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Executive Summary of New
Homeowners' Association Laws
June 28, 2024

Dear Client:

2024 was a particularly active year for community association legislation. There were several hundred pages of legislation affecting condominium, cooperative and homeowners' associations, which we will be analyzing in depth with our usual annual legislative summary. You will receive our annual Legislative Guidebook in the next couple of weeks.

Today, I would like to highlight what I think "you need to know now" and you can digest the rest at your leisure. HOA legislation is often described as "the good, the bad, and the ugly." 2024 was a notable exception in that not much "good" appears to have been done for associations.

There are four Bills that were adopted in 2024 regarding homeowners' associations ("CS" stands for "Committee Substitute," "HB stands for "House Bill" and "SB" stands for "Senate Bill"). The following Bills apply to homeowners' associations (or "HOA's"):

CS/CS/HB 1203	Chapter 2024-221	Effective July 1, 2024
HB 59	Chapter 2024-202	Effective July 1, 2024
CS/HB 293	Chapter 2024-205	Effective May 28, 2024
CS/CS/HB 1645	Chapter 2024-186	Effective July 1, 2024

I will emphasize the "big ticket" items here. I will use the "HB" and "SB" references (adding the "CS" references makes for clumsy reading).

Mandatory Websites

Current law does not mandate an HOA to have a website.

HB 1203 mandates any homeowners' association operating a community that has 100 or more parcels to establish a website (or make official records available through a mobile app) by **January 1, 2025**, so there is only six months to comply. The statute sets forth a "laundry list" of official records that must be posted on the website, and various procedures that must be implemented in connection with the website.

Director Education

Under previous law, a newly elected or appointed Director could either: (a) affirm that they have read the Governing Documents and statute, and will uphold them, or (b) take an

educational course. HB 1203 now mandates that newly elected or appointed Directors take educational courses within 90 days of being appointed or elected. The certificate of completion is valid for a up to 4 years. A director must complete the education specific to newly elected or appointed directors at least every 4 years. The department-approved educational curriculum specific to newly elected or appointed directors must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.

In addition to the educational curriculum specific to newly elected or appointed directors, a director of an association that has fewer than 2,500 parcels must complete at least 4 hours of continuing education annually. A director of an association that has 2,500 parcels or more must complete at least 8 hours of continuing education annually.

Becker will provide these classes for our clients. The programs will most likely be done by Zoom or some kind of video podcast.

Official Records Inspection

There are some minor and major changes, **effective July 1, 2024**. In what I would call one of the worst changes, new Sections 720.303(5)(d) and (e) of the Florida Homeowners' Association Act will now provide:

*(d) Any director or member of the board or association or a community association manager who **knowingly, willfully, and repeatedly** violates subparagraph (a), [which relates to allowing owners to inspect records] with the intent of causing harm to the association or one or more of its members, commits a **misdemeanor** of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subparagraph, the term "repeatedly" means two or more violations within a 12-month period. **(emphasis added)***

*(e) **Any person who knowingly and intentionally defaces or destroys accounting** records during the period in which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a **misdemeanor** of the first degree, punishable as provided in s. 775.082 or s. 775.083.*

Criminalizing conduct in HOA administration, which is not otherwise related to a crime itself (such as embezzlement), is a first in the 60-year history of Florida housing laws. While meaningful penalties against associations who intentionally violate Owner rights should be part of the law, I fear this will be weaponized by some. I suspect most prosecutors will find this a low priority threat to world order.

Year End Financial Reports

In general, and subject to any heightened requirements of the Governing Documents, homeowners' associations must provide (or provide notice of availability of) year-end financial statements no later than 120 days from the close of the fiscal year. The level of required report is as follows, based on revenue:

- An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.
- An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

- An association with total annual revenues of $500,000 or more shall prepare audited financial statements.
- An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

The law allows Owners to take a vote, prior to the end of the fiscal year, to "waive down" to a lower-level financial report.

The new statute provides (addition to the statute is underlined):

4. ***An association with at least 1,000 parcels shall prepare audited financial statements, notwithstanding the association's total annual revenues.***

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. *A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;*
2. *A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or*
3. *A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.*

An association may not prepare a financial report pursuant to this paragraph for consecutive fiscal years.

This is another poorly written piece of the new law and it is hard to make sense of. I "think" the "intent" was that statutory default level reports will be required at least every other fiscal year.

For example, if an association has a $700,000.00 budget, it would default to the requirement for a year-end audit. However, a majority of the Owners could vote to "waive down" to a review, a compilation, or a statement of cash receipts and expenditures. Under previous law, this "waive down" vote could be taken every year. Under this law, if this is what it means, the "waive down" vote cannot be taken in consecutive fiscal years meaning that our hypothetical association would be required to have an audit at least every other year.

If this is what the statute means, this is a big change. Stay tuned.

Fining and Suspension of Use Rights

HB 1203 made a number of changes to Section 720.305 of the Florida Homeowners' Association Act, some minor and some more substantial. Here are a few of the more significant changes:

- Fining/suspension hearings must be held within 90 days after issuance of written notice the parcel owner's right to a hearing.
- Fining/suspension hearings may be held by telephone or other electronic means.
- The Committee must present its written decision within 7 days of the hearing.

While the above-listed changes are largely procedural, though important, another change has left practitioners puzzled. Section 720.305(2)(e) through (g) have been added to the statute and read as follows:

(e) If a violation has been cured before the hearing or in the manner specified in the written notice required in paragraph (b) or paragraph (d), a fine or suspension may not be imposed.

(f) If a violation is not cured and the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the committee must set a date by which the fine must be paid, which date must be at least 30 days after delivery of the written notice required in paragraph (d). Attorney fees and costs may not be awarded against the parcel owner based on actions taken by the board before the date set for the fine to be paid.
(g) If a violation and the proposed fine or suspension levied by the board is approved by the committee and the violation is not cured or the fine is not paid per the written notice required in paragraph (d), reasonable attorney fees and costs may be awarded to the association. Attorney fees and costs may not begin to accrue until after the date noticed for payment under paragraph (d) and the time for an appeal has expired.
It is not clear what this was intended to accomplish or how it is supposed to work. While "ongoing" violations (such as an unapproved architectural alteration) can be "cured" (for example by removing it), many violations are single incidents that cannot be cured. Loud parties, speeding, and improper pet waste disposal are a few of many examples. How are such violations "cured"?
This will obviously be a topic that will generate some legal issues that have to be addressed.
HB 1203 also provides that fines and suspensions cannot be levied for the following actions:

- Leaving garbage receptacles at the curb or end of the driveway within 24 hours before or after the designated garbage collection day or time.
- Leaving holiday decorations or lights on a structure or other improvement on a parcel longer than indicated in the governing documents, unless such decorations or lights are left up for longer than 1 week after the association provides written notice of the violation to the parcel owner.

Finally, though not part of the section of the statute on fining and suspension, a new Section 720.303(14) has been added to the Florida Homeowners' Association Act. This statute provides:
REQUIREMENT TO PROVIDE AN ACCOUNTING.—A parcel owner may make a written request to the board for a detailed accounting of any amounts he or she owes to the association related to the parcel, and the board shall provide such information within 15 business days after receipt of the written request. After a parcel owner makes such written request to the board, he or she may not request another detailed accounting for at least 90 calendar days. Failure by the board to respond within 15 business days to a written request for a detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested such accounting which are more than 30 days past due and for which the association has not given prior written notice of the imposition of the fines.
This one is a bit of a head-scratcher. When you read the first part, it appears geared toward assessment collection issues, and on its face it is. But, when you read on, the penalty for non-compliance is the waiver of the right to collect fines "which are more than 30 days past due and for which the association has not given written notice of the imposition of the fines."

Prohibited Clauses In Governing Documents/Pickup Trucks; Other Vehicles; Owner Contractors

Section 720.3075 of the Florida Homeowners' Association Act was originally added to the statute in 1998 to protect consumers against sharp practices by Developers. The law is now

being expanded to regulate the content of Governing Documents regarding operational/lifestyle issues.

The statute now bars the Governing Documents of a homeowners' association (Declaration, Articles or Bylaws) from precluding:

- ***A property owner or a tenant, a guest, or an invitee of the property owner from parking his or her personal vehicle, including a pickup truck, in the property owner's driveway****, or in any other area at which the property owner or the property owner's tenant, guest, or invitee has a right to park as governed by state, county, and municipal regulations. The homeowners'* ***association****documents, including declarations of covenants, articles of incorporation, or bylaws,* ***may not prohibit, regardless of any official insignia or visible designation, a property owner or a tenant, a guest, or an invitee of the property owner from parking his or her work vehicle****, which is not a commercial motor vehicle as defined in s. 320.01(25), in the property owner's driveway.*
- ***A property owner from inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor list of the association****. Additionally, homeowners'* ***association*** *documents* ***may not preclude a property owner from inviting, hiring****, or allowing entry to* ***a contractor*** *or worker on his or her parcel solely* ***because the contractor or worker does not have a professional or an occupational license. The association may not require a contractor or worker to present or prove possession of a professional or an occupational license*** *to be allowed entry onto a property owner's parcel.*
- ***Operating a vehicle that is not a commercial motor vehicle*** *as defined in s. 320.01(25) in conformance with state traffic laws, on public roads or rights-of-way or the property owner's parcel.*

In general, this portion of the statute has been interpreted/applied to be a prospective regulation on the contents of newly created HOA Governing Documents, and Developers routinely asserted that the changes that impacted their rights could not be applied retroactively. It is too early to tell how this issue will play out, or the effect of the law if the documents incorporate future changes to the statute, or if the documents are amended. These questions will undoubtedly be the subject of much debate in the coming months and years.

Architectural Control Statutory Changes

In another group of changes that leave room to argue retroactive application, Section 720.3035 of the Florida Homeowners' Association Act, first enacted in 2007, precludes a Board or Architectural Control Committee enforcing or adopting a covenant, rule or guideline that:

- *Limits or places requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel, an adjacent common area, or a community golf course.*
- *Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the association or any architectural, construction improvement, or other such similar committee of an*

association, if such system is not visible from the parcel's frontage, an adjacent parcel, an adjacent common area, or a community golf course and is substantially similar to a system that is approved or recommended by the association or a committee thereof.

The new statute also requires that if an architectural request is denied, the Association must provide written notice of the denial including the with specificity the rule or covenant which served as the basis for the denial.

Requirement To Provide Copies of Rules and Covenants

This change was imposed by HB 59. As it is fairly short and largely self-explanatory, it is worthwhile to quote the statute in whole:

REQUIREMENT TO PROVIDE COPIES OF RULES AND COVENANTS.—

(a) ***Before October 1, 2024****, an association shall provide a physical or digital copy of the association's rules and covenants to every member of the association.*

(b) An association shall provide a physical or digital copy of the association's rules and covenants to every new member of the association.

(c) If an association's rules or covenants are amended, the association must provide every member of the association with an updated copy of the amended rules or covenants. An association may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

(d) The requirements of this subsection may be met by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website if such website is accessible to the members of the association and the association sends notice to each member of the association of its intent to utilize the website for this purpose. Such notice must be sent in both of the following ways:

1. *By electronic mail to any member of the association who has consented to receive notices by electronic transmission and provided an electronic mailing address to the association for that purpose.*
2. *By mail to all other members of the association at the address identified as the member's mailing address in the official records of the association.*

New Hurricane Protection Law

Presumably predicated on the legitimate notion that Owners in an HOA should be able to protect their homes from hurricane damage, this law is loosely modeled on the first condominium statutes that were enacted in the early 1990s after Hurricane Andrew, though that law only dealt with hurricane shutters, and this one goes much further. Here are the highlights from HB 293, which became effective May 28, 2024:

- The law is specifically stated to be applicable to existing associations.
- Every HOA must adopt "hurricane protection specifications" which may include color, style, and other factors deemed relevant by the Board.
- The Association's specifications must comply with the applicable building code.
- The association may not deny hurricane protection enhancement requests from Owners that comply with the Association's specifications.
- The Association may require that the Owner adhere to an existing unified building scheme regarding exterior appearance.

- Hurricane protection is defined to include: roof systems; permanent fixed storm shutters; roll-down track storm shutters; impact-resistant windows and doors; polycarbonate panels; reinforced garage doors; erosion controls; exterior fixed generators; fuel storage tanks; and "other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the Association".

Other Changes

These new statutes made many other changes to the Homeowners' Association Act, some substantial, some relatively minor. We will be analyzing these in greater detail in our forthcoming Legislative Guidebook.

Here is a listing of some of those changes:

- Substantial obligations have been placed on licensed community association managers and management firms, including minimum contract performance standards, penalties for not turning over official records, conflicts of interest, and related company restrictions.
- Prohibitions against HOA covenants that prohibit or restrict the use of certain types of energy resources, including natural gas.
- Establishment of deadlines to respond to law enforcement subpoenas.
- Prohibition against the use of debit cards in HOA's.
- Addition of more activities which constitute "fraudulent voting activities," supplementing the changes that were made in 2023.
- Precluding the assessment of "compound interest" in collection delinquent assessments.
- Permitting Owners to consent to electronic voting by the use of e-mail.

Things The Board Should Do:

These laws are new and voluminous, so there will obviously be some collective industry thought development on how to implement them. The things that strike me as obviously needing attention by all Boards include the following:

- If the Association has a fining/suspension policy, it should be updated to comply with the new statute. If the Association does not have such a policy, it should develop one.
- If the Association has an architectural request policy, it should likewise be updated to comply with the new law and a policy developed for those that do not have one.
- Associations should promptly review and develop hurricane protection specifications.
- Affected Associations (100 parcels are more) should promptly investigate website providers to comply with the new law as of January 1, 2025.
- Associations should begin preparing to disseminate the Governing Documents by October 1, 2024.
- Given the establishment of potential criminal penalties, Associations should have a written records inspection policy and have a clear understanding and agreement as to "who does what, when," especially in relation to contractual obligations of a management company.

Conclusion

Please be on the lookout for our annual Legislative Guidebook for additional discussion of these changes. I hope you are enjoying your summer, and let's all knock on wood for a quiet hurricane season this year.

Very truly yours,

Allison L. Hertz
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