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2022 REVISIONS TO FLORIDA COMMUNITY ASSOCIATION LAW

June 13, 2022

(Via e-mail)

Dear Client/Property Manager:

The 2022 legislative session is over, and as always, we are here to provide you with a summary of any new laws that may impact your Association. Although there were several proposed bills this year, most of them failed to pass during the regular legislative session. However, you may have heard that a MAJOR law impacting certain condominium associations passed during a special legislative session, which is summarized below. There are no new laws this year that will have a significant impact on homeowners associations.

Please remember that the below is only a summary of some of the significant changes in these new laws and is not an exhaustive list of all changes that may affect your community. If you have any questions about a specific statutory provision or other laws that may or may not have passed, please contact our office.

Effective as of July 1, 2022 (General law re: tree removal):

§163.045 – You may recall that this law was previously passed which prohibited a “local government” from interfering with the pruning, trimming or removal of a tree if the property owner obtained documentation from a certified arborist or Florida licensed landscape architect that the tree “presents a danger to persons or property”.

Effective July 1, 2022, the law has been changed to only require the property owner to possess documentation from a certified arborist or Florida licensed landscape architect that the tree “poses an unacceptable risk to persons or property”. The new law defines an unacceptable risk to mean, “if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017)”.

Important Note: It continues to be our firm’s position that this law does not directly apply to a community association, since a community association is not a “local government”. Therefore, if the Association’s governing documents require an application and approval before an owner removes a tree, then our position is that this requirement still applies, despite what some owners may argue.

Effective as of May 26, 2022 (Changes applicable to Condominium and Cooperative Associations only with buildings of 3 stories or more):

As of May 26, 2022, Senate Bill 4D was signed by Governor Desantis and went into effect, which will have a major impact on condominium and cooperative buildings with three (3) stories or more in height. Since there are several changes implemented by this new law, we have broken them down below by topic, in no specific order of importance.

1. Roof Repairs/Replacements

If you are repairing or replacing 25% or more of an existing roof, and the existing roof was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, then only the repaired or replaced portion of the roof is required to be constructed in accordance with the Florida Building Code in effect.

2. Mandatory Structural Inspections

a) For any condominium or cooperative buildings that are three (3) stories or more in height, there must be a “milestone inspection” performed for each building by December 31 of the year in which the building reaches 30 years of age (based on the date that the certificate of occupancy was issued).

i) The milestone inspection must be conducted every ten (10) years thereafter.

b) If the building’s certificate of occupancy was issued on or before July 1, 1992, the building’s initial milestone inspection must be performed before December 31, 2024. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building’s certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.

c) If the building is located within three (3) miles of a coastline, the milestone inspection must be performed by December 31 of the year in which the building reaches 25 years of age, again based on the date the certificate of occupancy for the building was issued, and every ten (10) years thereafter.

d) These requirements do not apply to a single family, two-family, or three-family dwellings with three or fewer habitable stories above ground.

e) Though the local enforcement agency is required to provide written notice to

the association of a required inspection, the association is still responsible for arranging for the milestone inspection and is responsible for ensuring compliance with the requirements of the law. Thus, it is not recommended that your association wait to receive the required notice. Any association that requires the inspection and is approaching the applicable deadline should plan now to have the milestone inspection prior to the deadline.

- i) Within 180 days after receiving the written notice from the local enforcement agency, the association must complete Phase 1 of the milestone inspection.
- f) A milestone inspection consists of two phases:
 - i) Phase 1 = a licensed architect or engineer authorized to practice in this state shall perform a visual examination of habitable and nonhabitable areas of the building, including the major structural components of the building, and provide a qualitative assessment of the structural conditions of the building. The architect or engineer who completes the inspection must prepare and submit an inspection report to the association and to the building official of the local government which has jurisdiction.
 - a) If the architect or engineer finds no signs of substantial structural deterioration to any building components under visual examination, then Phase 2 of the inspection is not required.
 - ii) Phase 2 = only required if any substantial structural deterioration is identified during Phase 1. The Phase 2 inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. The inspector who completes the Phase 2 inspection must prepare and submit an inspection report to the association and to the building official of the local government which has jurisdiction.
 - g) The association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by first class mail or personal delivery and by electronic transmission to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the property; and must publish the full report and inspector prepared summary on the association's website, if the association is required to have a website.
 - h) If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed, such failure is a breach of the officers' and

directors' fiduciary relationship to the unit owners.

3. Structural Integrity Reserve Study

a) The new law has also imposed a requirement for applicable associations to perform a structural integrity reserve study, which means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas.

i) The structural integrity reserve study may be performed by any person qualified to perform such study, but the visual inspection portion of the structural integrity reserve study must be performed by a licensed engineer or licensed architect.

ii) At a minimum, the structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

b) The association must have a structural integrity reserve study completed at least every ten (10) years after the condominium's creation for each building that is three (3) stories or higher in height. The reserve study must include, at a minimum, the following items as related to the structural integrity and safety of the building:

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

c) Unit-owner controlled associations existing on or before July 1, 2022, must have a structural integrity reserve study completed by December 31, 2024, for each building that is three (3) stories or higher in height.

d) The amount to be reserved in the annual budget must now be determined by the association's most recent structural integrity reserve study, which must be completed by December 31, 2024.

e) Effective December 31, 2024, the members of a unit-owner controlled association may not determine to provide no reserves or less reserves than required

for the items listed above.

f) Effective December 31, 2024, the members of a unit-owner controlled association may not vote to use reserve funds, or any interest accruing thereon, that are reserved for the items listed above, for any other purpose other than their intended purpose.

g) If the association fails to timely complete a structural integrity reserve study, such failure is deemed to be a breach of the officers' and directors' fiduciary relationship to the unit owners.

4. Official Records

a) The structural integrity reserve study is an official record of the Association and must be maintained for at least fifteen (15) years after the study is completed.

b) All inspection reports relating to a structural or life safety inspection of the property are an official record of the Association and must be maintained for at least fifteen (15) years after receipt of the report.

c) Any milestone inspection report, structural integrity reserve study and/or other inspection report relating to a structural or life safety inspection of property must be posted on the association's website, if the Association is required to have a website.

5. DBPR Reporting Requirements

a) On or before January 1, 2023, all condominium associations existing on or before July 1, 2022, must provide the following information to the DBPR in writing, by e-mail, first class mail, commercial delivery service, or hand delivery, at a physical address or e-mail address provided by the DBPR and on a form posted on the DBPR's website:

- i) The number of buildings on the condominium property that are three (3) stories or higher in height;
- ii) The total number of units in all such buildings;
- iii) The addresses of all such buildings; and
- iv) The counties in which all such buildings are located.

b) An association must provide an update in writing to the DBPR if there are any changes to the information in the list above within six (6) months after the change.

6. Developer Disclosures/Obligations

a) Developers must now have prepared and provide to all prospective buyers a copy of the inspector-prepared summary of the milestone inspection report and a copy of the association's most recent structural integrity reserve study or a

statement that the association has not completed a structural integrity reserve study for each building on the property that is three stories or higher in height prior to turnover.

b) At the time of turnover, developers are required to provide the milestone inspection report as part of the turnover report, regardless of when the building's certificate of occupancy was issued or the height of the building, which attests to the required maintenance, condition, useful life, and replacement costs of the property.

i) The turnover report must also address waterproofing conditions as well as structural conditions, including load-bearing walls and primary structural members and systems.

c) Prior to turnover, a developer-controlled association is not permitted to waive or reduce the funding of reserves.

7. **Seller Disclosures/Obligations**

a) In connection with the sale of a unit, the unit owner must now provide to each prospective buyer a copy of the inspection-prepared summary of the association's milestone inspection as well as the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

If there are any questions I can answer in this regard, please let me know. Please stay safe and well.

Sincerely,

E. Bachove (e-mail signature)

EVAN R. BACHOVE