



August 2023

RE: 2023 Legislative Update – Homeowners Associations

Dear Board of Directors:

The purpose of this letter is to provide your association with a summary of the most recent and relevant changes promulgated by the Florida Legislature impacting homeowners associations. Specifically, House Bill 919, known as the Homeowners Association Bill of Rights (effective on October 1, 2023) and House Bill 437 (effective on July 1, 2023). Accordingly, please be advised of the following statutory changes which are now in effect:

1. **Board Meeting Notices.** Notices of all board meetings must specifically identify agenda items for the meetings and must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.
2. **Official Records.** The provisions pertaining to official records of homeowners associations was amended to require the association to maintain a current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices. The association shall also maintain e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's email address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from association records when the member revokes consent to receive notice by electronic transmission. However, the association is not liable for an erroneous disclosure of the e-mail address or the facsimile number for receiving electronic transmission of notices.
3. **Commingling of Deposits.** If an association collects a deposit from a member for any reason, including to pay for expenses that may be incurred as a result of construction on a member's parcel, such funds must be maintained separately and may not be commingled with any other association funds. Upon completion of the member's construction project or other reason for which the deposit was collected, the member may request an accounting from the association of his or her funds that were deposited, and the association must provide such accounting to the member within 7 days after receiving the member's request. An association must remit payment of any unused funds to the member within 30 days after receiving notice that the member's construction project, or other reason for which the deposit was collected, is complete.
4. **Anti-Fraud/"Kickback" Provisions.** An officer, a director, or a manager may not solicit,

offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the association. An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback from which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association is subject to monetary damages under §617.0834. If the board finds that an officer or a director has violated the aforementioned, the board shall immediately remove the officer or director from office. The vacancy shall be filled according to law until the end of the officer's or director's term of office.

However, an officer, a director, or a manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs.

5. **Grounds for Immediate Removal of a Director or Officer from Office.** A director or an officer charged by information or indictment with any of the following crimes must be removed from office:
- Forgery of a ballot envelope or voting certificate used in a homeowners' association election;
 - Theft or embezzlement involving the association's funds or property;
 - Destruction of or refusal to allow inspection or copying of an official record of a homeowners' association which is accessible to parcel owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence; and
 - Obstruction of justice as provided in Chapter 843, Fla. Stat.

The board shall fill the vacancy as provided in §730.306(9), Fla. Stat. until the end of the period of the suspension or the end of the director's term of office, whichever occurs first.

If such criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order.

If the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of officer.

6. **Conflict of Interest Disclosures for Developer Appointed Board Members and Officers.** Directors and officers of an association who are appointed by the developer must disclose to the association their relationship to the developer each calendar year in which they serve as a director or an officer. Directors and officers appointed by the developer must disclose any other activity that may reasonably be construed to be a conflict of interest. However, a developer's appointment of an officer or director does not create a presumption that the officer or director has a conflict of interest with regard to the performance of his or her official duties.
7. **Conflict of Interest Disclosures for Board Members and Officers.** Directors and officers must disclose to the association any activity that may be reasonably construed to be a conflict

of interest at least 14 days before voting on an issue or entering into a contract that is the subject of the conflict. A rebuttable presumption of a conflict exists if any of the following acts occur without prior disclosure to the association:

- A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.
- A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability company, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

8. **Fines and Suspension of Use Rights.** The procedures set forth in §720.305 pertaining to the levy of fines and/or suspension of rights were further clarified to provide that a fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner at his or her designated mailing or e-mail address in the official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and a hearing before a committee of at least three (3) members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director or employee. The notice 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 has the right to attend a hearing by telephone or other electronic means.

After the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that 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.

If the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner.

9. **Fraudulent Voting Activities.** Effective October 1, 2023, §720.3065, each of the following acts is considered a fraudulent voting activity relating to association elections and constitutes a misdemeanor in the first degree:

- Willfully and falsely swearing to or affirming an 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.
- 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.
- 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.
- 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.
- 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 food served which is to be consumed at an election rally or a 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.

- Using or threatening to use, directly or indirectly, 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.

10. Installation, Display, and Storage of Items. House Bill 437, effective July 1, 2023, creates property owners' rights to install, display, and store items on their lot and clarifies the ability to display certain flags.

If any covenant, restriction, bylaw, rule, or requirement of an association prohibits a homeowner from displaying flags permitted under §720.304, the homeowner may still display in a respectful manner up to two (2) of the following portable, removable flags, not larger than 4 ½ feet by 6 feet:

- The United States flag
- The official flag of the State of Florida
- A flat that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard
- A POW-MIA flag
- A first responder flag, which may incorporate the design of any other flag set forth above to form a combined flag. The term "first responder" means a flag that recognizes and honors the service of any of the following:
 - Law enforcement officers
 - Firefighters
 - Paramedics or emergency medical technicians
 - Correctional officers
 - 911 public safety communicators
 - Advance practice registered nurses, licensed practical nurses, or registered nurses
 - Persons participating in a statewide urban search and rescue program developed by the Division of Emergency Management
 - Federal law enforcement officers

Regardless of any covenants, restrictions, bylaws, rules or requirements of the association, a homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property as long as the flagpole does not obstruct sightlines at the intersection and is not erected within or upon an easement. The homeowner may further display in a respectful manner from that flagpole, one official United States flag, not larger than 4 ½ feet by 6 feet, and may additionally display one other flag as permitted above. Such additional flag must be equal in size to or small than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the governing documents.

The foregoing statutory changes will have a significant impact on association operations. It is critical that your association review the foregoing statutory changes and take the necessary steps to achieve compliance. Should you have any questions or concerns with respect to any of the statutory changes discussed above, please do not hesitate to reach out to one of our attorneys and we will be happy to assist you.

Sincerely,

THE EISINGER LAW TEAM