THE CONDO ASSOCIATION

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DIRECTORS' DIGEST

37 YEARS

A Publication of the Law Offices of Lobeck & Rowe

2024 Condo Law Alert

JAILING DIRECTORS?

New Laws More Insane Than Ever: ***Criminal Penalties on Board Members Are Just the Start***

For years, the Florida Legislature has piled burdens, expenses and micromanagement on Condominium Associations.

Led by in Miami lawmakers for favor big government and urged on by some who perhaps find it profitable for the law to be complicated and burdensome, isolated incidents of Director misconduct in southeast Florida are cited as an excuse to make it even more difficult to recruit owners to serve on the Board.

And mandatory reserves (mostly unrelated to the building collapse which prompted them), with no right to borrow instead, are added to the climbing costs of mandatory insurance and inflation to price many out of condominium living.

For a supposedly conservative Legislature, this overreach into private corporations is hard to justify. Perhaps some day, sense will prevail.

MEET

Brett Paben

Brett Paben joined our firm in 2023 after his most recent work as a successful solo practitioner. He was admitted to the Florida Bar in October, 2000.

He earned his Juris Doctorate from University of Oregon School of Law and went on to further his education by receiving his Master of Law in Environmental Law from Georgetown University Law Center.

Brett's legal experience began in the nonprofit sector focusing on environmental subjects and he later expanded to land use and zoning in his private practice.

Brett has experience providing litigation and counseling in environmental, land use, nonprofit organization corporate and tax matters, as well as experience with wills and trusts.

Additionally, Brett has worked as a professor teaching environmental law and taught land use law while serving as a visiting professor.

2024 Condominium Legislation

The big bill for condominium legislation in 2024 was HB 1021. It passed unanimously in the Senate and with only two "no" votes in the House, and was signed into law by Governor DeSantis on June 14, 2024.

The new law has an effective date of **July 1, 2024**.

Milestone Inspections

Currently, there is an exemption from the requirement of a Milestone Inspection any single-family, two-family or three-family dwellings with three or fewer habitable stories above ground. This bill would add four-family dwellings of that height.

SIRS Reserves

The new requirement for a "Structural Integrity Reserve Study (SIRS) remains due by the end of 2024. Unwaivable full reserve funding begins with the 2026 budget.

The new law adds that within 45 days of receiving a SIRS report, the Association must provide a copy to each unit owner or notify the owners of its availability, in a certain manner.

In the event a natural disaster renders an entire building unsafe and uninhabitable, as determined by the local building official, the Board and a majority of the Association members may suspend reserve funding until it is made habitable and may expend reserves for that purpose.

Statute of Repose

Previously, it was provided that the statute of limitations on any lawsuit by an Association did not begin to run, at the earliest, until the election in which the Association is turned over from developer to unit owner control. Otherwise, the statute of limitations begins to run when a cause of action arises, such as when a latent (hidden) construction defect first becomes evident. The statute of repose sets an outer deadline for filing a lawsuit even in that event.

In what is a rare beneficial change for Associations in this new law, the statute of repose is now added to begin to run at the earliest at the turnover election. This helps to marginally soften the adverse effect of the 2023 Florida Legislature favoring builders and developers by shortening the statute of repose from ten to seven years, and making it start to run sooner.

Management Records Transfer

Creates a deadline of 20 business days for a terminated management company or manager to turn over Association records to the new management, subject to a CAM license suspension and a civil penalty of $1,000 a day up to ten business days.

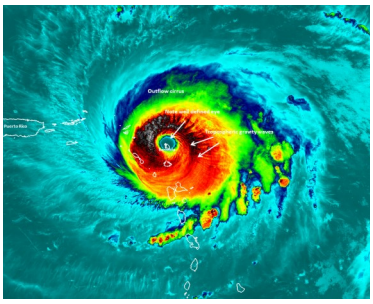
Management Conflicts of Interest

Requires written disclosure to the Association Board by a management company or manager or any director, officer and person with a financial interest in the company or a defined relative thereof, of any conflict of interest, including a contract or business with the Association for other than management services.

In such an instance, if the bid for goods or services exceeds $2,500, the Association must solicit multiple competitive bids from other providers. Disclosure of the conflict must be disclosed in agenda text and attachments and meeting minutes. Board approval of a contract or transaction with a conflict requires approval by 2/3 of the Directors present, and disclosure at the next membership meeting, unless the conflict is disclosed in the management services contract. A violation allows the Association to cancel the contract for management services without penalty and subjects the manager or management company to license discipline.

Hurricane Protection

A Declaration of Condominium must specify whether the unit owners or the Association is responsible for the installation, maintenance, repair or replacement of hurricane protection, defined as "hurricane shutters, impact glass, code-compliant windows or doors, and other code compliant hurricane protection products used to preserve and protect the condominium property or association property."



Associations are required to adopt "hurricane protection" specifications rather than just hurricane shutter specifications, as at present and they "may" (rather than "shall" at present) include color, style, and other factors deemed relevant by the Board, which may include adhering to the existing, unified external appearance of the building scheme. Present references to "hurricane shutters, impact glass, code compliant windows or doors, or other types of code compliant hurricane protection" are replaced by a similar reference to "hurricane protection."

The statutes now allow the Association to install hurricane protection in parts of the property it maintains or, by approval of a majority of all unit owners, elsewhere such as within unit boundaries. That is amended to add that with that owners' vote (or under the Declaration), the Association may require unit owners to make that installation. Such installation, by the unit owner or by the Association at an owner's expense (collectible in the same manner as a common expense), shall not apply to the "same type" of hurricane protection the owner has previously installed, unless it has reached the end of its useful life or "is necessary to prevent damage to the common elements or a unit."

A unit owner is exempt from the cost of installing hurricane protection if the owner has the same type of hurricane protection in place and it is compliant with current codes, if the installation for all other units is funded by the Association's budget (including reserves).

A unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection or of a window or door protected by hurricane protection, if the removal is necessary for the maintenance, repair or replacement of other condominium property for which the Association is responsible. The Association may decide whether that work is to be done by the Association or by the unit owner with the cost reimbursed by the Association.

This would appear to apply to the removal of balcony enclosures which provide hurricane protection in the course of balcony repairs by the Association, or the removal of hurricane shutters during exterior wall maintenance. The amendment does not clearly require that the removed hurricane protection be compliant with current codes and appears to require that the Association pay for the required code upgrade upon reinstallation.

Criminal Penalties

Any officer, Director or manager who solicits, offers to accept or accepts any thing or service of value from any person providing or proposing to provide goods or services to the Association, without paying consideration for it, except in connection with a trade fair or education program, or a kickback, commits a third-degree felony and shall be deemed to be removed from office.

Any officer, Director or manager who knowingly, willfully and repeatedly violates any of the statutory requirements to provide access to inspect and obtain copies of Association records to a unit owner or an owner's authorized representative, with an intent to cause harm to an owner, commits a second-degree misdemeanor and shall be deemed to be removed from office. "Repeatedly" is defined as two or more violations within a 12-month period. This includes the burdensome new requirement in this bill (as described below) that the response to a records request include a checklist not only of the records being made available but also of all Association records not being made available.

"Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for 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 first-degree misdemeanor and shall be deemed removed from office."

"Any person who 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" commits a felony of the third degree and shall be deemed removed from office.

Directors' Rap Sheet

Felony: Jail for 5, 15 or 30 years - for third, second and first degree respectively, and/or
Fine of up to $5,000 (second or third degree) or $10,000 (first degree)

First Degree Misdemeanor:
Jail for up to one year and/or
Fine of up to $1,000 plus costs and damages

Second Degree Misdemeanor:
Jail for up to 60 days and/or
Fine of up to $1,000 plus costs and damages

Third Degree Misdemeanor:
Fine of up to $500 plus costs and damages

Debit cards have for some years been prohibited to be used by an Association Director, officer, employee or agent for an Association expense if the card is issued in the name of the Association or "billed directly to the Association" for any Association expense (Now, the use of any such debit card for an expense that has not been "properly preapproved by the Board" and reflected in the written minutes or the written budget – even if otherwise a valid Association expense – is the commission of theft under s. 812.014, Florida Statutes.

Numerous acts involving Association elections are each a first-degree misdemeanor. They include fraud, generally; making a willfully false affidavit; fraudulently seeking to change a ballot, ballot envelope, vote or voting certificate; using force or violence or any "tactic of coercion or intimidation" or bribery, menace, threat, or "any other corruption" to try to influence a unit owner's vote; seeking to corruptly influence a vote by giving or promising "anything of value" to someone, other than a wearable campaign advertisement of nominal value or food at an election rally (beverage at a rally is apparently not protected, or buying lunch for an influential unit owner) or — except a licensed attorney giving legal advice — aiding an election fraud offender to avoid consequence.

Removal of Officers and Directors Charged with a Crime

At present, an officer or Director is removed from office upon being charged or indicted for felony theft or embezzlement of Association funds or property. This would be broadened to include the new crimes listed above and obstruction of justice, as well as forgery of a ballot envelope or voting certificate used in an election (but oddly, not a ballot) and failure to timely provide a unit owner with access to an Association record to inspect or obtain a copy, or the destruction of an Association record which is accessible to unit owners.

Repeat violation of providing records access is not needed, as in the creation of a new crime as described above, in order for a Director or officer to be removed for being charged or indicted with that violation.

Further, while the criminal charge is pending, the person is prohibited from serving as a Director or officer, or having access to official records, of any condominium Association, except by a court order.

Association Records

"All invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the Association," as well as "a copy of all building permits" and "a copy of all satisfactorily completed board member educational certificates", are added to the Association records which are accessible to all unit owners.

"The official records must be maintained in a manner that facilitates inspection of the records by a unit owner. In the event that the records are lost, destroyed, or otherwise unavailable, the obligation to maintain official records includes a good faith obligation to recover those records as may be reasonably possible."

The Association may fulfill its obligation to provide access to Association records if the requested records are posted on the Association's website, or are available for download through an application on a mobile device, and the Association directs that the records be accessed in that manner.

This very problematic requirement would be added to the statutory requirement for an Association to provide access to Association records:

"In response to a written request to inspect records, the Association must simultaneously provide a checklist to the requestor of all records made available for inspection and copying. The checklist must also identify any of the Association's official records that were not made available to the requestor. An Association must maintain a checklist provided under this sub-subparagraph for 7 years. An Association delivering a checklist pursuant to this sub-subparagraph creates a rebuttable presumption that the Association has complied with this paragraph" [that is, all of s. 718.111(12)(c), Florida Statutes, providing for access to Association records].

A checklist of all records of the Association, both those provided and those not provided, would be extremely difficult and time-consuming to prepare. Given the criminal penalty for a willful and knowing repeat violation of this requirement which is in this new law, this is a matter of considerable concern.

Records on Association Website

At present, an Association which operates a condominium with 150 or more units must post on its website or through a mobile device app an extremely long list of Association records and notices, which must be constantly updated. That threshold is now reduced to 25 units, effective January 1, 2026. Timeshares are exempt.

Annual Financial Report

The unit owners may not vote to reduce the level of annual financial report, as now required and allowed by the statute, in consecutive fiscal years. In other words, it is allowed at most every other year.

Delivery of Annual Financial Report

At present, it is required that the Association mail or hand-deliver to each unit owner, at the last address furnished to the Association by the unit owner, a copy of the annual financial report or notice that it will be provided upon written request. That "or" is changed to "and," even though it makes no sense to provide both a copy of the financial report and a notice that it will be provided upon request.

This would change to a requirement that the Association provide certain information about the financial report to each unit owner, "by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements." (This of course makes no sense, as one does not use the U.S mail or personal delivery to communicate by email or fax).

Board Meetings

If the Association operates a condominium with more than ten units, the Board must meet at least quarterly, and at that frequency must include on the agenda an opportunity for Association members to "ask questions with respect to reports on the status of construction or repair projects, status of revenues and expenditures during the current fiscal year, and other issues affecting the condominium." There is no stated requirement that anyone answer the questions. This is in addition to the right of members to comment on agenda items at any Board meeting.

This is added to the requirements for Board meetings:

"If an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice, 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."

Representatives of the Division or Condominium Ombudsman are entitled to attend any meeting of the Board, committee or unit owners that is open to unit owners, to perform their duties.

Mandatory Director Education

At present, a new Director has a choice between attending a Director education class or signing a certificate that the Director has read the condominium documents and will work to uphold them and uphold the Director's fiduciary duty.

That would be changed to require both, and to extend the requirements also to existing Directors by June 30, 2025. New Directors will have 90 days from election or appointment (but can submit early, up to a year before taking office). The education requirement is valid for seven years from the date of the certificate and must be repeated for any Board service after that. Detailed

requirements are added for the education course, to last at least four hours, and rule-making authority is provided to the Division for the course curriculum.

In addition, there is added an annual required class on recent changes to the Condominium Act and Division Rules.

Fidelity Bonds

The statutory requirement that the Association maintain a certain fidelity bond or insurance on persons who control or disburse Association funds would become subject to monitoring and enforcement through fines and penalties by the Division.

Protecting Adverse Unit Owner Conduct

Current provisions which limit lawsuits against a unit owner by a local government, business or individual for speech at a public hearing or other related activities (known as Strategic Lawsuits Against Public Participation, or SLAPP suits) are extended and expanded to protect a unit owner for exercising the right to "instruct his or her representatives" or "petition for redress of grievances" with regard to the Association.

This specifically includes reporting code violations to the government "in good faith"; creating, joining or supporting "a unit owners' organization"; reporting a violation of the Condominium Act (including the new crimes being created) or Division Rules to a government agency; complaining to the Association or its representatives about a violation of the Condominium Act or the Nonprofit Corporations Act; exercising a statutory right of a unit owner; or making "public statements critical of the operation or management of the Association."

It is unlawful for an Association to "fine, discriminatorily increase a unit owner's assessments, discriminatorily decrease services to a unit owner, or bring or threaten to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action, based on conduct" described in this new law.

Also, the Association may not expend Association funds in support of a "claim" against a unit owner for any of the newly protected conduct, including but not limited to an action for defamation, libel, slander or tortious interference.

Retaliatory conduct against a unit owner for such an activity may also be raised as a defense in any legal action brought against a unit owner "for possession", whatever that means.

Electronic Voting

It is clarified that a unit owner may consent to participate in electronic voting "electronically" rather than only "in writing" as at present.

Voting Rights Suspension

The right of the Association to suspend the voting rights of a unit owner who is at least 90 days delinquent in a payment to the Association requires notice of the obligation to the unit owner at least 90 days before an election, as well as generally 30 days before the suspension as at present.

Division Jurisdiction

Several years ago, the broad jurisdiction of the Florida Division of Condominiums, Timeshares and Mobile Homes to enforce the Condominium Act as to Associations was limited by the Legislature to financial issues, elections, records maintenance and access, and Association operations during developer control. When "structural integrity reserve studies" (SIRS) became mandated, the Division was given jurisdiction over their "procedural completion" as well.

This new law expands Division jurisdiction to also include the procedural aspects of membership and Board meetings, inquiries by unit owners to Associations under an applicable statute, required disclosures of conflicts of interest, Director removals under the statute and Director recalls. Examples of conduct under the Division's current jurisdiction regarding elections and financial issues are also added.

37 YEARS

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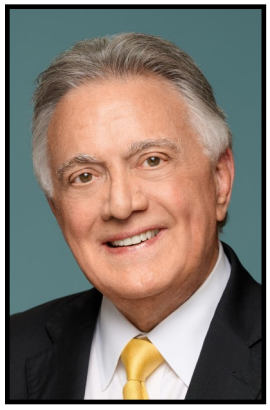
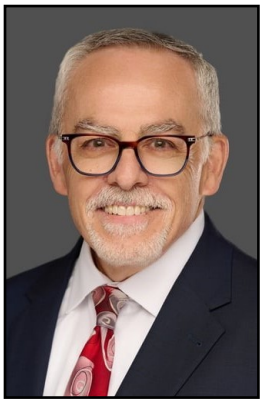


Dan Lobeck

Michelle Rowe

Brett Paben



Joe Gugino

- Assessment Collections
- *Rules Enforcement*
- Construction Defect Claims
- *Neighborhood Protection*
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2033 Main Street, Suite 403, Sarasota, Florida 34237
(941) 955-5622 law@lobeckrowe.com
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