1., Florida Statutes, revises the disclosure language required in the financial reports, and provides:

- If the budget does not provide for reserve accounts under section 720.303(6)(d), Florida Statutes, or the declaration, articles or bylaws do not obligate the developer to create reserves, and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided or are not fully funded, each financial report for the preceding year must contain certain disclosure language in conspicuous type.

Section 720.303(6)(d), Florida Statutes, removes language that deems an association to have provided for reserve account funds if the developer initially established the accounts, and now provides:

- An association is deemed to have provided for reserve accounts upon the affirmative approval of a majority of the total voting interests of the association.

Section 720.303(6)(d)(i)1., Florida Statutes, is a new provision to clarify the conditions in which a

developer is obligated to fund the reserve accounts of a homeowners' association, and provides:

- While a developer is in control of a homeowners' association, the developer may, but is not required to, include reserves in the budget. If the developer includes reserves in the budget, the developer may determine the amount of the reserves included. The developer is not obligated to pay for:
  - a. Contributions to reserve accounts for capital expenditures and deferred maintenance, as well as any other reserves that the homeowners' association or the developer may be required to fund pursuant to any state, municipal, county, or other governmental statute or ordinance;
  - b. Operating expenses; or
  - c. Any other assessments related to the developer's parcels for any period of time for which the developer has provided in the declaration that in lieu of paying assessments imposed on any parcel owned by the developer, the developer need only pay the deficit, if any, in the fiscal year of the association, between the total amount of the assessments receivable from other members plus any other association income and the lesser of the budgeted or actual expenses incurred by the association during such fiscal year.
- Section 720.303(6)(d)(i), Florida Statutes, applies to all homeowners' associations existing on or created after July 1, 2021.

#### NOTES:

- Reserves will now only be considered "mandatory" if reserves are approved by a vote of the members or if the declaration, articles or bylaws obligate the developer to create reserves.
- The changes to section 720.303(6)(i), Florida Statutes, regarding a developer's obligation for reserves are in response to Mackenzie v. Centex Homes, by Centex Real Estate Corp., 208 So. 3d 790 (Fla. 5th DCA 2016). The Centex case provides that a developer is obligated to contribute money to an association's statutory reserve accounts prior to turnover, even when the developer has chosen to deficit fund the

association's operating expenses in lieu of paying regular assessments. The new law supersedes the Centex case

### RECALL OF BOARD MEMBERS

Section 720.303(10), Florida Statutes, was amended to address review of disputed recall efforts and to remain consistent with the Condominium Act on recall and provides as follows:

- Recall disputes may be filed either in court or as a petition for arbitration with the department. In other words, the petitioner may now choose to either go directly to court with the dispute or to arbitration.

#### NOTE:

- Review of recall efforts is limited to the sufficiency of the vote to recall the board and the facial validity of the written agreement or ballots cast.

### PAYMENT OF FINES

Section 720.305(2), Florida Statutes, is amended to clarify the notice requirements for collecting fines consistent with the same amendment to the Condominium Act, as follows:

- Specifies that the fine is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee or invitee of the parcel owner.
- The term "occupant" is stricken and replaced with "tenant" regarding the parties to whom notice of the fines or suspension must be given.

#### NOTES:

- The previous statute provided that the fine was due 5 days after the date of the committee meeting at which the fine was approved. This new change applies only to the payment of fines, not to suspensions of use rights.
- Under the previous law, notice of the fining hearing had to be given to the owner, occupant, licensee, or invitee but "occupant" is stricken and replaced with "tenant." These terms are legal terms of art. It is not clear why the Legislature deleted the word "occupant" and added the word "tenant."



## NOTICE TO OWNERS REQUIRED BY SECTION 720.306, FLORIDA STATUTES

Section 720.306(1)(g), *Florida Statutes*, created some confusion regarding the correct mailing address for notices to unit owners in homeowners' associations. This amendment reverses an earlier amendment and provides:

- All notices required by section 720.306, *Florida Statutes*, no longer have to be sent to the address on the property appraiser's website and can now be sent to the mailing address in the official records of the association under section 720.303(4), *Florida Statutes*.

## AMENDMENTS PROHIBITING OR REGULATING RENTAL AGREEMENTS

Section 720.306(1)(h)1., *Florida Statutes*, adds similar language to chapter 720, *Florida Statutes*, as that found in section 718.110(13), *Florida Statutes*, which grandfathers certain rental rights of existing owners who do not vote or do not vote "yes" on a rental amendment. The new statute in the Homeowners' Association Act provides:

- Except as otherwise provided in section 720.306(1)(h), *Florida Statutes*, any governing document or amendment to a governing document that is enacted after July 1, 2021, which prohibits or regulates rental agreements, applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing document or amendment.
- An association may amend its governing documents to prohibit or regulate rental agreements for a term of less than 6 months and may prohibit the rental of a parcel for more than three times in a calendar year, and such amendments shall apply to all parcel owners regardless of whether they vote or how they vote.
- Section 720.306(1)(h), *Florida Statutes*, does not apply to associations of 15 or fewer parcels.
- For purposes of section 720.306(1)(h), *Florida Statutes*, a change in ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of

the parcel does not change or when an heir becomes the parcel owner.

- The term "affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock or transfer of membership partnership interests.
- For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish to the association a document certifying that this section applies and provide any organizational documents for the parcel owner and the affiliated entity which support the representations in the certificate as requested by the association.
- For purposes of section 720.306(1)(h), *Florida Statutes*, a change of ownership occurs when, with respect to a parcel owner that is a business entity, every person who owned an interest in the real property at the time of the enactment of the amendment or rule conveys his or her interest in the real property to an unaffiliated entity.

## ELECTION DISPUTES

Section 720.306(9), *Florida Statutes*, addresses elections in homeowners' associations and provides:

- An election dispute must be submitted to binding arbitration with the division or filed with a court of competent jurisdiction.

### NOTE:

- Previously, all election disputes in a homeowners' association had to be arbitrated with the division. Now, the petitioner has the option to file a petition for arbitration or file with a court of competent jurisdiction.

## TRANSITION OF HOMEOWNERS' ASSOCIATION CONTROL

Section 720.307(1)(a), *Florida Statutes*, incorporates one of the standards for mandatory turnover from the Condominium Act. It details when the parcel owners other than the developer are entitled to elect at least a majority of the members of the board of directors by providing that:

- Turnover of control of a homeowners' association is triggered three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members other than the developer.

NOTE:

- This is a welcomed change as some Florida homeowners' associations have waited decades to turn over from developer control. The bill is silent as to retroactive application of this section so it is unclear if the legislature intended for this change to apply to associations in existence as of July 1, 2021.

## DISPUTE RESOLUTION

Section 720.311, Florida Statutes, was amended to remain consistent with the same amendment this year to the Condominium Act, and provides:

- Election disputes and recall disputes are not eligible for presuit mediation. Election disputes and recall disputes may be arbitrated by the division or filed in a court of competent jurisdiction.

## DISCRIMINATORY RESTRICTIONS

Section 720.3075, Florida Statutes, is a new provision that allows boards to remove discriminatory provisions in their governing documents, consistent with the Condominium Act, and provides:

- The association may extinguish discriminatory restrictions as provided in section 712.065, Florida Statutes, which provides that upon the request of a parcel owner, a discriminatory restriction may be removed by an amendment approved by a majority of the board.

NOTE:

- This law was enacted in response to racially restrictive subdivision covenants that appear in the county official records.

PRACTICAL POINTER:

- Unlawful restrictions in governing documents

are those involving race, color, national origin, religion, gender, or physical disability, and should be eliminated by action of the board when discovered. The board should also review age restrictions in a declaration or rules that could violate fair housing laws and consult with counsel as to the applicability of this statute.

## EMERGENCY POWERS

Section 720.316(1), Florida Statutes, has been the subject of much attention and debate over the past year as the COVID-19 crisis forced boards to balance the interests and rights of the owners against their obligation to safeguard the residents and staff. The emergency powers statute was amended to remain consistent with this year's significant changes to the emergency powers provision of the Homeowners' Association Act, and the amendments are summarized as follows:

- The board can use emergency powers in response to damage or injury caused or anticipated in connection with an emergency, as defined in section 252.34(4), Florida Statutes.
- The term "emergency" is now defined in section 252.34(4), Florida Statutes, as any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.
- The board may exercise its emergency powers to conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable.
- Such notice may be given in any practicable manner, including publication, radio, U.S. mail, the Internet, electronic transmission, public service announcements, and conspicuous posting on the common area or any other means the board deems reasonable under the circumstances. Notice of decisions may also be communicated in the same manner.
- The previous statute included a number of emergency powers related to implementing a disaster plan, determining whether the association property can be safely inhabited or occupied, mitigating further damage, and

contracting for the items or services necessary to prevent further damage to the association property.

- The new law amends these provisions by adding language which clarifies that such powers can be used to address issues that may arise on the common areas or facilities because of a pandemic or a public health emergency.
- For instance:
  - The board may implement an emergency plan before, during or following the event for which a state of emergency is declared. The previous statute only specifically mentioned a “disaster plan.”
  - The board may rely on the advice of public health officials or licensed professionals otherwise available to the board to determine any portion of the common areas or facilities unavailable for entry or occupancy by owners, family members, tenants, guests, agents, or invitees to protect the health, safety or welfare of such persons. The previous statute only mentioned “emergency management officials” and “licensed professionals retained by the board.”
  - The board may rely on the advice of public health officials or licensed professionals otherwise available to the board to determine whether the common areas or facilities can be safely inhabited, accessed, or occupied. The previous statute only mentioned “emergency management officials” and “licensed professionals retained by the board.”
  - The board may mitigate injury or contagion within the common areas or facilities or sanitizing the common areas or facilities. The previous statute only mentioned mitigating “damage.”
- The emergency powers are limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and the parcel owners’ family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs. This means (and has meant) that a board’s emergency powers may extend beyond the expiration of the state’s state of emergency depending on the circumstances of

a particular community.

- Notwithstanding the provisions in sections 720.316(1)(f)-(i), *Florida Statutes*, an association may not prohibit parcel owners, tenants, guests, agents, or invitees of a parcel owner from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel and when access is necessary in connection with:
  - a. the sale, lease, or other transfer of title to a parcel; or
  - b. the habitability of the parcel or for the health and safety of such person unless a governmental order or determination, or public health directive from CDC has been issued prohibiting access to the parcel. Any such access is subject to reasonable restrictions by the association.

#### NOTES:

- When the “emergency powers” statute was initially adopted, it was intended to deal primarily with natural disasters, such as hurricanes. One of the primary changes to the emergency powers statute is to broaden the scope to include other types of emergencies, such as pandemics and public health crises. However, the new legislation limits the scope of the board’s authority with respect to access to common areas and facilities for the purpose of the sale, lease, or transfer of a parcel. Surprisingly, this new requirement that real estate salespersons be allowed to show properties even in the midst of an emergency does not distinguish between a public health crisis and a building that has been damaged by a casualty event. It is possible that a board, on the advice of its engineer, could declare a storm-damaged building unsafe to enter and an owner or real estate salespersons could demand entry to show a parcel.
- Previously, the statute did not specifically authorize membership meetings and elections to be held exclusively by remote means. Many communities passed the necessary resolutions to permit membership participation at virtual membership meetings during the pandemic. The addition of this new language will enable associations to continue to safely hold virtual meetings when the situation demands same.

# CS/CS/SB 56, Relating to Community Association Assessment Notices

This new law provides additional notice requirements for condominium, cooperative and homeowners' associations when collecting assessments.

Chapter 2021-91, Laws of Florida

Effective Date: July 1, 2021

---

## CONDOMINIUMS

---

### OFFICIAL RECORDS

Sections 718.111(12) (a) and (c), *Florida Statutes*, are amended to address the association's requirement to maintain the affirmative acknowledgments of the owners if the association changes the method of delivery of assessment notices and provides:

- All affirmative acknowledgments made by owners pursuant to the new section 718.121(4) (c), *Florida Statutes*, are to be maintained as part of the official records of the association.
- These affirmative acknowledgments are not open to unit owner inspection.

#### NOTE:

- Associations would be well-advised to ensure that they are complying with this new requirement to keep these records as these records could protect the association from technical defenses in foreclosure actions. However, as noted in the second bullet point, these affirmative acknowledgements are not open to unit owner inspection.

### NOTICE OF INTENT TO FORECLOSE

Section 718.116(6)(b), *Florida Statutes*, increases the timeframe for the required pre-foreclosure notice as follows:

No foreclosure judgment may be entered until at least 45 days (increased from 30 days) after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments.

### NOTICE REQUIRED FOR ASSESSMENT INVOICE AND STATEMENT OF ACCOUNT AND NOTICE OF LATE ASSESSMENT

Sections 718.121(4) and (5), *Florida Statutes*, are new provisions which require notice in a specific manner and require a new notice to delinquent owners as follows:

- If an association sends out an invoice for assessments or a unit's statement of the account, the invoice or statement of account must be delivered to the unit owner by first-class mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

#### NOTE:

- This addition to the statute is concerning because it does not clarify whether e-mail may be used when the owner has not consented to receive other official notices by e-mail. Further, unless the condominium documents provide otherwise (and they should not), sending out assessment



“coupons” or billing statements is not a condition to collecting properly levied assessments.

- 
- Before changing the method of delivery for an invoice or statement of account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or statement of account by the new delivery method. The notice must be sent by first-class mail to the unit owner at his or her last address as reflected in the association’s records and, if such address is not the unit address, must be sent by first-class mail to the unit address. Notice is deemed delivered upon mailing as required by this section.
  - A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit’s statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The unit owner may make the affirmative acknowledgment electronically or in writing.

Section 718.121(5), *Florida Statutes*, is a new provision and provides as follows:

- An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed to the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees.

NOTE:

- The restriction against charging fees if the “Notice of Late Assessment” is not sent relates only to “attorney fees.” The collection of other fees is not otherwise restricted. The association must list the delinquent assessments, interest and late fees owed.
- 

- The notice of late assessment must be sent by first-class mail to the unit owner at his or her last address as reflected in the association’s records and, if such address is not the unit address, must also be sent by first-class mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this section.
- A rebuttable presumption that an association mailed a notice in accordance with this section is established if a board member, officer, or agent of the association, or a licensed manager provides a sworn affidavit attesting to such mailing.

The notice must be substantially in accordance with the “Notice of Late Assessment” form in the statute, which is as follows:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)...., and must be paid within 30 days of the date of this letter. This letter shall serve as the association’s notice of its intent to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	\$.....
Late fee, if applicable	\$.....
Interest through ...(dates)....*	\$.....
TOTAL OUTSTANDING	\$.....

\*Interest accrues at the rate of .... percent per annum.

**NOTICE OF INTENT TO LIEN**

Section 718.121(6), *Florida Statutes*

- No lien may be filed by the association against a condominium unit until 45 days (increased from 30 days) after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, by first class mail to the owner at his or her last address as reflected in

the association's records and, if such address is not the unit address, by first-class mail to the unit address.

NOTE:

- These amendments will require your association to make significant changes to its collections policies and procedures, especially if the board has a written collection policy in place or is professionally managed and the current management agreement requires handling collection matters differently than what is set forth above. The failure to do so could result in serious legal ramifications for the association if not properly followed. It is recommended that you evaluate your current collection policy as the additional notice requirements imposed by this new law may require you to change the number of late notices your association sends prior to sending the file over to legal counsel. If you have further questions or require Becker's assistance, please contact us.

---

# COOPERATIVES

---

## OFFICIAL RECORDS

Sections 719.104(2)(a) and (c), *Florida Statutes*, were amended to address the association's requirement to maintain the affirmative acknowledgments of the owners if the association changes the method of delivery of assessment notices and provides:

- All affirmative acknowledgments made pursuant to the new section 719.108(3)(b)3., *Florida Statutes*, are to be maintained as part of the official records of the association.
- All affirmative acknowledgments are not open to unit owner inspection.

### NOTE:

- Associations would be well-advised to ensure that it is complying with this new requirement to keep these records as they will protect against technical defenses in foreclosure actions. However, as noted in the second bullet point, these affirmative acknowledgements are not open to unit owner inspection.

## NOTICE REQUIRED FOR ASSESSMENT INVOICE AND STATEMENT OF ACCOUNT AND NOTICE OF LATE ASSESSMENT

Section 719.108(3)(b), *Florida Statutes*, is a new provision to remain consistent with the Condominium Act which requires notice in a specific manner and requires a new notice to delinquent owners as follows:

- If an association sends out an invoice for assessments or a unit's statement of the account, the invoice or statement of account must be delivered to the unit owner by first-class mail or electronic transmission to the unit owner's e-mail address maintained in the association's official records.

### NOTE:

- This addition to the statute is concerning because it does not clarify whether e-mail may be used when the owner has not consented to receive

other official notices by e-mail. Further, unless the cooperative documents provide otherwise (and they should not), sending out assessment "coupons" or billing statements is not a condition to collecting properly levied assessments.

- Before changing the method of delivery for an invoice or statement of account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or statement of account by the new delivery method. The notice must be sent by first-class mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class mail to the unit address. Notice is deemed delivered upon mailing as required by this section.
- A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The unit owner may make the affirmative acknowledgment electronically or in writing.

### Section 719.108(3)(c), *Florida Statutes* (NEW)

- An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees.

### NOTE:

- The restriction against charging fees if the "Notice of Late Assessment" is not sent relates only to "attorney fees." The collection of other fees is not otherwise restricted, the association

must list the delinquent assessments, interest and late fees owed.

- The notice of late assessment must be sent by first-class mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must also be sent by first-class mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this section.
- A rebuttable presumption that an association mailed a notice in accordance with this section is established if a board member, officer, or agent of the association, or a licensed manager provides a sworn affidavit attesting to such mailing.
- The notice must be substantially in accordance with the "Notice of Late Assessment" form in the statute, which is as follows:

#### NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice of its intent to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	\$.....
Late fee, if applicable	\$.....
Interest through ...(dates)...*	\$.....
TOTAL OUTSTANDING	\$.....

\*Interest accrues at the rate of .... percent per annum.

#### NOTICE OF INTENT TO LIEN

Section 719.108(4), Florida Statutes

- No lien may be filed by the association against

a cooperative unit until 45 days (increased from 30 days) after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, by first class mail to the owner at his or her last address as reflected in the association's records and, if such address is not the unit address, by first-class mail to the unit address.

#### NOTE:

- These amendments will require your association to make significant changes to its collections policies and procedures, especially if the board has a written collection policy in place or is professionally managed and the current management agreement requires handling collection matters differently than what is set forth above. The failure to do so could result in serious legal ramifications for the association if not properly followed. It is recommended that you evaluate your current collection policy as the additional notice requirements imposed by this new law may require you to change the number of late notices your association sends prior to sending the file over to legal counsel. **If you have further questions or require Becker's assistance, please contact us.**



## OFFICIAL RECORDS

Sections 720.303(4) and (5), Florida Statutes, are amended to address the association's requirement to maintain the affirmative acknowledgments of the owners if the association changes the method of delivery of assessment notices and provides:

- All affirmative acknowledgments made pursuant to the new section 720.3085(3)(c)3., Florida Statutes, are to be maintained as part of the official records of the association.
- All affirmative acknowledgments are not open to unit owner inspection.

### NOTE:

- Associations would be well-advised to ensure that it is complying with this new requirement to keep these records as they will protect against technical defenses in foreclosure actions. However, as noted in the second bullet point, these affirmative acknowledgements are not open to unit owner inspection.

## NOTICE REQUIRED FOR ASSESSMENT INVOICE AND STATEMENT OF ACCOUNT AND NOTICE OF LATE ASSESSMENT

Section 720.3085(3)(c)(1), Florida Statutes, is a new provision to remain consistent with the Condominium Act and which requires notice in a specific manner and requires a new notice to delinquent owners as follows provides as follows:

- If an association sends out an invoice for assessments or a parcel's statement of the account, the invoice or statement of account must be delivered to the parcel owner by first-class mail or electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

### NOTE:

- This addition to the statute is concerning because it does not clarify whether e-mail may be used when the owner has not consented to receive

other official notices by e-mail. Further, unless the governing documents provide otherwise (and they should not), sending out assessment "coupons" or billing statements is not a condition to collecting properly levied assessments.

- Before changing the method of delivery for an invoice or statement of account, the association must deliver a written notice of such change to each parcel owner. The written notice must be delivered to the parcel owner at least 30 days before the association sends the invoice for assessments or statement of account by the new delivery method. The notice must be sent by first-class mail to the parcel owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class mail to the parcel address. Notice is deemed to delivered upon mailing as required by this section.
- A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The parcel owner may make the affirmative acknowledgment electronically or in writing.

Section 720.3085(d), Florida Statutes

- An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the parcel owner which specifies the amount owed the association and provides the parcel owner an opportunity to pay the amount owed without the assessment of attorney fees.

### NOTE:

- The restriction against charging fees if the "Notice of Late Assessment" is not sent relates only to "attorney fees." The collection of other fees is not otherwise restricted, the association must list the delinquent assessments, interest and late fees owed.

- 
- The notice of late assessment must be sent by first-class mail to the parcel owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must also be sent by first-class mail to the unit address. Notice is deemed delivered upon mailing as required by this section.
  - A rebuttable presumption that an association mailed a notice in accordance with this section is established if a board member, officer, or agent of the association, or a licensed manager provides a sworn affidavit attesting to such mailing.
  - The notice must be substantially in accordance with the "Notice of Late Assessment" form in the statute, which is as follows:

#### NOTICE OF LATE ASSESSMENT

RE: Parcel .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice of its intent to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	\$.....
-------------------------------	---------

Late fee, if applicable	\$.....
-------------------------	---------

Interest through ...(dates)...*	\$.....
---------------------------------	---------

TOTAL OUTSTANDING	\$.....
-------------------	---------

\*Interest accrues at the rate of .... percent per annum.

#### NOTE:

- These amendments will require your association to make significant changes to its collections policies and procedures, especially if the board has a written collection policy in place or is professionally managed and the current management agreement requires handling collection matters differently than what is set

forth above. The failure to do so could result in serious legal ramifications for the association if not properly followed. It is recommended that you evaluate your current collection policy as the additional notice requirements imposed by this new law may require you to change the number of late notices your association sends prior to sending the file over to legal counsel. **If you have further questions or require Becker's assistance, please contact us.**

# CS/HB 463, Relating to Community Association Swimming Pools

Chapter 2021-68, Laws of Florida

Effective Date: July 1, 2021

## CONDOMINIUMS, COOPERATIVES & HOMEOWNERS' ASSOCIATIONS

### EXEMPTIONS FROM POOL SUPERVISION

Section 514.0115(3), Florida Statutes

- Pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments are exempt from supervision under chapter 514, Florida Statutes, except for supervision necessary to ensure water quality and under sections 514.0315 (safety features for public swimming pools and spas), 514.05 (denial, suspension, or revocation of permit; administrative fines), and 514.06 (injunction to restrain violations), Florida Statutes.

#### NOTE:

- This new exemption for pools serving homeowners' associations with no more than 32 units or parcels and not operated as a public lodging establishment is consistent with the exemption for similar condominium and cooperative associations that currently exist in the law.

#### PRACTICAL APPLICATION:

- Homeowners' associations that qualify for the exemption will no longer be required to hold a

valid operating permit from the Department of Health (DOH). However, the association would have to submit an exemption application and supporting documents, but DOH would not regulate the homeowners' association pools through bi-annual inspection and the operating renewal process.

- Notwithstanding the foregoing, the following supervision by DOH still applies:
  - Supervision necessary to ensure water quality. Water quality standards include having a potable water system to ensure pool water is free of coliform bacteria contamination and chemical quality.
  - Supervision to ensure safety standards, which includes, but is not limited to, being equipped with an anti-entrapment device.
  - The county health department or DOH may abate or enjoin any homeowners' association pool that presents a significant public health risk by failing to meet water quality standards.

# CS/CS/SB 1966, Relating to the Department of Business and Professional Regulation

Chapter 2021-135, Laws of Florida

Effective Date: July 1, 2021

---

## CONDOMINIUMS

---

### BOARD ELIGIBILITY

Section 718.112(d)2., Florida Statutes

- Provides that a person who is delinquent in the payment of any assessment (instead of any monetary obligation) is not eligible to be a candidate for board membership. This narrows the scope of the delinquency from “any monetary obligation” to “any assessment.”

#### NOTE:

- For purposes of board eligibility, being late in the payment of a fine, other fee (e.g. a pet fee, etc.) or other monetary obligation due to the association would no longer disqualify someone from serving on the Board.

- 
- Clarifies that a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period.

### ANNUAL BUDGET

Section 718.112(f)1., Florida Statutes

- Requires board to adopt the annual budget at least 14 days prior to the start of the association’s fiscal year.
- In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation of the Department of Business and Professional Regulation’s Florida Administrative Code and the prior year’s budget shall continue in effect until a new budget is adopted.

#### NOTE:

- If the board fails to adopt a budget the first time, the previous year’s budget will continue.



---

## COOPERATIVES

---

Section 719.106(1)(j)1., *Florida Statutes*

- Requires board to adopt the annual budget at least 14 days prior to the start of the association's fiscal year.
- In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation of the Department of Business and Professional Regulation's Florida Administrative Code and the prior year's budget shall continue in effect until a new budget is adopted.

NOTE:

- *If the board fails to adopt a budget the first time, the previous year's budget will continue.*

---

## DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

---

### COMPLAINT AGAINST ASSOCIATIONS

Section 718.501(1)(m), *Florida Statutes*

- Provides that the division may adopt rules regarding the submission of a complaint against an association.

### PRINCIPAL OFFICE OF OMBUDSMAN

Section 718.5014, *Florida Statutes*

- Revises the location requirements for the principal office of the ombudsman by eliminating the requirement that a principal office be maintained in Leon County.

# CS/HB 649, Relating to Petitions for Objection to Tax Assessments

Chapter 2021-209, Laws of Florida

Effective Date: July 1, 2021

## ASSOCIATION PETITION TO VALUE ADJUSTMENT BOARD REGARDING ASSESSMENTS

### CONDOMINIUMS, COOPERATIVES & HOMEOWNERS' ASSOCIATIONS

#### NOTICE TO OWNERS REGARDING ASSOCIATION PETITION TO VALUE ADJUSTMENT BOARD TO OBJECT TO PROPERTY TAX VALUATION

Section 194.011(3)(e)1., Florida Statutes

- The condominium association, cooperative association, or homeowners' association shall provide the unit or parcel owners with notice of its intent to petition the value adjustment board. The notice must include a statement that by not opting out of the petition, the unit or parcel owner agrees that the association shall also represent the unit or parcel owner in any related proceedings, without the unit or parcel owners being named or joined as parties.
- Such notice must be hand delivered or sent by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit or parcel owner who has expressly consented in writing to receiving such notices by electronic transmission.
- If the association is a condominium association or cooperative association, the notice must also be posted conspicuously on the condominium or cooperative property in the same manner as notices of board meetings. Such notice must provide at least 14 (reduced from 20) days for

a unit or parcel owner to elect, in writing, that his or her unit or parcel not be included in the petition.

#### NOTE:

- These amendments are the Legislature's response to the case of Central Carillon Beach Condo Ass'n v. Garcia, 245 So. 3d 869 (Fla. 3d DCA 2018) in which the Court affirmed the denial of two condominium associations' motions for certification of a class of defendant unit owners in lawsuits brought by the county property tax appraiser regarding an administrative determination of the county's value adjustment board.

---

## CONDOMINIUMS/COOPERATIVES

---

### JUDICIAL REVIEW OR APPEAL OF VALUE ADJUSTMENT BOARD

Section 194.011(3)(e)2., *Florida Statutes*

- A condominium association or a cooperative association which has filed a single joint petition under this section has the right to seek judicial review or appeal a decision on the single joint petition and continue to represent the unit or parcel owners throughout any related proceedings.
- If the property appraiser seeks judicial review or appeals a decision on the single joint petition, the association shall defend the unit or parcel owners throughout any such related proceedings. The property appraiser is not required to name the individual unit or parcel owners as defendants in such proceedings.
- Applies to cases pending on July 1, 2021.

## PARTIES TO A TAX SUIT

---

## CONDOMINIUMS/COOPERATIVES

---

Section 194.181(2), *Florida Statutes*

- In any case brought by a taxpayer or a condominium or cooperative association, on behalf of some or all unit or parcel owners, contesting the assessment of any property, the county property appraiser is a party defendant.
- Other than as provided in section 194.181(2)(c), *Florida Statutes*, in any case brought by the property appraiser under sections 194.036(1)(a) or (b), *Florida Statutes*, the taxpayer is a party defendant.
- In any case brought by the property appraiser under sections 194.036(1)(a) or (b), *Florida Statutes*, relating to a value adjustment board decision on a single joint petition filed by a condominium or cooperative association under section 194.011(3), *Florida Statutes*, the association is the only required party defendant. The individual unit or parcel owners are not required to be named as parties.
- The condominium or cooperative association must provide unit or parcel owners with notice of the property appraiser's complaint and advise the unit or parcel owners that they may elect to: a. retain their own counsel to defend the appeal for their units or parcels; b. choose not to defend the appeal; or c. be represented by the association.
- The notice required by section 194.181(2), *Florida Statutes*, must be hand delivered or sent by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit or parcel owner who has expressly consented in writing to receiving such notices through electronic transmission. Additionally, the notice must be posted conspicuously on the condominium or cooperative property, if applicable, in the same manner as notices of board meetings under section 718.112(2) and section 719.106(1), *Florida Statutes*. The association must provide at least 14 days for a unit or parcel owner to respond to the notice. Any unit or parcel owner who does not respond to the association's notice will be represented by the association.
- If requested by a unit or parcel owner, the tax collector shall accept payment of the estimated

amount in controversy, as determined by the tax collector, as to that unit or parcel, whereupon the unit or parcel shall be released from any lis pendens and the unit or parcel owner may elect to remain in or be dismissed from the action.

## POWER TO SUE AND BE SUED

---

### CONDOMINIUMS

---

Section 718.111(3), *Florida Statutes*

- After control of the association is obtained by unit owners other than the developer, the condominium association may defend actions pertaining to ad valorem taxation of commonly used facilities or units.
- The condominium association, in its own name or on behalf of some or all unit owners, may institute, file, protest, or maintain any administrative challenge, lawsuit, appeal, or other challenge to ad valorem taxes assessed on units, commonly used facilities, or common elements. In any subsequent proceeding, lawsuit, appeal, or other challenge brought by the property appraiser related to units that were the subject of a single joint petition filed under section 194.011(3), *Florida Statutes*, the association has the right to represent the interest of the unit owners as provided in section 194.011(3)(e)2., *Florida Statutes*, and the unit owners are not necessary or indispensable parties to such actions.
- Applies to cases pending on July 1, 2021



# CS/SB 602, Relating to Business Organizations

Chapter 2021-13, Laws of Florida

Effective Date: May 7, 2021

## CONDOMINIUMS, COOPERATIVES & HOMEOWNERS' ASSOCIATIONS

### AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS OF NOT-FOR- PROFIT CORPORATIONS

#### Section 617.0725, Florida Statutes

- Section 617.0725, *Florida Statutes*, provides that an amendment to the articles of incorporation or bylaws which adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting requirements then in effect or proposed to be adopted, whichever is greater.
- The new law provides that the above-described section 617.0725, *Florida Statutes*, does not apply to any corporation that is an association, as defined in section 720.301, *Florida Statutes*, or a corporation regulated under chapter 718 or chapter 719, *Florida Statutes*.

#### Section 617.0825, Florida Statutes

- Section 617.0825, *Florida Statutes*, does not apply to a committee established under chapters 718, 719, or 720, *Florida Statutes*.

### APPLICATION OF FLORIDA NOT FOR PROFIT CORPORATION ACT

#### Section 617.1703, Florida Statutes

- Provides that the Florida Not For Profit Corporation Act (chapter 617, *Florida Statutes*) applies to a corporation that is an association as defined in and regulated by any of the following: chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners' associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile homeowners' associations, *Florida Statutes*, except:
  - For any conflict between chapter 617 and chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723, *Florida Statutes*; or
  - As otherwise "provided for" in chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723, *Florida Statutes*.
  - If above, then respective chapter applies.

## PART II

# COVID-19

# CS/SB 72, Relating to Civil Liability for Damages Relating to COVID-19

Chapter 2021-1, Laws of Florida

Effective Date: March 29, 2021

## CONDOMINIUMS, COOPERATIVES & HOMEOWNERS' ASSOCIATIONS

### NOTES:

- This new law imposes significant legal hurdles for individuals who want to sue a business entity for coronavirus-related injuries or deaths. Plaintiffs who file suit will need to provide a physician's affidavit to establish the basis for the injury claim. They will also need to prove in court that a defendant did not make a good faith effort to comply with public health standards and to prove that a defendant committed gross negligence under a "clear and convincing" evidentiary standard. The new law also imposes a tight one-year statute of limitations to bring these claims.
- Florida condominiums, cooperatives and homeowners' associations are generally included in the definition of business entities protected by this new law. Boards that took steps to comply with local, state and federal guidelines and other reasonable safety protocols throughout the pandemic may raise this new law in defending claims.

### DEFINITION

Section 768.38 (2)(a), Florida Statutes

- "Business entity" has the same meaning as provided in section 606.03, Florida Statutes. The term also includes a charitable

organization as defined in section 496.404 and a corporation not for profit as defined in section 617.01401, Florida Statutes.

### NOTE:

- Most Florida condominium, cooperative, and homeowners' associations are "not for profit" corporations, and therefore, fall under the definition of "business entity."

### COVID-19 LITIGATION

Section 768.38, Florida Statutes

- A plaintiff filing a COVID-19 related claim must plead its complaint with particularity. The general "notice" pleading standard is heightened for these types of claims, and the failure to plead with particularity will be a basis for dismissal of the claim.
- A plaintiff filing COVID-19 related claims must attest to his or her damages as a result of the defendant's acts or omissions.
- At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in this state which attests to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19 related damages, injury, or death occurred as a result of the defendant's acts or omissions.

- Before a trial may proceed, a court must determine whether:

1. The plaintiff submitted a complaint that was pled with particularity; and
2. The physician's affidavit complied with the necessary requirements.

If the plaintiff does not meet these requirements, the court must dismiss the action, but the plaintiff is not barred from correcting the deficiencies and refile the claim.

- The court must also determine whether a defendant made a good faith effort to substantially comply with the authoritative or controlling government issued health standards or guidance at the time that the cause of action accrued. If the court determines that a defendant made such good faith effort to substantially comply, the defendant is immune from civil liability. If, in contrast, the court determines that the defendant did not make the requisite good faith effort, the action may proceed to trial.
- The burden of proof is upon the plaintiff to demonstrate that the defendant did not make a good faith effort. Additionally, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent and prove this by the clear and convincing evidence standard.
- A plaintiff has 1 year after the cause of action accrues or within 1 year of the effective date of this act (March 29, 2021) to commence a civil action.

NOTE:

- *The new law applies retroactively and prospectively but does not apply to lawsuits that had already been filed prior to March 29, 2021.*

# CS/CS/SB 2006, Relating to Emergency Management

Chapter 2021-8, Laws of Florida

Effective Date: July 1, 2021

## CONDOMINIUMS, COOPERATIVES & HOMEOWNERS' ASSOCIATIONS

### NOTE:

- The new law amends the State Emergency Management Act to address the threat posed by a pandemic or other public health emergency. It also restricts a business entity, governmental entity, or educational institution from requiring proof of COVID-19 vaccination.

**The following is not intended to be a comprehensive summary of the bill, but instead it is a summary of the provisions that may be of particular interest to community associations.**

### DEFINITIONS

Section 252.34 (11), Florida Statutes

- “Public health emergency” means any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters, declared as a public health emergency as declared by the State Health Officer.

### EMERGENCY MANAGEMENT POWERS OF THE GOVERNOR

Section 252.36, Florida Statutes

- An executive order, a proclamation, or a rule must be limited to a duration of not more than 60 days and may be renewed as necessary during the duration of the emergency. If renewed, the order, proclamation, or rule must specifically state which provisions are being renewed.
- The Legislature intends that during such an event, there be a presumption that businesses should remain open to the greatest extent possible so long as the health and safety of employees and customers can be reasonably protected by specific public health mitigation strategies recommended by federal or state health agencies, including, but not limited, to the Occupational Safety and Health Administration.
- If the Governor declares by executive order or proclamation that the emergency requires businesses to restrict their operations or close, the executive order or proclamation must contain specific reasons for those determinations, and the Governor must review and reassess the situation.
- An executive order or proclamation must be promptly disseminated by means



calculated to bring its contents to the attention of the general public. The order or proclamation must be filed promptly with the Department of State, the President of the Senate, and the Speaker of the House of Representatives, and in the offices of the county commissioners in the counties to which the order or proclamation applies.

- At any time, the Legislature, by concurrent resolution, may terminate a state of emergency or any specific order, proclamation, or rule thereunder. Upon such concurrent resolution, the Governor shall issue an executive order or proclamation consistent with the concurrent resolution.

## EXPIRATION AND EXTENSION OF EMERGENCY ORDERS

### Section 252.38(4), *Florida Statutes*

- As used in this section, the term “emergency order” means an order or ordinance issued or enacted by a political subdivision in response to an emergency pursuant to this chapter or chapter 381, *Florida Statutes*, that limits the rights or liberties of individuals or businesses within the political subdivision. The term does not apply to orders issued in response to hurricanes or other weather-related emergencies.
- It is the intent of the Legislature to minimize the negative effects of an emergency order issued by a political subdivision. Notwithstanding any other law, an emergency order issued by a political subdivision must be narrowly tailored to serve a compelling public health or safety purpose. Any such emergency order must be limited in duration, applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible.
- An emergency order automatically expires 7 days after issuance but may be extended by a majority vote of the governing body of the political subdivision, as necessary, in 7-day increments for a total duration of not more than 42 days.
- The Governor may, at any time, invalidate an emergency order issued by a political subdivision if the Governor determines that

such order unnecessarily restricts individual rights or liberties.

- Upon the expiration of an emergency order, a political subdivision may not issue a substantially similar order.

### NOTE:

- This law vests the Governor with power at any time to invalidate an emergency order issued by a political subdivision if the Governor determines that such order unnecessarily restricts individual rights or liberties. The law is discretionary to the Governor “determining” what does and does not “unnecessarily restrict individual rights or liberties.”

## ORDER AND RULES

### Section 252.46, *Florida Statutes*

- Emergency ordinances, declarations, and orders adopted by a political subdivision under the authority of sections 252.31-252.90, *Florida Statutes*, including those enacted by a municipality pursuant to section 166.041(3)(b), *Florida Statutes*, must be available on a dedicated webpage accessible through a conspicuous link on the political subdivision's homepage. The dedicated webpage must identify the emergency ordinances, declarations, and orders currently in effect. Each political subdivision adopting emergency ordinances, declarations, or orders must provide the division with the link to the political subdivision's dedicated webpage. The division must include these links in an easily identifiable format on its website.
- An order issued by a political subdivision pursuant to this section which imposes a curfew restricting the travel or movement of persons during designated times must nonetheless allow persons to travel during the curfew to their places of employment to report for work and to return to their residences after their work has concluded.

## COVID-19 VACCINE DOCUMENTATION

### Section 381.00316, Florida Statutes

- A business entity, as defined in section 768.38, Florida Statutes, to include any business operating in this state, may not require patrons or customers to provide any documentation certifying COVID-19 vaccination or post-infection recovery to gain access to, entry upon, or service from the business operations in this state. This section does not otherwise restrict businesses from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.
- The department may impose a fine not to exceed \$5,000 per violation.

#### NOTE:

- The term “business entity” includes corporations not-for-profit. However, there is a question as to whether the prohibition on “vaccine passports” applies to community associations and their residents, some arguing that associations do not have “customers” or “patrons.” The new law does not restrict a business entity from instituting “screening protocols” consistent with authoritative or controlling government issued guidance to protect public health nor does it impact mask policies which allow vaccinated residents and guest to use certain amenities mask-free while unvaccinated residents and guests must continue to wear facial coverings to do so.

## PART III

# MISCELLANEOUS BILLS THAT **PASSED**

**CS/HB 35, RELATING TO LEGAL NOTICES  
(CHAPTER 2021-17, LAWS OF FLORIDA)**

Requires the Florida Press Association to seek to ensure equitable access for minority populations to legal notices posted on the statewide legal notice website; authorizes a governmental agency to choose between print publication or Internet-only publication of specified governmental agency notices with specified newspapers if certain conditions are met; authorizes a newspaper to charge for Internet-only publication of governmental agency notices, subject to specified limitations.

*Effective Date: 7/1/2022.*

**CS/HB 403, RELATING TO HOME-BASED  
BUSINESSES (CHAPTER 2021-\_\_\_\_, -202, LAWS  
OF FLORIDA)**

Specifies conditions under which a business is considered a home-based business; provides requirements for home-based businesses; authorizes a home-based business to operate in an area zoned for residential use; specifies that home-based businesses are subject to certain business taxes; provides prohibitions and authorizations for local governmental actions relating to home-based businesses. Does not supersede any current or future declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration of covenants adopted pursuant to chapter 720.

*Effective Date: 7/1/2021.*

**CS/CS/CS/SB 76, RELATING TO INSURANCE  
(CHAPTER 2021-77, LAWS OF FLORIDA)**

Prohibits certain practices by contractors; prohibits a contractor from executing a contract with a residential property owner for a roofing repair or replacement unless certain notice is included; requires property insurers, effective a certain date, to include certain data regarding closed claims in their annual reports to the Office of Insurance Regulation; requires the Property Insurance Corporation to include the costs of catastrophe reinsurance to its projected 100-year probable maximum loss in its rate calculations even if the corporation does not purchase such reinsurance.

*Effective Date: 7/1/2021.*

**CS/CS/SB 1954, RELATING TO STATEWIDE  
FLOODING AND SEA LEVEL RISE RESILIENCE  
(CHAPTER 2021-28, LAWS OF FLORIDA)**

Establishes the Resilient Florida Grant Program within the Department of Environmental Protection; requires the department to complete a comprehensive statewide flood vulnerability and sea level rise data set and assessment by specified dates; requiring the department to develop an annual Statewide Flooding and Sea Level Rise Resilience Plan and submit the plan to the Governor and Legislature by a specified date; requires the department to implement a scoring system for assessing projects eligible for inclusion in the plan.

*Effective Date: Upon Becoming Law.*

**HB 483, RELATING TO ELECTRONIC LEGAL  
DOCUMENTS (CHAPTER 2021-\_\_\_\_, -205, LAWS  
OF FLORIDA)**

Clarifies that supervising witnessing of electronic record by online notary public is notarial act; specifies applicability of online notarization procedures to supervision of witnessing of electronic record; modifies witnessing procedures; revises statutory forms for affidavit for acceptance of & reliance upon power of attorney, for notice of election relating to descent of homestead property, for self-proof of will or codicil, for disposition of certain assets at death, and for petition of summary relief for sale or transfer of property owned by absentee, to reflect means of notarization. The made by this act are remedial in nature and apply retroactively to January 1, 2020.

*Effective Date: Upon Becoming Law.*

## PART IV

# BILLS THAT **DID NOT PASS**



### **HB 1005 & CS/SB 1490, RELATING TO INVESTMENTS BY CONDOMINIUM ASSOCIATIONS**

Required condominium associations to maintain a copy of their investment policy statement as an official record; required certain association boards to obtain prior approval before investing funds in certain investment products, annually develop an investment policy statement, and select an investment adviser who meets specified requirements; required investment advisers to act as association fiduciaries; exempting registered investment advisers from certain provisions relating to contracts for products and services.

*Died in committee.*

### **HB 1259 & SB 1688, RELATING TO HOMEOWNERS' ASSOCIATION RECALLS**

Renamed section as Community Recall Act. Revised process for recalling director of homeowners' association; required at least 60 percent of the parcel owners whose parcels are their homestead (instead of a majority of the total voting interests) to initiate recall petition or special meeting to recall director; requires board of directors to duly notice and hold referendum (instead of meeting of the board) within 30 business days (instead of 5 full business day) after receipt of the recall petition.

*Died in committee.*

### **SB 1638, RELATING TO THE CONDOMINIUM FRAUD INVESTIGATION PILOT PROGRAM**

Would have created a pilot program within the division to ferret out fraud in certain Florida counties; required complaints submitted to the department which allege condominium fraud or corruption in any of three specified counties to be reviewed by the division; provided powers to the division relating to the pilot program; requiring the division to refer certain cases for prosecution; requiring that the pilot program be funded from the division's trust fund, etc.

*Died in committee.*

### **SB 1998, RELATING TO CONDOMINIUM ASSOCIATIONS**

Provided that Condominium or Cooperative Associations may continue to represent, prosecute, or defend unit owners in certain proceedings; revised the parties considered to be the defendant in a tax suit; revised criminal penalties relating to the acceptance of things or services of value or kickbacks; required an association managing 25 or more units, not including timeshare units, to post digital copies of all official records of the association on its website; provided criminal penalties for fraudulent voting activities related to unauthorized use of association's debit card, association voting, and elections.

*Died in committee.*

### **CS/HB 1139 & CS/SB 1520, RELATING TO ANCILLARY PROPERTY RIGHTS**

Defined utility easement as an interest in real property; provided that unless otherwise provided in instrument creating easement, utility easements may be alienated, assigned, partially assigned, divided, transferred, or apportioned as a divided or undivided interest by grantee and its successors and assigns; provided that easement is not an undue burden; revised rights not affected or extinguished by marketable record titles; revised what types of interests are extinguished by marketable record title; required persons with interests in land which may be extinguished to file notice to preserve such interests.

*Died in committee.*

### **CS/HB 219 & CS/CS/SB 522, RELATING TO VACATION RENTALS**

Required advertising platforms such as Airbnb to collect and remit specified taxes imposed for certain transactions; preempted regulation of vacation rentals to the state, thereby disallowing local governments from regulating vacation rentals; prohibited local law, ordinance, or regulation from allowing or requiring inspections or licensing of public lodging establishments, including vacation rentals, or public food service establishments; required licenses issued by the

Division of Hotels and Restaurants of DBPR to be displayed conspicuously to public inside licensed establishment.

Died in committee.

### **HB 703 & SB 124, RELATING TO RESIDENTIAL SWIMMING POOL SAFETY**

Named act as the The Kacen's Cause Act. Required a home inspector to include certain information relating to swimming pools in an inspector's report; required new residential swimming pools to meet additional requirements in order to pass final inspection and receive certificate of completion; requires that certain pool safety features meet specified standards; prohibited property owners from transferring ownership of parcel that includes swimming pool unless certain requirements are met; provided civil penalties rather than criminal penalties.

Died in committee.

### **CS/HB 665 & SB 872, RELATING TO HOMEOWNERS' ASSOCIATIONS RENTAL AGREEMENTS**

Provided applicability for amendments to governing documents relating to rental agreements which are enacted after a specified date; provided exception for certain rental agreement restrictions; specified when a change of ownership does or does not occur for certain purposes.

Died in committee.

### **HB 591 & SB 1576, RELATING TO REQUIRED NOTICE TO HOMEOWNERS IN MORTGAGE FORECLOSURE ACTIONS**

Required foreclosing mortgagees to provide notice to mortgagors in actions involving residential real property; provided requirements and form of such notice; required mortgagees to file proof of compliance with notice requirements; provided that failure to provide notice does not affect title of real property in foreclosure.

Died in committee.

### **CS/CS/HB 55 & CS/SB 284, RELATING TO BUILDING DESIGN**

Would have added a new section to section 163.3202, Florida Statutes, which regulates land development in order for building design elements regulations to not be applied to single-family or two-family dwellings unless the regulations were adopted pursuant to any of the exceptions the provision enumerated. It defined "Building design elements" as external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms. The term would not have included the height, bulk, orientation, or location of a dwelling on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors. It also defined "Planned unit development" or "master planned community" as an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole. Of note is that the new provision explicitly stated that the section would not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Died in committee.

# HAND IN HAND

SERVICES THAT COMPLIMENT OUR COMMUNITY ASSOCIATION CORE PRACTICE

**We wrote the law relating to common ownership housing. These additional services stem directly from 45+ years of representation and innovation.**

## REAL ESTATE

Real Estate law has been a core practice for Becker since its founding in 1973. The firm has helped shape the local landscape through representation of developers of multi-family and single-family residential communities; business and property owners; and financial institutions. We have represented clients in the successful acquisition, financing, development, and sale of all types of unimproved land and improved properties for residential and commercial use.

## CONSTRUCTION LAW & LITIGATION

The firm has handled numerous and varied construction-related cases, many of which have involved complex issues with a multitude of defendants and scores of construction defects. Our attorneys represent clients in both transactions and disputes ranging from single- and multi-family dwellings to large commercial buildings, planned unit developments, multi-use retail, industrial, and governmental projects.

## TITLE SERVICES

The firm operates Becker Title to assist clients with residential real estate closings, title and escrow services. Becker Title has offices throughout Florida and is backed by a team of attorneys who have handled thousands of successful real estate closings.

## BUSINESS LITIGATION

The firm's Litigation Practice is dedicated to providing strategic, innovative, and aggressive representation for our clients in all litigation matters. Becker's reputation as a pioneer and leader in community association law is well-known throughout the legal community. There is almost no issue our attorneys have not dealt with before – everything from civil and criminal cases to foreclosure and complex contractual matters.

## GOVERNMENT LAW & LOBBYING

Our dedicated Community Association Leadership Lobby (CALL) is a statewide advocacy group that represents the interests of our over 4,000 community association clients. We help draft legislation and work closely with legislators and members of the executive branch to improve the laws that impact community associations in Florida. Additionally we represent condo clients in negotiations with various developers, municipalities, and utilities on zoning issues, easements, and settlements.

# IS IT TIME TO AMEND YOUR DOCUMENTS?

## GENERAL AMENDMENT CHECKLIST

### General Provisions and Definitions

- ☐ Does your Declaration define important words and phrases such as “short-term rental,” “guest,” and “single-family residence”?
- ☐ Should your amendment process/procedure be amended to make it easier to pass proposed changes?

### Association Maintenance Responsibility and Owner Maintenance Responsibility

- ☐ Does the current Declaration clearly define the maintenance responsibilities of the association and owners for such things as landscaping, shared walls, or other shared amenities?
- ☐ Does your Declaration contain an “incidental damages” clause?
- ☐ Does your Declaration allow for self-help procedures for abandoned or vacant properties?

### Collections and Assessments

- ☐ Does your Declaration contain language which automatically incorporates statutory changes to Chapter 720 (HOA) or Chapter 718 (Condo) (“Kaufman Language”)?
- ☐ Does your Declaration allow you to charge the highest allowable interest rate and/or late fees when an owner becomes delinquent?
- ☐ Does your Declaration entitle you to pre-suit attorney fees and costs for collections enforcement?

### General Use Restrictions

- ☐ Do your Governing Documents limit the type and amount of animals allowed to occupy a unit or household?
- ☐ Do your Governing Documents prohibit smoking while on association property?
- ☐ Do your Governing Documents regulate where and what type of landscaping is allowed on lots?
- ☐ Are your Governing Document references to clotheslines, occupancy, car charging stations, and antennae consistent with current law?

### Bylaws and Other Governing Document Amendments

- ☐ Should the date and time of the annual meeting be amended to reflect updated preferences and practices regarding the same?
- ☐ Should the number of director positions be amended?
- ☐ Should the quorum threshold be lowered to make it attainable based on current owner participation?

### Board and Member Meetings & Official Records Requests

- ☐ Has your board adopted rules governing the frequency, duration, and other manner of member statements during board and member meetings?
- ☐ Has your board adopted rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections for official records requests?



# Insurance Damage Claim? We've got you covered.

Your insurance company has a team of attorneys and adjusters on their side.  
You should have your own professionals on yours.



We are the one and only public adjusting company that exclusively serves **community associations** throughout Florida. We know your business.

- On-Site Analysis
- Policy Review
- Damage Documentation
- Loss Estimate
- Negotiation and Settlement with Insurance Company

We don't get paid until you do.

Every community association will experience a significant property damage claim at some point during its lifespan. In addition to windstorms, fires and floods there are the everyday water leaks with which volunteer boards and managers must contend. While it is reasonable to believe that after years of dutifully paying your insurance premiums your damage claims will be paid quickly and in full, the reality is often quite different.

Time-strapped volunteer board members and managers are at a significant disadvantage while trying to shepherd an insurance claim on their own. And the insurance company's adjuster is not there to help you maximize your claim-in fact, it is the opposite. The insurance company's adjuster is there to minimize or even deny your claim if possible. Our team intimately knows your business and will fight hard to maximize your insurance payout.

**844.394.2518**  
[associationadjusting.com](http://associationadjusting.com)

**ASSOCIATION**  **ADJUSTING**  
powered by Becker & Poliakoff

**Schedule Your Free Consultation Today!**



# CALLING ALL BOARD MEMBERS AND COMMUNITY MANAGERS



As a service to the community and industry, we are pleased to offer some of our most popular classes online!

[www.beckerlawyers.com/classes](http://www.beckerlawyers.com/classes)

## CURRENT & UPCOMING CLASSES

HOA/Condo Board Member Certification

Disaster Preparedness and Recovery

Anatomy of a Water Leak

Understanding Our Bylaws

Is a “No Pet” Building a Thing of the Past?

How to Properly Run an Election

Budgeting & Reserves

Covering Your Assets: How to Avoid Board Member Liability

Collection and Foreclosure Strategies for Community Associations

Dealing with Difficult People

Construction Projects Gone Wild

# WE DID THE MATH.

Becker has the largest, dedicated team of Board Certified attorneys in Condominium and Planned Development Law among any firm in the state.



beckerlawyers.com

[JOSEPH E. ADAMS](#)

FT. MYERS | NAPLES

[JOANN NESTA BURNETT](#)

FT. LAUDERDALE

[DONNA DIMAGGIO BERGER](#)

FT. LAUDERDALE

[JAMES ROBERT CAVES III](#)

FT. MYERS

[JANE L. CORNETT](#)

STUART

[ROSA M. DE LA CAMARA](#)

MIAMI

[KENNETH S. DIREKTOR](#)

FT. LAUDERDALE

[JENNIFER BALES DRAKE](#)

FT. LAUDERDALE

[KEVIN L. EDWARDS](#)

SARASOTA

[LILLIANA M. FARINAS-SABOGAL](#)

MIAMI

[MARK D. FRIEDMAN](#)

WEST PALM BEACH

[YELINE GOIN](#)

ORLANDO | TALLAHASSEE

[MICHAEL C. GÓNGORA](#)

MIAMI

[JENNIFER HORAN](#)

NAPLES

[ELIZABETH A. LANHAM-PATRIE](#)

ORLANDO

[K. JOY MATTINGLY](#)

FT. LAUDERDALE

[STEVEN H. MEZER](#)

TAMPA | SARASOTA

[DAVID G. MULLER](#)

NAPLES | SARASOTA

[HOWARD J. PERL](#)

FT. LAUDERDALE

[MARTY PLATTS](#)

WEST PALM BEACH

[JAY ROBERTS](#)

FT. WALTON BEACH

[DAVID H. ROGEL](#)

MIAMI

[ROBERT RUBINSTEIN](#)

WEST PALM BEACH

[ROBYN M. SEVERS](#)

ST. AUGUSTINE | ORLANDO