



2024 Florida Legislative Recap **A Guide to HB 1203 and its Impact on Florida Homeowners' Associations**

On May 24, 2024, Governor Ron DeSantis signed House Bill 1203 (“HB 1203” or the “Bill”), which amends various aspects of Chapter 720 of the Florida Statutes pertaining to homeowners’ associations (the “HOA Act”). Effective **July 1, 2024**, all Florida homeowners’ associations (“HOAs”) must comply with the Bill. As such, it is important that HOA board members and management staff review and become familiar with the Bill’s changes and consult HOA legal counsel as necessary regarding compliance and implementation. A summary of the Bill’s pertinent provisions are as follows:

A. Community Association Managers – Professional Standards and Continuing Education Courses

The Bill starts by implementing new professional practice standards for Florida community association managers (“CAM(s)”) under Chapter 468, Florida Statutes. Specifically, the Bill requires CAMs and CAM firms authorized by a contract to provide community association management to an HOA to annually attend at least one member meeting or board meeting of the HOA in person.

In addition, the CAM must provide members with (i) the name and contact information of each manager or representative of the CAM firm assigned to the HOA; (ii) the manager’s (or representative’s) hours of availability; and (iii) a summary of the duties for which the manager (or representative) is responsible. The HOA must post this information on its website or mobile application (as applicable) and update any changes to the information within 14 business days after a change occurs. The Bill also now requires the CAM or CAM firm to provide the contract between the HOA and the CAM upon request of a member of the HOA.

Next, the Bill requires that every two years, a CAM providing services to an HOA must complete at least 5 hours of continuing education that pertains specifically to HOAs, and 3 of those 5 hours must relate to recordkeeping. The Bill further clarifies that the Regulatory Council of Community Association Management at the Department of Business and Professional Regulation (“DBPR”) cannot require more than 10 hours of continuing education per year for the renewal of a CAM license.

B. Changes to HOA Official Records Requirements and Websites

Timeframe. The Bill updates multiple requirements for maintenance and production of HOA official records. First is a change to the timeframe language of Section 720.303(4) and 5(a), which now provide that HOA official records shall be maintained for at least 7 years, unless the HOA’s governing documents require a longer period of time.

Websites. By January 1, 2025, every HOA with 100 or more parcels must post a current digital copy of certain official records on its website or make those documents available through an application that can be downloaded on a mobile device. Those documents include the HOA's governing documents (declaration, articles of incorporation, bylaws, rules, and all amendments thereto); contracts to which the HOA is a party or the parcel owners have an obligation or responsibility; a list of bids received within the past year; annual budget and any proposed budgets to be considered at the annual meeting; financial report and monthly income/expense statement to be considered at a meeting; current insurance policies; director certifications as required under Section 720.3033(1)(a); contracts or transactions reflecting any potential conflict of interest; and notices and agendas for member and board meetings. Any information or documents that are not open to parcel owners for inspection pursuant to Section 720.303(5)(g) should not be posted on the website, or if posted, must be redacted.

The website or mobile application must be accessible through the internet and have a subpage or portal inaccessible to the general public, so that is only accessible to HOA parcel owners and employees of the association. Upon a parcel owner's written request, an HOA must provide a username and password which gives the owner access to the restricted subpage or portal. Finally, the Bill provides that the HOA shall adopt written rules governing the method or policy of retention of official records and the timeframe such records must be retained pursuant to Chapter 720 and the HOA's governing documents.

Subpoena for Records. The Bill also implements new requirements that HOAs must follow if they receive a subpoena from a law enforcement agency. If a subpoena from a law enforcement agency is received, the HOA must provide a copy or otherwise make the records available to the law enforcement agency within 5 business days after receipt of the subpoena, unless otherwise specified in the subpoena itself. HOAs must also assist the law enforcement agency in its investigation to the extent permissible by law.

Criminal Offenses. HB 1203 also creates the following criminal penalties in connection with the production, retention, inspection or tampering of official records:

- A Second-Degree Misdemeanor is committed if "any director or member of the board or association" or CAM knowingly, willfully, and repeatedly violates the inspection and copying of official records provisions in Section 720.303(5)(a) with the intent to cause harm to the association or its members. The term "repeatedly" means two or more violations within a twelve-month period.
- A First-Degree Misdemeanor is committed when a person knowingly and intentionally defaces or destroys accounting records during the period in which such records are required to be retained, or who knowingly or intentionally fails to create or maintain required accounting records with the intent of causing harm to the association or one or more of its members.
- A Third-Degree Felony is committed if a person 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.

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 would not apply to an officer 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.

Notably, if a director or officer is charged by information or indictment for certain criminal offenses listed under Section 720.3033(4)(a), then that person must be removed from office and a vacancy must also be declared for their position. The criminal offenses listed under Section 720.3033(4)(a) now include “any criminal violation under [Chapter 720]”, meaning someone charged with one of the above crimes pertaining to official records 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 CAMs 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 CAMs, 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 1203 and its ramifications.

C. Modifications to HOA Financial Reporting, Debit Card Usage, and Owner Requests for Detailed Accounting

HB 1203 attempts to further combat financial corruption by implementing various auditing requirements and financial safeguards.

Financial Statements. First, the Bill changes Section 720.303(7) to require HOAs with 1,000 or more parcels to prepare audited financial statements, regardless of the HOA’s total annual revenue. While a majority of the voting interests present at a duly called meeting may vote to approve the HOA preparing only a report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement (as applicable to the particular association), the Bill now provides that the association may not do so for consecutive fiscal years.

Debit Cards. In addition, the Bill creates a provision that addresses the use of HOA debit cards. Beginning July 1, 2024, the association and its officers, directors, employees, and agents are

prohibited from using a debit card issued in the HOA's to pay for association expenses. Even though the provision appears to outlaw the use of an HOA debit card altogether, it goes on to state that a person who uses an HOA debit card for anything that is not a "lawful obligation of the association" commits theft under Florida law. A "lawful obligation of the association" is specifically defined in the statute as "an obligation that been properly preapproved by the board and is reflected in the meeting minutes or written budget."

Detailed Accounting Requested by Owners. The Bill now allows parcel owners to make written requests to the HOA board for a detailed account for any amounts owed to the HOA by the parcel owner related to his or her parcel. The board must then provide the information within 15 business days of receipt of the request. If the board fails to respond to the request within 15 business days, then any outstanding fines of the requester are considered waived if the fine is more than 30 days past due and if the HOA did not give prior written notice of the imposition of the fine. Thus, it is imperative that associations treat these requests with a sense of urgency. Notably, once a parcel owner submits a request for an accounting, he or she cannot submit another accounting request for at least 90 calendar days.

D. Updates to HOA Board of Director Obligations, Educational Requirements, and Removal Process

HB 1203 provides new education requirements for directors while also specifying penalties for kickbacks and criminal charges.

Fiduciary Obligations for Directors and Officers. First, the Bill clarifies in Section 720.303(1) that officers and directors of an HOA are subject to the fiduciary obligations and standards for directors outlined in Section 617.0830, Florida Statutes, of the Florida Not-for-Profit Corporation Act. Previously, the HOA Act implied that directors were subject to these standards, but it is now clear that directors must follow these requirements.

Director Education Requirements. Section 720.3033(1)(a) has been updated so that newly elected or appointed directors can no longer simply provide a written certification regarding their duties, but now must complete and submit a certificate proving that they have satisfactorily completed a DBPR-approved educational course within 90 days after being elected or appointed to the board. The certification is valid for up to 4 years upon completion of the educational requirements.

The educational curriculum for newly elected and appointed directors must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements. Additionally, all directors will be required to retake the DBPR-approved education course every 4 years.

In addition to the educational requirements specific to newly elected or appointed directors, the Bill further requires that a director of an HOA that has fewer than 2,500 parcels must complete at least 4 hours of continuing education annually, while a director of an HOA that has 2,500 or more parcels must complete at least 8 hours of continuing education annually. The DBPR is tasked with adopting rules to implement and administer the initial educational curriculum and the continuing education requirements.

Prohibition of Kickbacks. The Bill also cracks down on kickbacks and provides that an HOA officer, director, or manager who knowingly solicits, offers to accept, or accepts any kickback commits a third-degree felony and will also be subject to monetary damages.

Updates to Grounds for Removal. Lastly, the Bill provides that if a director or officer is charged by information or indictment for certain criminal offenses listed under Section 720.3033(4)(a), then that person must be removed from office and a vacancy must also be declared for their position. The criminal offenses listed under Section 720.3033(4)(a) now include “any criminal violation under [Chapter 720].”

E. Changes to Provisions Regarding HOA Architectural Control Covenants

HB 1203 requires an HOA or architectural review, construction improvement, or other similar committee (“ARC”) to reasonably and equitably apply and enforce architectural and construction improvement standards authorized by the HOA’s governing documents. The Bill prohibits an HOA or ARC from 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 community golf course.
- Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the HOA or ARC, 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 HOA or ARC.

The Bill also requires that if an HOA or ARC denies a parcel owner’s request to construct a structure or other improvement on a parcel, then the HOA or ARC must provide the parcel owner with written notice identifying the portion of the proposed improvement that does not comply with the HOA’s rules/covenants and citing the specific rule or covenant that the HOA or ARC relied on when denying the request or application.

F. Expansion of Prohibited Clauses in HOA Governing Documents

Under Section 720.3045, Florida Statutes, as amended by HB 1203, an HOA can no longer prohibit a homeowner from installing, displaying or storing any items not visible from the parcel’s frontage, an adjacent parcel, an adjacent common area, or a community golf course. Such items include, but are not limited to, artificial turf, boats, flags, vegetable gardens, clotheslines, and recreational vehicles.

In addition, HB 1203’s revised version of the HOA Act also provides that HOA governing documents **cannot** prohibit:

- A property owner, or a guest, tenant, or invitee, from parking his or her personal vehicle (including pickup trucks) in the property owner’s driveway, or in any other area where the property owner or property owner’s tenant, guest, or invitee has a right to park as governed by state, county, and municipal regulations.

- Regardless of any official insignia or visible designation, a property owner, guest, tenant, or invitee from parking his or her work vehicle, which is not a commercial motor vehicle subject to Section 320.01(25), Florida Statutes, 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 an HOA preferred vendor list.
- 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 cannot require a contractor or worker to present or prove possession of a professional or an occupational license in order to be allowed entry onto a property owner's parcel.
- Operating a vehicle that is not a commercial motor vehicle in conformance with state traffic laws on public roads or rights-of-way or the property owner's parcel.

G. New Procedures and Limitations for Imposing Fines and Suspensions

HB 1203 also creates new procedures and limitations on levying fines and implementing suspensions.

Procedure for Levying Fines. The Bill now specifically requires that a fine or suspension levied by the HOA board may not be imposed unless the board provides at least 14 days' written notice of the parcel owner's right to a hearing. The hearing must take place within 90 days after issuance of the notice. In regards to the format of the hearing, HB 1203 now allows the committee to hold the meetings via telephone or other electronic means, but if the hearing is to be held via telephone or electronically, then the notice must include the access information required to attend the conference.

The Bill also provides new considerations for imposing a fine depending on the status of the violation. If, for instance, the violation has been cured before the hearing or as specified in the applicable written notice, a fine or suspension **may not** be imposed.

Within 7 days after the hearing, the committee must provide a written notice to the parcel owner (and tenant or occupant, if applicable) of its findings related to the violation as well as details on how the owner or occupant may cure the violation or fulfill a suspension, or the date when the fine must be paid. If a fine has been imposed, the due date for payment must be at least 30 days after delivery of the committee's post-hearing notice of its findings.

Reasonable attorneys' fees and costs may be awarded to the HOA if a violation is found by the committee, 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 by its due date. However, attorney fees and costs may not begin to accrue until after the due date for the fine and time for an appeal has expired.

Limitations on Imposing Fines and Suspensions. Under the Bill, regardless of the terms of the HOA's governing documents, HOAs **may not** issue a fine or suspension for:

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

H. Assessments and Charges

The Bill clarifies that unpaid assessments and installments are only permitted to bear simple interest, regardless of whether the governing documents allow for compounding interest rather than simple interest.

I. Fraudulent Voting Activities Relating to HOA Elections

In order to combat voting fraud, the Bill expands upon the activities that qualify as fraudulent voting activities, which constitute a first-degree misdemeanor (except these provisions do not apply to a licensed attorney giving legal advice to a client):

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoids or escape detection, arrest, trial, or punishment.

J. Electronic Voting Consent Forms

The Bill also amends Section 720.317, Florida Statutes, by clarifying that a member may consent to online voting electronically, not just in writing.

K. New Regulations for First Responder Parking

Lastly, the Bill amends Section 720.318 to state that a first responder, rather than just a law enforcement officer, that is a homeowner, or the tenant, guest, or invitee of the homeowner, may park their assigned first responder vehicle where they otherwise have a right to park, including on public roads or rights-of-way within the HOA. Under Florida law, a first responder includes an actual or volunteer law enforcement officer, firefighter, emergency medical technician or paramedic.

As always, our office is available to assist in interpretation and compliance with Chapter 720 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 on our website recapping additional bills that were passed this legislative session.

DISCLAIMER

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