HABER LAW

2024 Legislative Session Recap
HB 1021 Provides New Updates to Florida Condominium Laws

On June 14, 2024, Governor Ron DeSantis signed House Bill 1021 ("HB 1021", or "the Bill"), which amends various Florida condominium laws and directly impacts the duties and obligations of board members and property managers. Effective July 1, 2024, with the exception of a few provisions further detailed below, all condominium associations across Florida must comply with HB 1021. As such, we advise that associations, including board members and management staff, review and become familiar with its changes. It is worth noting that some of these changes necessitate immediate and specific policy and protocol adjustments demanding more than reliance on a generalized summary such as this. It is strongly recommended that legal counsel be consulted regarding compliance and implementation.

A summary of the Bill's pertinent provisions are as follows:

A. Changes Affecting Community Association Managers – Returning Official Records & Conflicts of Interest Disclosures

Returning Official Records - Generally. Codifying previous administrative code requirements governing a community association manager's duty to return records, HB 1021 requires community association managers ("CAM(s)") and CAM firms to return all community association official records that are in their possession within 20 business days after either (a) termination of the management agreement or (b) receipt of written request for return of the official records, whichever occurs first. A notice to terminate the management agreement must be sent by certified mail, return receipt requested, or in a manner required by the agreement.

If a CAM or CAM firm fails to timely return all of the official records that it has to the association, then there is a rebuttable presumption that the CAM or CAM firm has willfully failed to comply with the statute, and they will be subjected to:

- Suspension of their CAM license; and,
- A civil penalty of $1,000.00 per day (up to 10 business days), which will begin on the 21st business day after termination of the management agreement or receipt of written request, whichever happens first.

Returning Official Records – Accounting Records. Despite the provisions above, CAMs are allowed to retain any records that are necessary to complete an ending financial statement or report for 20 business days. If an association fails to provide access or retention of accounting records to prepare the statement or report, then the CAM will be relieved of any further liability or responsibility in relation to preparation of that particular report.

Returning Official Records – Timeshare Plans. HB 1021 specifically provides that the 20-day time periods described above do not apply to CAMs managing timeshare plans that are created under Chapter 721, Florida Statutes.

Conflicts of Interest - Generally. HB 1021 also creates disclosure requirements for CAMs and guidelines to detect potential conflicts of interest. The Bill requires CAMs to disclose any activity that may be reasonably construed to be a conflict of interest and creates a conflict-of-interest disclosure process for

CAMs, including directors, officers, persons with a financial interest in a CAM firm, or a relative of such persons. The Bill defines a "relative" as someone within the third-degree by blood or marriage.

A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:

- Contracts for goods or services with the association
- Receiving compensation or anything of value from a business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

Under the Bill, if the association receives and considers a bid to provide a good or service that exceeds $2,500.00, other than a CAM service, from an individual with a financial interest in a CAM firm, or a relative of a CAM, then the association must also elicit multiple bids from other third-party providers.

If an individual discloses that they have engaged in an activity that is a conflict of interest, then (1) that activity must be listed on all contracts; (2) transactional documents related to the activity must be attached to the meeting agenda of the next board meeting; and, (3) the disclosures of a possible conflict of interest must be entered into the written minutes of the meeting.

Conflicts of Interest – Voting Requirements. The Bill provides that a contract or other transaction with a possible conflict of interest must be (1) approved via an affirmative vote of two-thirds of all directors present and (2) disclosed to members at the next regular or special meeting.

If a CAM has previously disclosed a conflict of interest in an existing management contract, the conflict of interest does not need to be re-noticed and voted on during the term of the contract between the association and the CAM. It must, however, be noticed and voted on upon renewal of the contract.

If an association finds that a conflict of interest was not properly disclosed and approved in the manner provided above, the association can terminate its contract with the CAM or CAM firm. If the contract is canceled, the association will not be liable for any termination fees, liquidated damages, or other form of penalty, but will be liable for the reasonable value of the management services provided up to the time of cancellation.

In addition, if the board finds that a CAM or CAM firm has violated the provisions above, then the association can cancel the management contract by filing a written notice of termination by the board.

Notably, any association contract involving a conflict of interest for the CAM or CAM Firm is voidable by the membership directly in the event of non-compliance. To cancel the contract, members can submit a notice directly to the Board of Directors with the consent of twenty percent (20%) of the membership voting interests.

B. Changes to Milestone Inspections Requirements

HB 1021 amends Section 553.899, Florida Statutes, to provide that the milestone inspection requirement does not apply to a four-family dwelling with three or fewer habitable stories above the ground.

C. Changes to Official Records Request Requirements for Associations

The Bill also establishes very significant changes to Section 718.111(12), Florida Statutes, which governs the Association's obligations to maintain official records and comply with inspection requests.

Maintenance of Records. First, HB 1021 supplements the list of official records that must be maintained for at least 7 years to expressly include copies of all building permits for ongoing or planned construction and satisfactorily completed board educational certificates as official records of the association.

The Bill also now provides language clarifying the manner in which official records must be maintained. For instance, the Bill requires that official records must be maintained in an organized manner that facilitates the inspection of records. It is unclear, however, exactly what this entails and the burden imposed. The Bill also provides that in the event that an official record is lost, destroyed, or otherwise made unavailable, then the obligation to maintain official record includes a good faith obligation to obtain and recover those records as reasonably as possible.

In addition, the scope of "accounting records" under Section 718.111(12)(a)11 is expanded to include all invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association.

Lastly, beginning January 1, 2026, an association with 25 or more units is required to post digital copies of specified documents on its website or make such documents available through an application that can be downloaded on a mobile device. This is a major change because previously, this requirement only applied to associations with 150 or more units.

Compliance with Requirements to Provide Access to Records. The Bill provides that an association's obligations to provide access to official records would be fulfilled if the records that are being requested are already provided on an association's website, or if such records available for download through an application on a mobile device.

In addition to the previously existing requirement to provide timely access to official records pursuant to previously numbered Sub-Section 718.111 (12)(c)(1), the Bill creates a new additional requirement in response to an official records request, which is an obligation to provide a checklist to the person requesting the records. The checklist must identify what records were made available for inspection and copying, and what records were not available. The checklist must also be maintained for 7 years. An association delivering a checklist and affidavit creates a rebuttable presumption that the association has complied. Section 718.111 (12)(c)(1) now has two subsections created 718.111 (12)(c)(1)(a) and (b), to differentiate these two obligations.

Interestingly, there is something of an ambiguity over whether the checklist would be required for records that have already been posted on an association's website or mobile application. For instance, one might ty to argue that under Section 718.111(12)(c)(1)(a), access to records on the association's website or mobile application constitutes compliance with the Association's record access obligations, including the checklist. However, the creation of separate numbering for the sub-paragraphs requiring access on the one hand, and the checklist on the other, is likely to be interpreted as creating two separate requirements altogether and that accessibility on a website or application only satisfies the access requirement, while the checklist requirement remains. Given these types of nuances, associations should therefore consult with counsel concerning the implementation of these requirements and provide a checklist in response to all requests once the new law takes effect.

E-mail Addresses and Facsimile Numbers of Unit Owners. When it comes to email addresses and facsimile numbers of other unit owners, verbiage is added to emphasize what was previously implicit, that this information can only be used for the business operations of the association and cannot be sold or shared with outside third parties. The association must apply redactions to remove personal information (including e-mail addresses and facsimile numbers) if the association is releasing documents to a third-party that is not a unit owner. Additionally, verbiage is added that qualifies the previously existing immunity from liability for "inadvertent disclosure" of private personal information, so that the immunity no longer applies if there was a "knowing or intentional disregard of the protected nature of such information". This creates a higher burden to take reasonable precautions to protect such private information.

Penalties for Non-Compliance. Notably, HB 1021 allows criminal penalties to be imposed for associations that destroy or refuse to release official records. These penalties are further described as follows:

- A first-degree misdemeanor, a civil penalty, and removal from office if any person either: (i) knowingly or intentionally defaces or destroys accounting records that were required to be maintained for a certain period, or (ii) knowingly or intentionally fails to create or maintain accounting records with the intent of causing harm to the association or one or more of its members. Previously the commission of these acts would only result in a civil penalty. However, HB 1021 now establishes that such acts would be considered a first-degree misdemeanor and the person who committed the acts must be removed from office and a vacancy concerning their position will be declared.

- A second-degree misdemeanor for any director, board member, or member of the association (?!), or community association manager, that knowingly, willfully, and repeatedly violates any specified requirements relating to the inspection and copying of official records of an association, which includes the newly imposed maintenance requirements and checklist requirements. Note that, under the language of the Bill, "repeatedly" is explicitly defined as "two or more violations within a 12-month period. In addition to criminal penalties, the "offender" must be removed from office and a vacancy concerning their position will be declared.

- A third-degree felony for any person who willfully and knowingly refusing 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 doing the same. In addition to criminal penalties, the "offender" must be removed from office and a vacancy concerning their position will be declared.

The descriptions of these penalties, however, are not without significant "textual hiccups" or "glitches" that may be difficult to apply from a practical point of view. For instance, for the language concerning the second-degree misdemeanor, it appears that the Florida Legislature included a member of the association despite the impracticability of a member of an association committing a violation in relation to the official records of an association, since association members typically have nothing to do with the authority to grant/deny official records or ensure that requests are properly complied with. That being said, it is perhaps possible that this provision could apply to members of the association that simultaneously serve as officers and, as a result, have responsibilities over records requests. The language concerning the second-degree misdemeanor also explicitly applies to both directors and board members which, to us, appears to have no textual differentiation, and is clearly redundant. Meanwhile, the term "officers" is excluded, so that the paragraph wouldn't apply to an office responsible for overseeing operational aspects of records inspection compliance. While an officer who is a member would be included, an officer that is a non-member would not be covered.

Lastly, the penalties described above also provide that if such acts are committed, then the person that committed the act must be removed from office and, as a result, a vacancy for their position must be declared. Again, the language of the Bill is unclear on how this would apply. For board members, it is clear that they would no longer serve as a member of the board; however, for community association managers and members of the association (which are specifically called out in the second-degree misdemeanor), it is unclear what "vacating" would mean. For instance, when it comes to community association managers, would "vacating" refer to vacating their office or employment as a manager? Such considerations and issues

are exactly why we strongly recommend consulting with legal counsel to determine how to navigate the ins and outs of HB 1021 and its ramifications.

D. New Requirements for Association Meetings

Frequency and Scope. HB 1021 amends Section 718.112, Florida Statutes, and now requires mandatory board meetings to be held once per quarter for residential associations of more than 10 units in order to respond to member inquiries and inform members of the state of the condominium, including:

- Status of construction or repair projects;
- Status of association revenue and expenditures during the fiscal year; or,
- Other issues affecting the association.

Contracts to Approve Goods or Services. The Bill also provides that if an agenda item relates to the approval of a contract for goods or services, then a copy of the contract must be provided with the notice of the meeting and made available for inspection and copying upon a written request from a unit owner, or made available on the association's website or through an application that can be downloaded on a mobile device.

E. Updates to Electronic Voting

HB 1021 now allows a unit owner to electronically consent to electronic voting. The Bill also requires that if a board authorizes online voting, then the board must honor a unit owner's request to vote electronically in all subsequent elections, unless the unit owner later opts-out of online voting.

F. Board Transparency and Accountability – Criminal Penalties, Grounds for Removal, and Conflicts of Interest

Criminal Penalties. The Bill increases penalties for officers, directors, or managers that solicit, offer, or accept kick-backs to a felony of the third degree plus mandatory removal from office in addition to the previously provided civil penalties.

Removal From Office. HB 1021 requires the directors to be removed from office if they are charged with any of the following crimes:

- Forgery of a ballot envelope or voting certificate;
- Theft or embezzlement of involving association funds or property;
- Destruction or refusal to allow access to association official records in furtherance of any crime;
- Obstruction of justice; or,
- Any criminal violation of the Condominium Act

If a criminal charge is pending against an officer or director, he or she may not have access to the official records of an association, except pursuant to a court order.

Debit Card Usage. The Bill further clarifies that it is considered theft under Florida law when a person uses a debit card issued in name of the association for expenses which are not lawful obligations of the association (i.e., obligations that have not been properly approved by the Board and reflected in meeting minutes or the budget).

Conflicts of Interest for Directors and Officers. The Bill provides that the attendance of a director or an officer with a possible conflict of interest at the meeting of the board counts for the purposes of quorum for the meeting. If, however, a vote concerns a matter where the director has a conflict of interest, then the

director must recuse themselves from that particular vote, but can count towards quorum for the purposes of the meeting and vote.

G. Updates to Director Education Requirements

Under HB 1021, up to 1 year prior to election or appointment, but no later than 90 days after election or appointment, all residential condominium directors will be required to:

- (1) complete a 4-hour educational course on milestone inspections, structural integrity reserve studies, recordkeeping, financial literacy and transparency, levying of fines and notice/meeting requirements; and,
- (2) certify in writing that they have read the association documents.

However, directors elected/appointed prior to July 1, 2024, must complete these updated written certification and educational course requirements by June 30, 2025. A director's written certification and educational course certificate shall be valid for 7 years after the date of issuance and need not be re-submitted so long as a director serves on the Board without interruption during the 7-year period. Board members are further obligated to annually complete a 1-hour course relating to any recent changes to Chapter 718 and administrative rules.

Haber Law, LLP, is approved by the Division as a Board member education provider. Please contact our office for more details.

H. Unit Owner Fines and Suspensions

HB 1021 provides that at least 90 days before an election, an association must notify a unit owner or member that their voting rights may be suspended due to a non-payment of a fee or monetary obligation.

I. Revisions to Structural Integrity Reserve Study Requirements

Natural Emergencies. In the event a local building official determines the entire condominium building is uninhabitable due to a natural emergency, contribution to association reserve accounts may be paused or reduced, upon approval of a majority of association members, until the building is deemed habitable. However, once the local building official determines the condominium building is habitable, contribution of funds to reserve accounts must immediately resume. Moreover, the association's board may permit reserve funds held by the association to be expended to make the building habitable without the need for a vote of the association members.

Distribution of Reserve Study. The Bill also imposes new requirements to Section 718.112(g), Florida Statutes, and requires that associations distribute a copy of any structural integrity reserve study to each unit owner within 45 days of receipt of same or deliver a notice to each unit owner that the study is available for inspection and copying upon written request.

Disclosure to Division. In addition, associations are required, within 45 days after receiving the structural integrity reserve study, to provide the Division with a statement indicating that such study was completed, and that the association provided or made available such study to each owner. This statement must be provided to the Division in a manner prescribed by the Division by using a form posted on the Division's website.

J. Hurricane Protection

Overview and Scope. HB 1021 also amends Chapter 718, Florida Statutes (the "Condo Act") to provide long overdue refinements and clarifications of those provisions governing the installation, maintenance, repair, and replacement of Hurricane Protection. "Hurricane Protection" is now defined under Section 718.103(19), Florida Statutes, to include shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection.

The Bill provides that if Hurricane Protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install the same type of hurricane protection or require that unit owners install the same type of Hurricane Protection unless the unit owner's installed Hurricane Protection has reached the end of its useful life or it is necessary to prevent damage to the common elements or the unit.

Voting and Recording Requirements. The Bill also requires associations to record a certificate in the public records attesting to a vote of unit owners requiring installation of Hurricane Protection and date the Hurricane Protection must be installed with delivery of a copy of the certificate to all owners after recordation. However, a vote of the unit owners is not required if the declaration already provides that installation, maintenance, repair and replacement of hurricane protection, exterior windows and doors, or other apertures protected by the Hurricane Protection is the responsibility of the association, or if the Declaration has a provision that already requires the unit owners to install hurricane protection.

Additional Clarifications. HB 1021 creates additional language clarifying when an association can install or require owners to install new Hurricane Protection, who is responsible for the cost of removal or reinstallation of Hurricane Protection when the removal is necessary to maintain, repair or replace other property, and the allocation of costs pertaining to hurricane protection and collection of same. Importantly, HB 1021 provides clarity regarding the ability to assess unit owners for the cost of Association installation of hurricane protection, even if such installation is not allocated as a common expense. It also differentiates association replacement of Hurricane Protection that is incidental to the maintenance, repair, or replacement of other common elements.

K. Limitations on Defamation, Libel, Slander, or Tort Actions

HB 1021 expands Section 718.1224(3), Florida Statutes, and provides that associations are now prohibited from issuing fines, discriminatorily increasing a unit's assessments, or decreasing services, or bringing or threatening to bring an action for possession, defamation, libel, slander or tortious interference action against a unit owner who has either:

- complained in good faith to a governmental agency of a suspected violation applicable to the condominium;
- organized, encouraged, or participated in a unit owners' organization;
- submitted information or filed a complaint with the DBPR, law enforcement, Condominium Ombudsman or other governmental agency;
- exercised his or her rights under Chapter 718;
- complained to the association for failure to comply with applicable law; or,
- made public statements critical of the operation or management of the association.

Associations are further prohibited from using association funds in support of defamation, libel, slander, or tortious interference actions against unit owners or any other claim against unit owners based on conduct described above.

L. Changes to DBPR's Authority

HB 1021 also creates additional categories of complaints that the DBPR may investigate post-turnover. Additionally, the Bill authorizes the DBPR to routinely conduct random audits of condominium associations to determine compliance with website or official record requirements and permits DBPR or Condominium Ombudsman employees to attend and observe any condominium board or membership meeting.

M. Mixed-Use Condominiums

The following provisions regarding mixed-use condominiums are effective on October 1, 2024. These provisions are intended to address heavily litigated issues concerning the establishment of projects with hotel-condominiums or shared common property that is maintained by an entity other than the association. The anticipated likely attempt of litigants and owners in such projects to utilize these provisions retroactively is likely to be litigated.

Multiple Parcel Building. The Bill allows a condominium to be created within a portion of a building or within a multiple parcel building. A "multiple parcel building" means a building, other than a building consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land.

Common elements of a condominium that are created within a portion of a building or a multiple parcel building are only those portions of the building submitted to the condominium form of ownership, excluding the units of such condominium.

Creation Documents. A declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other applicable recorded instrument must specify 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, which may include, among other things, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.
- The party responsible for collecting the shared expenses.
- The rights and remedies that are available to enforce payment of the shared expenses.
- The way the expenses for the maintenance of the shared facilities will be apportioned.

Sale Contract Disclosures. The sale contract of a unit in condominium within a portion of a building or within a multiple parcel building must contain a disclosure summary, which must include:

- That the unit is in a within a portion of a building or within a multiple parcel building, and that the common elements of the condominium consist only of the portions of the building that are submitted to the condominium.
- Acknowledgements from the buyer:
    - That the unit may have minimal common elements;
    - Portions of the building that are not subject to condominium ownership are governed by a separate record instrument.
    - That the party that controls the maintenance and operation of the portions of the building that are not included in the condominium determines the budget for the operation and maintenance of such portions. However, the condominium association and unit owners are still responsible for their share of such expenses.
    - That the cost distribution between the unit owners and the owner of the portions of the building that are not a condominium to maintain and operate portions of the building that are not part of condominium can be found in the declaration of the condominium or other recorded instrument.

The following provisions regarding prior sale disclosures are effective on October 1, 2024.

The Bill requires a developer or non-developer condominium unit owner to provide a certain disclosure if a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building. In addition, the prospectus or offering circular for a condominium must state whether the condominium is created within a portion of a building or a multiple parcel building

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As always, our office is available to assist in interpretation and compliance with Chapter 718 and the Association's governing documents, and the amendments thereto, including those listed above. As such, please do not hesitate to contact us if you have any questions, concerns, or requests. In addition, we encourage you to review our other blog posts recapping additional bills that were passed this legislative session.