EISINGER LAW

June 2024

RE: 2024 Legislative Update – Condominium Associations

Dear Board of Directors:

The purpose of this letter is to provide your association with a summary of the most recent and relevant changes promulgated by the Florida Legislature impacting condominium associations. This letter discusses the recent statutory changes including HB 1021 (effective on July 1, 2024), HB 1029 (effective on July 1, 2024), HB 621 (effective July 1, 2024), and HB 741 (effective upon becoming a law):

HOUSE BILL 1021 (Various Matters)

EFFECTIVE ON JULY 1, 2024 (unless otherwise noted)

House Bill 1021 ("HB 1021") was approved unanimously by the House on March 1, 2024, and the Senate on March 6, 2024, and signed by the Governor on June 14, 2024, with an effective date of July 1, 2024 (unless otherwise noted herein). HB 1021 enacts numerous comprehensive changes for the laws applicable to condominium associations.

Community Association Managers

Fla. Stat. §468.4334(3) mandates new requirements for managers and management companies (hereinafter collectively referred to as "manager") to return all association records within its possession to the condominium association within twenty (20) business days after termination of their contractual agreement with the association. If a manager fails to timely return all of the official records within its possession to the association, a rebuttable presumption is created that the manager has willfully failed to comply with the statute, subjecting the manager to license suspension under Fla. Stat. §468.436, and a civil penalty of $1,000 per day for up to ten (10) business days, beginning on the 21st business day after the earlier of termination of management agreement or receipt of written request from the association for the return of records.

The Bill also created Fla. Stat. §468.4335, which creates conflict of interest disclosure requirements for managers. Specifically, a manager is required to disclose to the board of directors of the association any activity that may reasonable be construed to be a conflict of interest. Fla. Stat. §468.4335(1) creates a rebuttable presumption of a conflict of interest if the following occurs without prior notice:

- A manager or individual with a financial interest in a management firm, or relative of such person, enters into a contract for goods or services with the association; or
- A manager or individual with a financial interest in a management firm, or relative of such person, holds an interest in or receives compensation or anything of value from a corporation, LLC, partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

In addition, Fla. Stat. §468.4335(2) requires an association to solicit multiple bids from third party providers if it receives and considers a bid to provide goods or services from a manager or management firm that exceeds $2,500 to provide a good or service (other than community association management services), from a manager or relative of such person. The statute further provides that if a manager or their relative proposes to engage in an activity that is a conflict of interest, the proposed activity and all contracts and documents related to the proposed activity must be listed on and attached to the meeting agenda of the next board meeting. The disclosure of any possible conflict of interest must be entered into the written minutes of the meeting. Approval of such contract requires the approval of two-thirds (2/3) of all directors present. Furthermore, at the next members meeting, the existence of the conflict of interest and contract must be disclosed to the members.

If a manager violates any provision of the statute pertaining to disclosures or otherwise, the association may cancel its agreement with the manager. If the contract is canceled, the association is only obligated to pay for the reasonable value of management services provided up to the time of cancellation and is not liable for termination fees, liquidated damages, or other form of penalty. If an association enters into a contract in violation of the statute and fails to provide the requisite disclosures, the contract is voidable and terminates upon the association filing a written notice terminating the contract with the board which contains consent of at least twenty percent (20%) of the voting interests of the association.

Milestone Inspection for Four-Family Dwellings

Fla. Stat. §553.899 was amended to provide that a four-family dwelling with three or fewer habitable stories above ground would not be required to complete the milestone inspection that is currently required for all condominiums that are three stories or higher.

Required Insurance Policy or Fidelity Bond

Fla. Stat. §718.111(11) already requires that an association maintain insurance or fidelity bonding of all persons who control or disburse funds of the association to cover the maximum funds that will be in the custody of the of the association or its management. Subsection (11)(h) was amended to provide that upon the Division of Florida Condominiums, Timeshares, and Mobile Homes (the "Division") receiving a complaint, the Division is obligated to monitor the association's insurance coverages and may issue fines and penalties for failure to maintain the required insurance policy or fidelity bond under Fla. Stat. §718.111(11)(h).

Structural Integrity Reserve Studies ("SIRS")

Fla. Stat. §718.301(4)(p) was amended to require that the SIRS be included in the turnover inspection report when control of the association is transferred from the developer. Furthermore, Fla. Stat. §718.112(2)(g)(9) provides that within 45 days of receiving the SIRS, the association must distribute a copy of the study to each unit owner or deliver a notice to each unit owner that the study is available for inspection and copying upon a written request. In addition, the association must send a statement to the Division confirming the completion and availability of the study to owners, using a form prescribed by the Division. By January 1, 2025, the Division is tasked with creating a database of associations that have completed their SIRS.

Additionally, concerning reserve contributions, Fla. Stat. §718.112(2)(f) was amended to add language which allows a majority of the board to pause or reduce contributions to its reserves or reserve funding if a local building official deems the entire building uninhabitable due to a natural emergency, as defined in Fla. Stat. §252.34. However, the association must immediately resume contribution funds to its reserves once the building is deemed habitable again.

Financial Reporting

Fla. Stat. §718.111(13)(d)(3) was amended to prohibit condominium associations from waiving the financial reporting requirements for consecutive years. Any vote by the majority of the members to reduce financial reporting requirements must occur before the end of the fiscal year and is only valid for the fiscal year in which the vote is taken.

Meeting Requirements for Board of Directors

With regard to meetings of the board of a condominium association, Fla. Stat. §718.112(2)(c) is modified to require that a board of a residential condominium association containing more than ten (10) units to meet at least once each quarter and the meeting agenda include an opportunity for members to ask questions of the board at least four (4) times per year. Moreover, the right to attend the meeting has been further defined as including the right to ask questions with regard to construction or repair projects, status of revenues and expenditures for the fiscal year, and other issues affecting the condominium.

If a regular or special assessment against unit owners is to be considered, Fla. Stat. §718.112(2)(c)(3) now specifically requires that the notice must specifically state that assessments will be considered and provide the estimated costs and description of the purposes for such assessments. In the event that an agenda item of a meeting relates to the approval of a contract for goods or services, the association is now required to provide a copy of the contract with the notice of the meeting and the contract must be made available for inspection upon written request by an owner or made available on the association's website or mobile device application.

Official Records

As it pertains to official records of an association, Fla. Stat. §718.111(12) has clarified provisions pertaining to e-mail addresses and facsimile numbers. Specifically, e-mail address and facsimile numbers of unit owners are only accessible to other unit owners if consent to receive notice by electronic transmission is provided or if the unit owner expressly indicated that personal information can be shared with other unit owners. The statute was further revised to specifically prohibit an association from selling or sharing email addresses and facsimile numbers to outside third parties. If such information is included in documents released to a third party, the association must redact such information before the document is disseminated. However, an association is only liable if disclosure of email addresses or facsimile numbers was made with a knowing or intentional disregard of the protected nature of such information.

Fla. Stat. §718.111(12)(a)(11) now requires the association to maintain all invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the

association since the inception of the association. Furthermore, the association must maintain a copy of all building permits and copies of the completed board member educational certificates.

The law pertaining to the manner in which the records are maintained has also been clarified to provide that the official records must be maintained in an organized manner that facilities inspection of the records by the unit owners. In the event that the official records of the association are lost, destroyed, or otherwise unavailable, Fla. Stat. §718.111(12)(b) provides that the association as the good faith obligation to obtain and recover those records as is reasonably possible.

As to whether posting on the website is sufficient to comply with the association's obligation to allow inspection of records, Fla. Stat. §718.111(12)(c) has now specifically been modified to address and resolve this issue. The law now provides that if records requested for inspection are posted on an association's website (or are available for download through a mobile device application), the association may fulfill its obligation to make documents available by directing the individual to the website or application with such information.

Fla. Stat. §718.111(12)(c)(1)(b) is amended to create a responsibility of the association to simultaneously provide an individual requesting to inspect records with a checklist of all records made available for inspection and copying. The checklist must also identify any of the records that were not made available to the requestor and the association must maintain a checklist provided for seven (7) years.

Fla. Stat. §718.111(12)(c)(2) and (3) now imposes criminal liability for a director or manager who knowingly, willfully, and repeatedly destroys or refuses to release official records and/or accounting records. Repeatedly means two or more violations within a 12-month period. Additionally, any person who engages in such activity must be removed from office and a vacancy must be declared. Fla. Stat. §718.111(12)(c)(4) elevates penalties to a felony of the third degree for individuals who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

If the Division receives a complaint regarding access to official records on the association's website or mobile application, Fla. Stat. §718.501(1)(o) provides that the Division may request access to the association's website or mobile application to investigate.

Websites

For a condominium with over 150 units, Fla. Stat. §718.111(12)(g)(2)(o) now requires that the website of the association must include copies of all building permits issued for ongoing and planned construction.

Additionally, Fla. Stat. §718.111(12)(g)(1) now provides that on January 1, 2026, condominium associations with twenty-five (25) units or more (previously 150 units), will be required to maintain a website or application on a mobile device that contains specified records available for download.

Electronic Voting

Fla. Stat. §718.128 is amended to provide that a unit owner can now electronically consent to online/electronic voting. Furthermore, Fla. Stat. §718.128(4) now states that if a board authorizes online voting, it is required to honor a unit owner's request to vote electronically at all subsequent elections, unless the unit owner opts out of online voting.

Kickbacks

HB 1021 introduces severe criminal penalties for individuals within condominium associations who engage in illicit activities, specifically for officers, directors, or managers who accept kickbacks. A "kickback" is defined to mean "any thing or service of value, for which consideration has not been provided, for an officer's, a director's, or a manager's own benefit or that of his or her immediate family, from any persons providing or proposing to provide goods or services to the association." Pursuant to Fla. Stat. §718.111(1)(a), any officer, director or manager who knowingly solicits or offers to accept, or accepts a kickback commits a felony of the third degree, punishable as provided in Fla. Stat. §775.082, 775.083, or 775.084, and must be removed from their position and seat on the Board.

Fraudulent Voting Activity

Regarding condominium association elections, Fla. Stat. §718.112(2)(r) identifies various fraudulent voting activities, each classified as a misdemeanor of the first degree. These activities include:

1. Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities;
2. Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast;
3. Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate, of the member;
4. Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly to influence, deceive, or deter a member when the member is voting;
5. Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting their vote;
6. Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce of compel a member to vote or refrain from voting in an election or on a particular ballot measure;
7. Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections;
8. Agreeing, conspiring, combining, or confederating with at least one person to commit a fraudulent voting activity related to association elections; and
9. Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with the intent that the offender avoid or escape detection, arrest, trial, or punishment.

In addition, a director or an officer charged by information or indicted with any of the following crimes must be removed from office:

1. Forgery, as provided in s. 831.01, of a ballot envelope or voting certificate used in a condominium association election.
2. Theft, as provided in s. 812.014, or embezzlement involving the association's funds or property.
3. Destruction of, or the refusal to allow inspection or copying of, an official record of a condominium association which is accessible to unit owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.
4. Obstruction of justice under chapter 843.
5. Any criminal violation under this chapter.

The board is required to fill the vacancy. However, while such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer of any association and may not have access to the official records of any association, except pursuant to a court order.

Debit Card/Debit Card Usage

Another critical aspect addressed in the bill is the misuse of association-issued debit cards. Under Fla. Stat. §718.111(15), individuals found using debit cards for any expense that is not a lawful obligation of the association are not only subject to criminal charges, specifically theft under the law, but they are also automatically removed from office and a vacancy declared. The statute defines the "lawful obligation of the association" as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

Fla. Stat. §718.501(1)(o) provides that if the Division has cause to believe that an individual associated with a condominium association has engaged in fraud, theft, embezzlement, or other criminal activity, the Division shall refer such activity to local law enforcement authorities.

Conflict of Interest Disclosure Requirements and Repercussions

Fla. Stat. §718.3027(4) is amended to provide that the attendance of a director or an officer with a possible conflict of interest at the meeting of the board is sufficient to constitute a quorum for the meeting and the vote in their absence on the proposed activity. It further provides that a contract entered into that has not properly disclosed a conflict or potential conflict of interest as required by Chapter 718 or Fla. Stat. 617.0832 is voidable.

Board Director Continuing Education Requirement

Fla. Stat. §718.112(2)(d)(4)(b) provides for new education requirements for board members. Specifically, both existing and newly elected or appointed directors of condominium associations must complete a board member education course that must include at least four (4) hours of initial instruction covering milestone inspections, structural integrity reserve studies, elections, recordkeeping, financial literacy and transparency, levying of fines, and notice requirements. Each newly elected or appointed director must submit to the secretary of the

association the written certification and educational certificate within one (1) year before being elected or appointed, or ninety (90) days after the date of election or appointment. Directors elected or appointed before July 1, 2024, must fulfill these requirements by June 30, 2025. The educational certificates remain valid for seven (7) years from the date of issuance and do not require resubmission as long as the director serves continuously on the Board during this period.

Directors appointed by developers can fulfill the educational certificate requirements for subsequent appointments within seven (7) years of issuance.

Finally, one (1) year after submission of the most recent written certification and educational certificate, and annually thereafter, directors are obligated to complete one (1) hour of continuing education relating to recent changes to laws applicable to condominiums.

Suspension of Voting Rights

Fla. Stat. §718.303(5) is amended to provide that to suspend the voting rights of a unit owner or member that is delinquent in the payment of a fee or other monetary obligation, the association must first notify the unit owner or member at least ninety (90) days before an election that his or her voting rights are being suspended.

Hurricane Protection

HB 1021 outlines comprehensive measures aimed at defining, regulating, and clarifying various aspects related to hurricane protection within condominiums. Fla. Stat. §718.103(19) was added to define "hurricane protection" as hurricane shutters, impact glass, code-compliant windows or doors, and other code compliant hurricane protection products used to preserve and protect the condominium property. Additionally, Fla. Stat. §718.104(4)(p), provides that a declaration of condominium for both residential condominiums and mixed-use condominiums must include a statement that specifies whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium and association property.

Fla. Stat. §718.113(5) clarifies that the installation, maintenance, repair, replacement, and operation of hurricane protection is not considered a material alteration or substantial addition to the common elements or association. Furthermore, Fla. Stat. §718.113(5)(a) provides that a vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed, of which must be recorded in the public records of the county in which the condominium is located, and thereafter mailed or delivered to the unit owners. Such a vote is not required if the association, opposed to the unit owners, is obligated to install, maintain, repair, or replace hurricane protections or exterior doors or windows under the declaration of condominium.

If hurricane protection, in compliance with applicable building code, was previously installed, the board is prohibited from installing the same type of hurricane protection or require unit owners to install the same type of protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit.

Fla. Stat. §718.113(5)(d) provides that if hurricane protection must be removed or reinstalled to perform maintenance, repair, or replacement of other condominium property or association property, the association, rather than the unit owner, would bear the cost of such removal or replacement. The board of the association must determine whether the association or the unit owner is obligated to remove or replace the hurricane protection. If the association is obligated, it may not charge the unit owner for such costs; however, if the unit owner is obligated, the association must either reimburse the owner for the costs or apply a credit toward future assessments in the amount of such cost to remove or reinstall the hurricane protection.

Prohibition of Strategic Lawsuits Against Public Participation (SLAPP) Suits

Fla. Stat. §718.1224 is amended to provide legislation preventing condominium associations from engaging in Strategic Lawsuits Against Public Participation (SLAPP) suits. Specifically, condominium associations are prohibited from fining, discriminatorily increasing a unit owner's assessments, discriminatorily decreasing services to a unit owner, or bringing or threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action. Fla. Stat. §718.1224(3) provides that for a unit owner to raise the defense of retaliatory conduct, the unit owner must have acted in good faith and not for any improper purposes, such as to harass, cause unnecessary delay, for frivolous purposes or needless increase in the cost of litigation. The modified statute provides examples of when a director or association is prohibited from retaliating:

- Unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation appliable to the condominium;
- Unit owner has organized, encouraged, or participated in a unit owners' organization;
- Unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or other rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;
- Unit owner has exercised their right or rights under Chapter 718 of the Florida Statutes;
- Unit owner has complained to the association or any of the association's representatives for the failure to comply with Chapter 718 or 617 of the Florida Statutes;
- Unit owner has made public statements critical of the operation or management of the association.
- SLAPP suits are legal actions brought against individuals for speaking out on issues that are important to the public in an effort to silence or discourage such individuals from speaking out Specifically, the legislation prohibits associations from retaliating against unit owners through various means, such as imposing fines, increasing assessments, or initiating civil actions, including defamation or tortious interference suits. Additionally, associations are barred from using association funds to support such actions against unit owners.

Fla. Stat. §718.1224(7) prohibits a condominium association from expending association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in Fla. Stat. §718.1224(3).

Authority, Responsibility and Duties of the Division

Fla. Stat. §718.501(1)(a) is amended to clarify that the Division of Florida Condominiums, Timeshares, and Mobile Homes, has the jurisdiction investigate complaints related to procedural aspects and records pertaining to financial issues, of which include:

- Annual financial reporting under Fla. Stat. §718.111(13);
- Assessments for common expenses, fines, and comingling of reserve and operating funds under Fla. Stat. §718.111(14);
- Use of debit cards for unintended purposes under Fla. Stat. §718.111(15)
- The annual operating budget and the allocation of reserve funds under Fla. Stat. §718.112(2)(f);
- Financial records under Fla. Stat. §718.112(12)(a)(11); and
- Any other record necessary to determine the revenues and expenses of the association.

Furthermore, Fla. Stat. §718.501(1)(a)(2) clarifies that the Division has the jurisdiction to investigate complaints related to elections, including electing and voting requirements under Fla. Stat. §718.112(2)(b) and (d), recall of board members under Fla. Stat. §718.112(2)(1), electronic voting under Fla. Stat. §718.128, and elections that occur during an emergency under Fla. Stat. §718.1265(1)(a).

The Bill also provides the Division with jurisdiction to investigate the procedural aspects of all association meetings, voting requirements and proxies. (Fla. Stat. §718.501(1)(a)(4)). Furthermore, Fla. Stat. §718.501(1)(a)(5), (6), and (8) provides that the Division may now investigate complaints regarding the disclosure of conflicts of interest; the removal of a board director and any written inquiries by unit owners to the association relating to such matters, including written inquiries. Fla. Stat. §718.501(1)(e)(9) now authorizes the Division to issue citations and adopt rules to provide for citation bases and citation procedures.

Finally, Fla. Stat. §718.501(1)(p) is created to allow a Division director, employee and the Condominium Ombudsman to attend and observe any unit owner or board meeting, including subcommittee meetings that are to be held open to members of the association. As it pertains to the ombudsman, Fla. Stat. §718.5011(2) is amended to provide that the Secretary of the Division, rather than the Governor, is the entity authorized to appoint the ombudsman and that the ombudsman does not have to be an attorney.

Statute of Repose

Fla. Stat. §718.124 is amended to alter the statute of repose for condominium and cooperative associations. By amending Fla. Stat. §718.124, the statutes of repose for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board.

Definition of Condominium Property

Fla. Stat. §718.103(14) alters the definition of "condominium property" to be defined as lands, leaseholds, any improvements, any personal property, and all easements and rights

appurtenant thereto, regardless of whether contiguous, which are subjected to condominium ownership. This new definition removes the requirement that such improvements, easements and rights appurtenant thereto be "intended for use in connection with the condominium".

Condominiums Created Within a Portion of a Building or Within a Multiple Parcel Building

Fla. Stat. §718.407 is created to address condominiums that are created within a portion of a building or within a multiple parcel building. Fla. Stat. §718.407(2) clarifies that the common elements of a condominium created within a portion of a building or within a multiple parcel building are only those portions of the building submitted to the condominium form of ownership, excluding the units of the condominium.

The new law provides that a declaration of a condominium created within a portion of a building or within a multiple parcel building must include the name by which the condominium is to be identified and be followed by "a condominium within a portion of a building or within a multiple parcel building." Furthermore, Fla. Stat. §718.407(3) requires that the declaration of such condominium specify all of the following:

- The portions of the building which are included in the condominium and the portions of the building which are excluded.
- The party responsible for maintaining and operating those portions of the building which are shared facilities, including, but not limited to, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.
- Manner in which the expenses for maintenance and operation of the shared facilities will be apportioned.
- The party responsible for collecting the shared expenses.
- The rights and remedies that are available to enforce payment of the shared expenses.

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

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

The association of a condominium created within a portion of a building or within a multiple parcel building is entitled to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based on and to receive an annual budget with respect to such costs.

Fla. Stat. §718.407(5) creates a disclosure summary that must be included in each contract for the sale of a unit in a condominium that is created within a portion of building or within a multiple parcel building.

Please note that pursuant to the Bill, amendments to Section 718.407(1), (2) and (6) were deemed to have been intended to clarify existing law and "shall apply retroactively." However, "such amendments do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before October 1, 2024." These measures are set to take effect on October 1, 2024.

Non-Developer and Developer Disclosures Prior to Sale

Fla. Stat. §718.503(2)(a) modifies the disclosures that each unit owner must make to the prospective purchaser prior to the sale of their unit, and now requires that a copy of an annual financial statement and annual budget of the condominium association be provided to a prospective purchaser at the seller's expense. Additionally, Fla. Stat. §718.503(2)(c) provides that if a unit is situated within a condominium created within a portion of a building or a multiple parcel building, specific disclosures must be provided.

Fla. Stat. §718.504 provides that a developer must now include in the prospectus or offering circle a statement as to whether the condominium is created within a portion of a building or within a multiple parcel building. These measures are set to take effect on October 1, 2024.

Condominium Sales and Reservation Deposits

Fla. Stat. §718.202(1), of which is effective October 1, 2024, is amended to provide that for nonresidential condominiums, developers may deliver to the escrow agent a surety bond or an irrevocable letter of credit in an amount equivalent to the aggregate of some or all payments, up to ten percent (10%) of the sale price, received by the developer from all buyers toward the sale price.

Florida Building Commission and Water Intrusion Prevention

Section 32 of HB 1021 mandates the Florida Building Commission ("FBC") to undertake a study focused on establishing standards aimed at preventing water intrusion through the tracks of sliding glass doors. This study includes an evaluation of devices specifically designed to mitigate such water intrusion risks. By December 1, 2024, the FBC is required to submit a comprehensive written report outlining its recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and relevant legislative committees overseeing Chapter 718 of the Florida Statutes.

HOUSE BILL 1029 (My Safe Florida Condominium Pilot Program)

EFFECTIVE JULY 1, 2024 – Chapter No. 2024-108

The Florida legislature has recently introduced a new mechanism for condominium associations to receive inspections and potentially government funds to improve their properties. These changes may be found in Fla. Stat. §215.5587, which was created through House Bill 1029 (HB 1029). This new law is set to take effect on July 1, 2024, and creates the My Safe Florida Condominium Pilot Program (the "Pilot Program"). Pursuant to the Pilot Program, condominium

associations may receive inspections from licensed inspectors and grants to further protect the associations from hurricane damage. However, in order to receive these inspections and grants, an association must comply with the statuary requirements. Individual condominium unit owners may not participate in the Pilot Program.

In order to receive a mitigation inspection, a condominium association must receive the approval of either the majority of its board of directors or the approval of half of the total voting interests of the association. This vote can take place at either the annual meeting or a special meeting of the membership called for the purpose of conducting this vote. After receiving the necessary approval, the association may submit an application for an inspection. An application for inspection under the Pilot Program must include a signed or electronically verified statement, made under penalty of perjury, by the president of the board that the association has submitted only a single application for each property that the association operates or maintains.

Licensed inspectors, that are contracted by the Department of Financial Services, are to perform inspections of the condominium to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage. The association does not need to apply for a grant under the Pilot Program in order to apply for and receive an inspection from a licensed inspector under the Pilot Program.

Inspections provided under the Pilot Program must include the following items:

1. An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage;
2. A range of cost estimates regarding the recommended mitigation improvements; and
3. Information regarding estimated insurance premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

After the initial inspection has been completed, the association may then submit an application for a mitigation grant. However, to apply for a mitigation grant, the association will need to receive a **unanimous vote from all unit owners within the association to receive a mitigation grant**. This vote can take place at either the annual meeting or a special meeting of the membership called for the purpose of conducting this vote.

Before placing this measure before membership, the association must provide a clear disclosure to the owners of the Pilot Program via a form provided by the Department of Financial Services. The President and Treasurer of the Board must both sign the disclosure form stating that the form was provided to each unit owner of the association. This signed disclosure, along with the minutes from the unit owners' meeting where the unit owners vote to participate in the Pilot Program, must be retained as official records of the association.

Within 14 days of obtaining the requisite unanimous affirmative vote to participate in the Pilot Program, the association must provide written notice to all unit owners pursuant to Fla. Stat. §718.112(2)(d) informing all of the unit owners of the decision to participate in the Pilot Program.

Once the association receives the unanimous affirmative vote from the membership, it may apply for a grant under the Pilot Program. The application for a mitigation grant provided for under this Pilot Program must contain:

1. A signed or electronically verified statement made under penalty of perjury by the president of the Board that the association has submitted only a single application for each property that the association operates or maintains;
2. A notarized statement from the president of the Board containing the name and license number of each contractor the association intends to use for the mitigation project; and
3. A notarized statement from the president of the Board which commits to the department that the association will complete the mitigation improvements. If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner.

As long as the same is supported by the inspection report, the grants may be used for the following improvements:

- Opening protection, including exterior doors, garage doors, windows, and skylights.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Secondary water resistance for roof.

The grants may be used for a previously inspected existing structure on the property. However, the grants may not be used to install the same type of improvements that were previously installed or pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received.

If an association previously installed improvements to protect the property which complied with applicable building codes at the time of installation, and then receives grant funds, the association must use the mitigation grant to install improvements that both comply with or exceed the applicable building code in effect at the time of the grant application and provide more hurricane protection than the improvements that the association previously installed. The association may not use a mitigation grant to install the same type of improvements that were previously installed or pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received.

If the association receives a grant under the Pilot Program, it may select its own contractors for the mitigation project, as long as each contractor meets all qualification, certification, or licensing requirements pursuant to general law. Additionally, a mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project.

In order to receive the final grant funds, an association must complete the entire mitigation project and make the property available for inspection upon completion. The inspection is to ensure that the mitigation improvements are consistent with the intention of the Pilot Program and meet or exceed applicable Florida Building Code requirements.

Construction must be completed and the association must submit a request to the Department of Financial Services for a final inspection, or request an extension of time, within 1 year after receiving grant approval. If the association fails to complete the work and submit a request for final inspection or request an extension in that timeframe, the application will be deemed abandoned and the grant money will revert to the Department of Financial Services.

As to funding, the following guidelines are provided in the Statute:

- All grants must be matched on the basis of $1 provided by the association for $2 provided by the state.
- For roof-related projects, the grant contribution is $11 per square foot multiplied by the square footage of the replacement roof, not to exceed $1,000 per unit, with a maximum grant award of 50 percent (50%) of the cost of the project.
- For opening protection-related projects, the grant contribution is a maximum of $750 per replacement window or door, not to exceed $1,500 per unit, with a maximum grant award of 50 percent (50%) of the cost of the project.
- An association may receive grant funds for both roof related and opening protection-related projects, but **the maximum total grant award may not exceed $175,000 per association.**
- Once the appropriated funds have been distributed or accounted for, the Department of Financial Services may not accept applications or maintain a wait list unless expressly authorized by the legislature.

HOUSE BILL 741 (HILLSBORO BEACH CONDOMINIUMS)

House Bill 741 ("HB 741"), effective upon becoming a law, has been passed by the House and the Senate but awaits the signature of the Governor. Should HB 741 be signed by the Governor, it will allow for condominium restaurants/cafes in the Town of Hillsboro Beach to serve alcoholic beverages so long as the condominium does not allow for transient rentals, such as AirBNBs, and meets other requirements. HB 741 it will allow the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue special alcoholic beverage licenses to condominiums that meet 3 requirements:

1. Has no fewer than 50 condominium units in a single building or in multiple buildings under the control and operation of the same association of condominium owners;
2. Is wholly owned by and rented to nontransients; and
3. Is licensed as a food establishment and regularly offers food and beverage amenities to condominium residents.

The special alcoholic beverage license must be issued only to the person, company, or cooperation that manages the food and beverage operations of the condominium and not to the condominium association. Alcohol beverages served under the special alcoholic beverage license must be consumed on the premises by residents and their guests. Alcohol may not be sold by the package for off-premises consumption. Alcohol may not be sold after food sales have ceased.

The foregoing statutory changes will have a significant impact on association operations. It is critical that your association review the foregoing statutory changes and take the necessary steps to achieve compliance. Should you have any questions or concerns with respect to any of the statutory changes discussed above, please do not hesitate to reach out to one of our attorneys and we will be happy to assist you.

Sincerely,

THE EISINGER LAW TEAM