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2023 LEGISLATIVE UPDATES FOR FLORIDA CONDOMINIUM ASSOCIATIONS AND COOPERATIVES

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Staying informed about legislative changes is crucial in the ever-evolving landscape of laws pertaining to condominiums and cooperatives. The 2023 Florida legislative session has brought forth a wave of significant changes that directly impact Florida Condominium Associations and Cooperatives. This update is intended to highlight these changes and should not be considered a substitute for reviewing the law itself.

Flood Insurance Requirements – Section 627.351(6) (aa), F.S.

The law now exempts condominium unit owner policies from the mandatory inclusion of flood coverage in all personal lines residential policies issued by the Citizens Property Insurance Corporation.

Community Association Managers – Section 468.4334(1), F.S.

The requirement for a community association manager or firm that has a contract with a community association to comply with Section 553.899, F.S., has been amended to delete the redundant term “that has a building on the association’s property.”

Milestone Inspections – Section 553.899, F.S.

There are new revisions to the milestone inspection requirements for condominium and cooperative buildings that are three or more stories tall, as defined by the Florida Building Code. These revisions include:

1. Limiting the milestone inspection requirements to buildings that have residential condominium or cooperative units.

2. Applying the milestone inspection requirements to buildings that are wholly or partially subject to condominium or cooperative ownership, including mixed-ownership buildings.
3. Clarifying that all owners of mixed-ownership buildings with condominium or cooperative units are responsible for compliance and must share inspection costs.
4. Requiring buildings reaching 30 years of age before December 31, 2024, to undergo a milestone inspection before that date.
5. Removing the 25-year milestone inspection requirements for buildings within three miles of the coastline.
6. Granting local enforcement agencies, the option to establish a 25-year inspection requirement based on local environmental conditions, such as proximity to seawater.
7. Allowing local enforcement agencies to extend inspection deadlines if the owner or owners of the building have entered into a contract with an architect or engineer to conduct the milestone inspection, which cannot reasonably be completed by the deadline.
8. Allowing local enforcement agencies to accept inspections and reports completed before July 1, 2022, if they substantially comply with milestone requirements, with subsequent 10-year re-inspections based on the date of the previous inspection.
9. Permitting inspection services to be carried out by a team of design professionals, with an architect or engineer in charge.
10. Making the condominium or cooperative association responsible for inspection costs related to the portions of the building under its governance.
11. Requiring associations to notify unit owners about inspection deadlines within 14 days of receiving the initial milestone inspection notice, either electronically or by posting on the association's website.
12. Mandating the milestone inspector to submit a phase two progress report to the local enforcement agency within 180 days of submitting the phase one inspection report.
13. Specifying that associations must distribute a summary of the inspection reports to unit owners within 45 days of receipt.
14. The Florida Building Commission is required to adopt rules by December 31, 2024, in accordance with Sections 120.536(1) and 120.54, Florida Statutes. These rules will establish a building safety program for implementing this section within the Florida Building Code: Existing Building. The program must include inspection criteria, testing protocols, standardized forms for inspection and reporting that can be used in electronic format, as well as record maintenance requirements for the local authority.

Official Records – Section 718.111(12)(c), F.S.

The change in the law clarifies that both unit owners and individuals authorized by the owner as their representative have the right to inspect the official records of the association.

Budget Meeting – Section 718.112(2)(e), F.S.

The law has been revised to exclude insurance premiums from the calculation used to determine whether members can petition for a substitute budget in cases where assessments increase by 115 percent.

Reserve Funding Requirements – Section 718.112(2)(f), F.S.

There are new revisions to the reserve funding requirements for condominium and cooperative associations.

These revisions include:

1. Requiring associations subject to the structural integrity reserve study (“SIRS”) requirement to base their budget, adopted on or after January 1, 2025, on the findings and recommendations of the most recent SIRS conducted by the association.
2. Clarifying that reserves must be established for SIRS items for which the association is responsible according to the condominium declaration.
3. Clarifying that reserves for replacement costs are not required for items with an estimated remaining useful life of over 25 years, but the SIRS study may recommend a deferred maintenance expense amount for such items.
4. Allowing associations not subject to the SIRS requirement to waive reserves if approved by a majority vote of the total voting interests in the association.
5. Allowing multi-condominium associations to waive reserves if an alternative funding method has been approved by the Florida Division of Condominiums, Timeshares, and Mobile Homes.
6. Allowing for adjustments to reserve assessments based on inflation.

Structural Integrity Reserve Study (“SIRS”) – Section 718.112(2)(d)1., F.S.

The new law has revisions to the SIRS requirements, including:

1. Limiting the SIRS requirement to residential condominiums and cooperatives.
2. Specifying that the SIRS recommendation must include a reserve funding schedule.
3. Including the building structure, such as load-bearing walls and primary structural members, as a component of the SIRS, while removing "floor" and "foundation" from the list.
4. Allowing the visual inspection portion of the SIRS to be verified by an engineer or architect.

5. Allowing individuals certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts to perform or verify the visual inspection part of the SIRS.
6. Exempting the following from the SIRS requirement:
 - Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground.
 - Any portion or component of a building not subjected to condominium or cooperative ownership or maintained by a party other than the association.
7. Allowing associations that must complete a milestone inspection on or before December 31, 2026, to perform the SIRS concurrently with the milestone inspection, but the SIRS must be completed by December 31, 2026.
8. Permitting associations to fulfill the SIRS requirement with a previous milestone inspection or inspection conducted for a similar local requirement if the inspection took place within the past five years.

Alternative Dispute Resolution – Section 718.1255, F.S.

Effective July 1, 2027, condominium and cooperative unit owners will have the ability to utilize the pre-suit mediation process described in this section for specific disputes related to compliance with the milestone inspection or SIRS requirements. Disputes will include the following failures by a board of administration:

- Failure to obtain the mandatory milestone inspection stated in Section 553.899, F.S.
- Failure to obtain the required structural integrity reserve study as mandated by Section 718.112(2)(g), F.S.
- Failure to adequately fund reserves for items identified in Section 718.112(2)(g), F.S.
- Failure to carry out necessary maintenance or repairs of condominium property, as recommended by a milestone inspection or a structural integrity reserve study.

Turnover Inspection Report – Section 718.301(2), F.S.

The law now permits reserve specialists and professional reserve analysts, in addition to engineers and architects, to prepare the turnover report.

Developer and Non-Developer Disclosure – Section 718.503, F.S.

The law has imposed additional pre-sale notice requirements for contracts involving the sale of a unit by a developer or non-developer. Both developers and non-developers are required to provide prospective buyers of condominium or cooperative units with a copy of a turnover inspection report conducted on or after July 1, 2023, if applicable. Additionally, if applicable, they must also provide a copy of the inspector-prepared summary of the milestone inspection. This provision aligns with existing contract notices that obligate unit

owners to furnish specific governing documents to prospective buyers. For sales by a non-developer, these documents must be provided more than three days before closing, while for sales by a developer, they must be provided 15 days before closing. Failure to comply with these notice requirements renders the contract voidable at the purchaser's discretion prior to closing.

Note that If the association is required to have completed a milestone inspection as described in Section 553.899, F.S., a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, and the association has not completed the milestone inspection, the turnover inspection report, or the structural integrity reserve study, the association must provide a statement to the prospective purchaser that the association has not completed the milestone inspection, the turnover inspection report, or the structural integrity reserve study.

Flag Display – Section 718.113 (4), F.S.

The law adds Patriot Day (September 11) to the days of which unit owners in condominium associations may display one portable and removable flag that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard. The current law already allows Unit Owners to display flags on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day.

Conclusion

These changes to the law are significant and will impact how condominium associations and cooperatives operate in Florida. It is crucial that associations familiarize themselves with these changes and implement them as required by law. As always, it is recommended to consult with a legal professional for advice tailored to your specific circumstances.

We trust that this update has provided valuable information. Please stay tuned for further updates as we navigate the implementation of these legislative changes.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

Questions regarding the content of this article may be emailed to [Christopher Pope](mailto:christopher.pope@paveselaw.com) at christopher.pope@paveselaw.com. To view past articles, please click “Publications” on our firm website. Mr. Pope is one of only two attorneys in Florida that is Board Certified by the Florida Bar in the three areas of Construction Law, Condominium and Planned Development Law, and Real Estate Law. He is a partner and an experienced construction and real estate attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195; Fax: (239) 332-2243.

Pavese Law has four attorneys Board Certified in Condominium and Planned Development Law; two of only thirty attorneys in the State of Florida who are Board Certified in both Real Estate Law and Condominium and Planned Development Law; and one of only two attorneys in the State of Florida who is Board Certified in both Construction Law and Condominium and Planned Development Law.

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