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**The Alliance of Delray Residential Associations
proudly present:**

***2023 Community Association
Legislative & Case Law Update***

Sirs, Reserves, HOA Bill of Rights, Condo. Security, and more!

What To Expect From This Presentation

- ▶ Nobody can remember everything.
- ▶ Nobody expects you to remember everything.
- ▶ Be an issue spotter and delegate.
- ▶ Spotting a potential issue and knowing whom to ask is an important trait for any successful community association director.

2023 Legislative Update

Condominiums- Surfside “Glitch” Bill, Reserves, and Inspections.

- ▶ On June 9, 2023, Governor DeSantis signed the "glitch" bill to purportedly fix some issues with the recent "Surfside" related inspection law. The full text of the law is available [here](#), and a .pdf of this portion of the article is available [here](#). Unless otherwise indicated, this legislation takes effect immediately. As with many legislative efforts, determining the effectiveness of the legislation and the discovery of unintended consequences takes time. At the very least, the changes to the Structural Integrity Reserve Study law (SB 154) listed below are a good start:
- ▶ Reserve Funding:
 - ▶ a) Multi-condominium associations operating at least 25 condominiums can use a line of credit as an alternate funding source for reserve funding.
 - ▶ b) Reserve funding must be based on the association's most recent Structural Integrity Reserve Study.
 - ▶ c) The requirements to waive reserves or use reserves for an alternate purpose (allowable only until 2025) has changed to a majority of the total membership from a majority of those present at a meeting in which quorum was attained.

2023 Legislative Update

Condominiums- Surfside “Glitch” Bill, Reserves, and Inspections.

▶ **Reserve Funding, continued.**

- ▶ d) Inflation can be considered by an association when determining reserve funding.
- ▶ e) Depending on specific requirements, a 40 or 50-year certification may be used instead of the visual survey portion of a SIRS.
- ▶ f) The unduly harsh strict liability standard to find a director liable for a breach of fiduciary duty for not complying with the new reserve requirements has been changed. The new standard is now the more reasonable "willful and knowing."
- ▶ g) Reserves are only required for components an association is responsible for according to its Declaration. Reserves are not needed for items whose useful life exceeds 25 years. However, deferred maintenance reserves for these items are still required.
- ▶ h) Along with architects and engineers, a reserve specialist can now perform the visual inspection portion of a SIRS.
- ▶ i) Exterior doors are now reserve components, and the floor and foundation are not unless the floor and foundation are part of the building's "structure," which, of course, they are.

2023 Legislative Update

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▶ **Inspections:**

- ▶ j) Insurance premiums are excluded from the 115% calculation that allows members to challenge a budget.

- ▶ k) The Florida Building Code is designated as authoritative to determine the height of a building.

- ▶ l) An association has a year or less (depending on local ordinances) to repair damage identified in an inspection.

- ▶ m) Fourteen days' notice to members is required upon an association's receipt from a local governing authority a milestone inspection is required. The notice must also include the date the milestone inspection must be completed.

- ▶ n) An architect and an engineer acting as a licensed design professional may conduct a milestone inspection.

2023 Legislative Update

Condominiums- Surfside “Glitch” Bill, Reserves, and Inspections.

- ▶ m) Fourteen days' notice to members is required upon an association's receipt from a local governing authority a milestone inspection is required. The notice must also include the date the milestone inspection must be completed.
- ▶ n) An architect and an engineer acting as a licensed design professional may conduct a milestone inspection.
- ▶ o) The definition of "substantial structural deterioration" was broadened to include "substantial structural weakness."
- ▶ p) A local governing authority has the discretion to extend an inspection deadline for "good cause," which at the least requires the association to have entered into a contract for a milestone inspection that cannot be completed by the deadline.

2023 Legislative Update

Condominiums- Surfside “Glitch” Bill, Reserves, and Inspections.

- ▶ q) No more than 45 days after receiving the inspection report from the architect or engineer, the association must post a summary on its website, mail it to the members, and make the summary or report available to renters.
- ▶ r) Community association managers no longer have to comply with the structural inspection laws solely because they manage a property "that has a building" on it.
- ▶ s) Local authorities can set a 25-year inspection requirement based on environmental conditions, such as proximity to a shoreline.
- ▶ t) Condominium units in which personal property is covered under a flood master policy or located above specific floors may not be required to have flood insurance.
- ▶ u) As of July 1, 2027, mediation is available to members for certain structural and life-safety disputes.
- ▶ v) Developers must provide prospective buyers with statements regarding milestone inspections, SIRS, and reserve studies, if applicable. The law introduces additional presale notice requirements in contracts to ensure buyer awareness.

2023 Legislative Update

- ▶ On May 5, 2023, Florida's Legislature concluded its annual 60-day legislative session. Unlike previous legislative sessions, this year's session garnered little media attention while the legislators were busy at work passing many laws impacting Florida's community
- ▶ **Homeowner Associations.** **House Bill 919 ("Homeowners Association Bill of Rights")** ([click here for the full bill](#)). **These laws will take effect on October 1, 2023.**
- ▶ **Board meeting notices.** All Board meeting notices must specifically list the meeting's agenda.
- ▶ **Owner deposits.** If a homeowners association collects a deposit from a member for any reason, including for a tenant or construction, and regardless if it is called a "security deposit," the association must maintain all funds separately and not commingle them with association funds. Additionally, all funds deposited with the association must be returned within thirty days after receiving notice the reason for which the deposit was collected is complete. If requested by the owner, the association must provide an accounting of the funds deposited within seven (7) days of receiving the request.
- ▶ **Kickbacks.** If an officer or director (or property manager) solicits or receives anything of value for him or his family from any person or entity providing goods or services to the Association may be immediately removed from the Board by the remaining Board of Directors. The violator is also subject to civil monetary fines. However, an officer, director, or manager may continue to accept food consumed at a business meeting with a value of less than twenty-five dollars (\$25.00) per person or a service or good receipt in connection with the trade fair or education program.
- ▶ **Official Records.** The law clarifies any parcel owner, or their authorized representative, may inspect Official Records.

2023 Legislative Update

House Bill 919 ("Homeowners Association Bill of Rights")

- ▶ **Fines.** The existing law was clarified to make it clear that fines may be levied for violations of the declaration, bylaws, or rules. Additionally, the notice to the member from the fining committee must include a description of the alleged violation, the specific action required to cure such violation, if applicable, and the date and location of the hearing. A parcel owner can attend a hearing by telephone or other electronic means. The letter from the fining committee after its hearing must include any applicable fines or suspensions the committee approved or rejected and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable. All payments for fines are due within five days from the notice to the member.

- ▶ **Voting.** Each of the following acts is considered a fraudulent voting activity and constitutes a misdemeanor of the first degree:
 - a) Willfully and falsely swearing to, or affirming at oath or affirmation, or willfully procuring another person to falsely swear to, or affirm an oath or affirmation in connection with or arising out of, voting activities.

 - b) Perpetrating, or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

2023 Legislative Update

House Bill 919 ("Homeowners Association Bill of Rights")

c) Preventing a member from voting or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

d) Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

e) Giving or promising directly or indirectly anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. However, this does not apply to any food served which is to be consumed at the election rally or meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

f) Using or threatening to use direct or indirect force, violence or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

2023 Legislative Update

Homeowner Associations, House Bill 437

- ▶ **Flags.** If displayed respectfully, a homeowner may display up to two (2) of the following flags:
 - a) The United States flag.
 - b) The official flag of the State of Florida.
 - c) U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard flag.
 - d) POW-MIA flag.
 - e) A first responder flag.

- ▶ **Storage & Display of Items.** An association may not restrict parcel owners or their tenants from installing, displaying, or storing any items on a parcel that are not visible from the parcel's frontage or an adjacent parcel, including, but not limited to, artificial turf, boats, flags, and recreational vehicles.

2023 Legislative Update
Condominiums. Safety, Security and Crime Prevention.
House Bill (HB) 837

When implemented by an association, the following safeguards exempt an association from liability if a third party commits a crime on their property:

- i. Security cameras at points of entry and exit that keep video retrievable for 30 days.
- ii. Lighted parking available from dusk to dawn.
- iii. Lighting in common areas, porches, walkways, and laundry rooms from dusk to dawn.
- iv. Deadbolts measuring at least one inch on every door of every unit.
- v. Locking devices on every window and sliding door not used for community purposes.
- vi. Locked gates at pool areas with fob or key access.
- vii. Peepholes or viewers on doors that do not have windows or window next to doors

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- ▶ viii. By January 1, 2025, associations must have a Crime Prevention Through Environmental Design (CPTED) study performed by a law enforcement agency or a Florida Crime Prevention Through Environmental Design Practitioner (FCP). CPTED studies should be no older than 3 years old, and the association must substantially comply with the assessment.

- ▶ ix. Associations must also provide their employees with safety and crime prevention training by January 1, 2025. This training must familiarize employees with security principles, devices, measures, and standards. After January 1, 2025, associations must train new employees within 60 days. The Florida Crime Prevention Training Institute of the Department of Legal Affairs will develop a proposed curriculum or best practices to implement the training.



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Association Services of Florida
proudly presents:

2023 Case Law Update

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2023 Case Law Update

Rules

The legal test for a valid Board-made rule is:

The board must be granted rule-making authority;

The rule cannot conflict with any right or restriction contained within the covenants, nor any right which inferable therefrom; and

The rule must be reasonable and not discriminatory.

Beachwood Villas v. Poor, 448 So.2d 1143 (Fla. 4th DCA 1994).

In *Lexington Place Condominium Association, Inc. v. Flint* 348 So.3d 650 (Fla. 5th DCA 2022), the Lexington Place Declaration of Condominium provided:

17.4 Pets. No more than two (2) housed pets (as may be defined and re-defined by the Association) shall be maintained in any Unit or and Limited Common Element appurtenant thereto.

The Board adopted a rule prohibiting tenants to have pets and the Court held that Section 17.4 of the Declaration of Condominium inferred two pets are allowed to be maintained in a Unit, no matter whether the occupant is an owner or a tenant. Therefore, the Court deemed the rule an invalid attempt to amend the Declaration.

2023 Case Law Update

Restricting Access

The decision came in a lawsuit that was brought by Latkisha Mosley against the Majorca Isles II Condominium Association. Mosley had been residing as a tenant in the community located in Miami Gardens for over seven years when her most recent lease expired on Nov. 30, 2022. Mosley, was battling cancer and has an active domestic violence protective order against a third party, subsequently continued her tenancy under a month-to-month lease, which is prohibited by the condominium association.

Given the plain language of the statute, the court concluded that the association's restriction of Mosley's resident gate access runs afoul of Florida law. It also concluded that, on at least one occasion, the association had intentionally or unintentionally locked her out through the visitor gate, thereby necessitating the court's intervention.

Consequently, the court issued a temporary injunction requiring the association to reinstate Mosley's resident gate access. It also found that her cancer condition and domestic violence protective order required her to have immediate and unrestricted access, so she would be exempt from the requirement of paying for a bond for the issuance of a temporary injunction.



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