

SETH D. CHIPMAN, P.A.

Attorney at Law

96 Willard Street, Suite 204, Cocoa, FL 32922

Tel: 321-639-1300 ▪ Fax: 321-639-1303 ▪ Email: schipmanlaw@cfl.rr.com

Florida Bar Board Certified Specialist in Condominium and Planned Development Law

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Via Email

Condominium Associations

Re: 2023 Legislative Update – Condominium Associations

Dear Board Members:

I am writing to inform you of changes and developments to various statutes adopted in the 2023 legislative session of the Florida Legislature, affecting community associations. The following is a summary of some of those changes, and reiteration of some statutes that may impact your Association. These statutes are already in effect. I am NOT including every change/amendment to the various Statutes. I am addressing the most significant and noteworthy changes that I feel all condominium associations must be aware of moving forward.

I encourage you to review these statutory changes to various Florida Statutes, given the substance of these new laws and the potential impact that such new laws may have on your Association.

Mandatory Structural Inspections. The term “milestone inspection” has been redefined to mean a structural inspection of a building, including an inspection of the load bearing elements in the primary structural members and primary structural systems as those terms are defined in §627.706, *Fla. Stat.* The reference to “walls” has been removed from the definition of milestone inspection. The milestone inspection must involve, using a licensed engineer or architect attesting to the life-safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair or replacement of any structural component of the building. “The purpose of the inspection is not to determine if the condition of the existing building is in compliance with the Florida building code or fire safety code. Additionally, the milestone inspection services may be provided by a team of professionals, with an engineer or architect acting as the registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.” See: §553.899, *Fla. Stat.*

Substantial Structural Deterioration. The term “substantial structural deterioration” is redefined as “substantial structural distress or substantial structural weakness that negatively affects a building’s general structural condition and integrity.” The term has been refined, now excluding surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.” See: §553.899, *Fla. Stat.*

Milestone Inspection Report Deadlines, §553.899 Fla. Stat.:

1. Initial Deadlines.

- a. an owner, or owners, of a building that is three (3) stories or more in height, as determined by the Florida Building Code, and that is subject in whole or in part to the condominium or cooperative form of ownership, must have a milestone inspection performed by December 31st of the year in which the building reaches thirty (30) years of age based on the date the certificate of occupancy for the building was issued, and every ten (10) years thereafter.
- b. if a building reaches thirty (30) years of age **before** July 1, 2022, the building's initial milestone inspection must be performed by December 31, 2024.
- c. if a building reaches thirty (30) years of age on or **after** July 1, 2022, and **before** December 31, 2024, the building's initial milestone inspection must be performed before December 31, 2025.

See: §553.899(3)(a), *Fla. Stat.*

2. **Proximity to Salt Water.** The provisions regarding buildings located within three (3) miles of the coastline is removed and replaced with the following: “the local enforcement agency may determine that local circumstances, including environmental conditions such as proximity to saltwater as defined in §379.101, Fla. Stat., require that a milestone inspection must be performed by December 31st of the year in which the building reaches twenty-five (25) years of age based on the date the certificate of occupancy for the building was issued and every ten (10) years thereafter.”

See: §553.899(3)(b), *Fla. Stat.*

3. **Deadline Extensions.** The local enforcement agency *may* extend the date by which a building's initial milestone inspection must be completed upon a showing of good cause by the owner or owners of the building that the inspection cannot be timely completed if the owner or owners have entered into a contract with an Architect or Engineer to perform the milestone inspection and the inspection cannot reasonably be completed before the deadline or other circumstance to justify an extension.

See: §553.899(3)(c), *Fla. Stat.*

Milestone Inspection Reports Prepared Prior to July 1, 2022. The local enforcement agency may accept an inspection report prepared by a licensed engineer or architect for a structural integrity and condition inspection of a building performed before July 1, 2022, if the inspection and report substantially complies with the requirements of this section. Notwithstanding that such inspection was completed, the condominium or cooperative association must comply with the unit owner notice requirements. The inspection for which an inspection report is accepted by the local enforcement agency is deemed to be a milestone inspection for the purposes of satisfying Chapter 718 of the Florida Statutes. If a previous inspection and report is accepted by the local enforcement agency, then the deadline for the building's subsequent ten (10) year milestone inspection is based on the date of the accepted previous inspection.

See: §553.899(3)(d), *Fla. Stat.*

4. **Mixed Use and Condominium Hotels.** The milestone inspection report must be arranged by the condominium association and any owner of any portion of the building which is not subject to the condominium form of ownership. The condominium association and any owner of any portion of the building which is not subject to the condominium form of ownership are each responsible for ensuring compliance with the requirements for the milestone inspection.

See: §553.899(4), *Fla. Stat.*

5. **Governmental Notice for Phase One of the Milestone Inspection.** Upon determining that a building must have a milestone inspection, a local enforcement agency must provide written notice of such required inspection to the condominium association to any owner of any portion of the building which is not subject to the condominium form of ownership by certified mail, return receipt requested. Thereafter, the association must notify the unit owners of the required milestone inspection within fourteen (14) days after receipt of the written notice from local government and provide the date that the milestone inspection must be completed. Phase one of the milestone inspection must be completed within one hundred and eighty (180) days after the owner, or owners, of the building received written notice from local government.

Associations should be mindful of the notice requirements imposed on them, once they receive notice from the local government. Additionally, associations should proactively comply with milestone inspection requirements, and not rely on local government agencies to provide reminders or applicable notices.

See: §553.889(5), *Fla. Stat.*

6. **Phase Two of the Milestone Inspection.** If a phase two inspection is required, then within one hundred and eighty (180) days after submitting a phase one inspection report, the Architect or Engineer performing the phase two inspection must submit a phase two progress report to the local enforcement agency with a timeline for completion of the phase two inspection.

See: §553.899(7)(b), *Fla. Stat.*

7. **Post Inspection Requirements.** Upon completion of the phase one and phase two milestone inspections, the Architect or Engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at a minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association and to any other owner of any portion of the building which is not subject to the condominium or cooperative form of ownership.

See: §553.899(8), *Fla. Stat.*

8. In addition, within forty-five (45) days after receiving the applicable inspection report, the condominium or cooperative association must distribute a copy of the inspector prepared

summary of the inspection report to each owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery to the owner's mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to such owners who previously consented to receiving notice by electronic transmission and must post a copy of the inspector prepared summary in a conspicuous place on the property and must publish the full report and inspector prepared summary on the association's website if the association is required to have a website.

See: §553.899(9), *Fla. Stat.*

9. **Governmental Ordinances.** A board of county commissioners, or municipal governing body may adopt an ordinance requiring that a condominium or cooperative association or any other owner that is subject to the milestone report requirements commence repairs for substantial structural deterioration within a specified time frame after the local enforcement agency receives a phase two inspection report however the repairs must be commenced no later than 365 days after receiving the report. If the owner of the building fails to submit such proof, then local government must review and determine if the building is unsafe for human occupancy.

See: §553.899(11), *Fla. Stat.*

10. **Short Term Exemption from the Milestone Inspection.** In addition, if the milestone inspection, or inspection completed for a similar local government requirement, was performed within the past five (5) years, meeting the requirements for the milestone inspection, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

See: §718.112(g)(7), *Fla. Stat.*

Official Record Requests. Previously, the official records of the association were open to inspection by any association member *or* their authorized representative. This language has been revised, as follows: “the official records of the association are open to inspection by any association member **and** any person authorized by an association member as a representative of such member at all reasonable times.”

See: §718.111(12)(c)(1), *Fla. Stat.*

Reserves. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item (the foregoing was not recently added to the Florida Statutes but is an important summary of the existing reserve funding requirements). *The Structural Integrity Reserve Study requirements follow, below.*

In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g), below, for which the association is responsible, pursuant to the declaration of condominium, and the reserve amount for such items must be based on the findings and recommendations of the association's most recent structural integrity reserve study.

With respect to items for which an estimate of useful life is not readily ascertainable, or with an estimated remaining useful life of greater than twenty-five (25) years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.

See: §718.112(f)(2.a), *Fla. Stat.*

The Structural Integrity Reserve Study (the paragraph (g) items). A residential condominium association must have a structural integrity reserve study completed at least every ten (10) years after the condominium's creation for each building on the condominium property that is three (3) stories or higher in height, as determined by the Florida building code, which includes, at a minimum, the study of the following items as related to the structural integrity and safety of the building:

- a) Roof;
- b) Structure, including load bearing walls and other primary structural members, and primary structural systems as those terms are defined in §627.706, Fla. Stat.;
- c) Fire proofing and fire protection systems;
- d) Plumbing;
- e) Electrical systems;
- f) Waterproofing and exterior painting;
- g) Windows and exterior doors;
And any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the items listed above as determined by the visual inspection portion of the structural integrity reserve study.

Commercial condominiums are exempt from the SIRS requirements. In addition, the terms "floor" and "foundation" were removed from the items needed to be included in the structural integrity reserve study but, however, are also potentially part of the "Structure".

See: §718.112(2)(g), *Fla. Stat.*

Structural Integrity Reserve Items with a Life of 25 Years or Greater. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items.

See: §718.112(f)(2.a), *Fla. Stat.*

Exclusions to the Requirement to Prepare a Structural Integrity Reserve Study: This paragraph does not apply to buildings

- less than (3) three stories in height;
- single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground;
- any portion or component of a building that has not been submitted to the condominium form of ownership;
- or any portion or component of a building that is maintained by a party other than the association.

See: §718.112(g)(4), *Fla. Stat.*

Deadlines to Complete the Structural Integrity Reserve Study. Associations existing before July 1, 2022, which are unit owner controlled, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three (3) stories or higher in height. However, an association that is required to complete a milestone inspection on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection period but, however, in no event may the structural integrity reserve study be completed after December 31, 2026.

See: §718.112(g)(6), *Fla. Stat.*

Waiving and Reducing Reserves. The members of a unit owner controlled association may determine, by a majority vote of the total voting interests of the association, to provide no reserves or less reserves than required by this subsection. However, for a budget adopted on or after December 31, 2024 the **members of a unit owner controlled association that must obtain a structural integrity reserve study may NOT determine to provide no reserves**, or less reserves, than required by this subsection before the items listed in paragraph below except that members of an association operating a multi-condominium may determine to provide no reserves, or less reserves, than required by this subsection if an alternative funding method has been approved by the Division.

See: §718.112(f)(2.a), *Fla. Stat.*

Using Reserves for a Different Purpose. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and may only be used for authorized reserve expenditures unless they are used for other purposes as approved in advance by a majority of all of the voting interests. For a budget adopted **on or after December 31, 2024**, members of a unit owner-controlled association **that must obtain a structural integrity reserve study may NOT vote to use reserve funds or any interest accruing thereon for any other purpose** other than the replacement or deferred maintenance costs of the components listed in paragraph (g).

See: §718.112(f)(3), *Fla. Stat.*

Breach of Fiduciary Duty for Failure to Complete the Structural Integrity Reserve Study Period. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study, then such failure is deemed to be a breach of the officers' and directors' fiduciary relationship to the unit owners.

See: §718.112(g)(8), *Fla. Stat.*

Disputes Regarding the Milestone Inspection and Structural Integrity Reserve Study. The term “dispute”, as used in §718.1255, Fla. Stat., **effective 07-01-2027**, will include the failure to:

- 1) obtain the milestone inspection, pursuant to §553.899, Fla. Stat.
- 2) obtain a structural integrity reserve study required pursuant to §718.112(2)(g), Fla. Stat.
- 3) fund reserves as required for an item identified in §718.112(2)(g), Fla. Stat.
- 4) make, or provide, necessary maintenance or repairs of the condominium property recommended by a milestone inspection or a structural integrity reserve study.

However, the aforementioned are not subject to mandatory non-binding arbitration but rather must be submitted to presuit mediation and, if unresolved, followed by litigation.

See: §718.1255(1)(d), *Fla. Stat.*

Owner Disclosure Requirements to Prospective Purchasers. (2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter, must comply with this subsection before the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller’s expense, to a current copy of all of the following:

5. A copy of the inspector-prepared summary of the milestone inspection report as described in s. 553.899, if applicable.
6. The association’s most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.
7. A copy of the inspection report described in s. 718.301(4)(p) and (q) for a turnover inspection performed on or after July 1, 2023
§718.503(2)(a), *Fla. Stat.*

ADDITIONAL NEW LEGISLATION AFFECTING ALL ASSOCIATIONS

Statute of Limitation Significantly Reduced. House Bill 837 shortens the time upon which to file a lawsuit founded on negligence from four (4) years to two (2) years. In addition, additional litigation protections are created for armed service members when on active duty.

See: §95.11(4)(a), *Fla. Stat.*

Modified Comparative Negligence. The bill also modified Florida’s damages apportionment standard from a pure comparative negligence approach to a modified comparative negligence approach, except that this modification does not apply to personal injury or wrongful death cases arising out of medical negligence pursuant to chapter 766, *Fla. Stat.*

Under the bill, **any party to a negligence action not brought under Chapter 766, Fla. Stat., (medical negligence) who is more than 50 percent at fault for his or her own harm recovers no damages:**

(6) GREATER PERCENTAGE OF FAULT.—In a negligence action to which this section applies, any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages. This subsection does not apply to an action for damages for personal injury or wrongful death arising out of medical negligence pursuant to chapter 766.

See: §768.81(6), *Fla. Stat.*

**SAFETY, SECURITY AND CRIME PREVENTION:
LIMITS OF LIABILITY FOR TAKING CERTAIN ACTIONS**

The following safeguards exempt an association from liability if a third party commits a crime on their property:

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

See: §768.0706(2)(a) *Fla. Stat.*

**CONSTRUCTION DEFECT LAWSUIT TIMELINE IN WHICH TO FILE A LAWSUIT IS
SIGNIFICANTLY SHORTENED (SENATE BILL 360).**

Effective July 1, 2023.

Construction Defects. Senate Bill 360, an already existing law, shortens the time in which to bring a latent (hidden) construction related defect claim from ten (10) years to seven (7) years. When bringing an action (lawsuit) founded on the design, planning, or construction of an improvement to real property such claim begins from the time one knew, or should have known, of such defect as measured from the issuance of the certificate of occupancy and must be brought within four (4) years. However, the period to file the lawsuit is measured from the earlier date of the issuance of the temporary certificate of occupancy, or certificate of completion, rather than from the date of the issuance of the certificate of occupancy.

Notwithstanding being within the statute of limitations to file a lawsuit, the statute of repose acts as a hard deadline in which to file such a lawsuit. As to latent defects, assume such latent defect was discovered in year eight (8) from the issuance of the certificate of occupancy and the aggrieved owner could not possibly have known of the defect earlier. In the past, so long as the claim was brought within four (4) years from the time of discovery, but not later than ten (10) years from the issuance of the certificate of occupancy, then the case could proceed. But, however, with the shortening of the statute of repose to seven (7) years, using the aforementioned example, such lawsuit could not be filed (or, if filed, a strong defense would exist) because it would be already passed the seven (7) year statute of repose when first discovered.

See: §95.11(3)(b), *Fla. Stat.*

INSURANCE

SENATE BILLS 2A & 2B. (SPECIAL SESSION)

SENATE BILL 2A:

Reinsurance. The state of Florida provided for an optional hurricane reinsurance that insurance companies can purchase at reasonable near market rates with the goal being to stave off additional premium increases.

Timeline Reductions.

1. The claim filing deadline is reduced from two years to one year for a newly reopened claim and from three years to 18 months for a supplemental claim.
2. The time is reduced for insurance companies to pay or deny claims from 90 to 60 days.
3. The time is reduced for insurance companies to review and acknowledge a claim communication from 14 days to seven days.
4. The time is reduced for an insurance company to begin investigation of a claim from 14 days to seven days.
5. The time for an insurance company to conduct a physical inspection is reduced from 45 days to 30 days and this applies to hurricane claims as well.
6. Insurance companies may use electronic methods to investigate damage and allow policyholders to participate in the use of such methods.
7. Insurance companies are required to send any adjuster report estimating the damage to the policy holder within seven days after it is created.
8. All undisputed amounts of benefits must be paid out to the policyholder within 60 days rather than the previously existing 90 days.

Effective March 1, 2023.

Attorneys' Fee Awards. One way attorneys' fee provisions related to property insurance claims have been eliminated meaning neither party is awarded prevailing party attorneys' fees and each party is responsible for payment of their own attorneys' fees however, this is mitigated through the offer of judgment whereby if an offer is made and at trial the other side does not exceed at least 125% of such offer, then that could trigger the prevailing party to still have to pay the other sides attorneys' fees.

Assignment of Benefits. No post loss insurance benefits under any residential property insurance policy or commercial property insurance policy issued on or after January 1, 2023, can be assigned to a third party. Therefore, assignment of benefits is no longer an option.

Bad Faith. Before a policyholder can sue a property insurance company for bad faith-based on how the insurance company settled the claim, the court of competent jurisdiction must first find that a breach of contract occurred. In addition, receiving an appraisal award higher than the insurance companies' appraisers' final estimate may be evidence of bad faith, but on its own does not give rise to a bad faith claim.

Flood Insurance. Citizens residential policyholders can be required to obtain flood insurance as a condition of having coverage from citizens. Considering that the state of Florida is primarily built on swampland, this makes sense.

Mandatory Arbitration. Insurance companies can now offer a policy with mandatory arbitration to settle disputes rather than litigation so long as the insurance company also offers a policy without a mandatory binding arbitration clause. If such binding arbitration is required, then a premium discount is required for such policy.

This bill substantially amends §§624.1551, 624.3161, 626.9373, 626.9541, 627.351, 627.3511, 627.3518, 627.428, 627.7011, 627.70131, 627.70132, 627.70152, 627.7074, 627.7142, 627.7152, 631.252, of the Florida Statutes. This bill creates §215.5552 and §627.70154 of the Florida Statute.

I hope that you find the foregoing information to be helpful, and feel free to contact me if you have any questions.

Sincerely,

/s/ Seth D. Chipman

Seth D. Chipman, Esq.

**Board Certified in Condominium &
Planned Development Law**

Seth D. Chipman, P.A.
96 Willard St., Suite 204
Cocoa, FL 32922