EISINGER LAW

June 2024

RE: 2024 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. This letter discusses the recent statutory changes including HB 1203 (effective on July 1, 2024), HB 59 (effective on July 1, 2024), HB 293 (effective on May 28, 2024), and HB 1645 (effective July 1, 2024). Should you have any questions concerning the contents of this letter or any other matter, please do not hesitate to contact our Firm.

HOUSE BILL 1203 (Various Matters)

EFFECTIVE ON JULY 1, 2024 – Chapter No. 2024-221

House Bill 1203 ("HB 1203") was signed by the Governor on May 31, 2024, and the provisions of the Bill, unless noted otherwise, are set to take effect on July 1, 2024. HB 1203 enacts a number of comprehensive changes for the laws applicable to homeowners' associations.

Community Association Managers.

Fla. Stat. §468.4334(3) imposes new requirements upon community association property managers and community association management firms ("managers") providing management services to homeowners' associations. Managers are now statutorily required to attend, in person, at least one (1) member or board meeting annually. Managers must provide the membership of the association the names and contact information for each management employee assigned to the association as well as the employee's hours of availability and summary of duties. This information must be posted on the association's website, to the extent that an association is required to maintain same. Additionally, upon request, managers must provide members with a copy of the contract between the manager and the association. This contract must be maintained as part of the association's official records. Should there be a change in any of this information, the manager must update the association and its members within 14 business days of such changes.

Amendments to Fla. Stat. §468.4337 set forth new continuing education requirements for community association managers, requiring the completion of at least five (5) hours of continuing education that pertains specifically to homeowners' associations, three (3) of which must relate to recordkeeping. These education requirements must be completed every two (2) years.

Director Education Requirements

The board member education requirements set forth in Fla. Stat. §720.3033 have been significantly amended to provide that within 90 days of being elected or appointed to the board, each director must submit a certificate of having satisfactorily completed the educational curriculum administered by a department-approved education provider. The statute no longer provides for self-certification. Instead, newly elected or appointed directors must attend a course that addresses training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements. Directors must complete the education course specific to newly elected or appointed directors at least every four (4) years.

Additionally, the new statute sets forth continuing education requirements for board members that remain on their board for consecutive years. A director of an association that has fewer than 2,500 parcels must complete at least four (4) hours of continuing education annually. A director of an association that has 2,500 parcels or more must complete at least eight (8) hours of continuing education annually A director who does not timely complete the educational course requirements and file the educational certificate is suspended from the board until he or she complies with the requirement. The department is required to adopt rules to implement and administer the educational curriculum and continuing education requirements under the new subsection of the statute.

Fiduciary Duty and Liability.

A clarification to Fla. Stat. §720.303 confirms that the officers and directors of an association are held to the general standards for officers and directors of not-for-profit corporations, as set forth in Fla. Stat. §617.0830. Specifically, directors shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner believed to be in the best interests of the corporation. Directors are not liable for any action taken as a director, or any failure to take any action, if they have performed their duties in accordance with these general standards.

In discharging their duties, directors may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the association whom the director reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or (c) a committee appointed by the board of directors of which the specific director is not a member, if the director reasonably believes the committee merits confidence.

Official Records and Website/Application Requirements.

Fla. Stat. §720.303(4), which sets forth the official records that must be maintained by an association, now requires that the official records of the association be maintained for at least seven years, unless the association's governing documents require a longer period. Associations are also

now required to adopt a document retention policy, setting forth the method or policy by which the official records of the association are to be retained and the time period such records must be retained. This policy must be made available to the parcel owners on the Association's website or application, if the Association is required to maintain a website.

By January 1, 2025, an association that has 100 or more parcels shall be required to post the following documents on their website or make the same available through an application that can be downloaded on a mobile device:

- ✓ The articles of incorporation, recorded by-laws, and declaration of covenants for the Association, and a copy of each amendment thereto;
- ✓ The current rules and regulations (including rules governing the method or policy by which official records of the association are to be retained and the time period such records must be retained);
- ✓ A list of all executory contract or documents to which association is a party or under which the association or the parcel owners have an obligation or responsibility and, after bidding for the related materials, equipment or services has closed, a list of bids received by the association within the past year;
- ✓ The annual budget and any proposed budget to be considered at the annual meeting;
- ✓ The financial report and any monthly income or expense statement to be considered at a meeting;
- ✓ Current insurance policies;
- ✓ Certifications of each director as required by Section 720.333(1)(a)(discussed further in the section entitled "Director Education Requirements" hereinabove);
- ✓ All contracts or transactions between the association and any director, officer, corporation, firm, association that is not an affiliated homeowners' association, or any other entity that a director of the association is also a director or officer and has a financial interest; and
- ✓ Any contract or document regarding a conflict of interest or potential conflict of interest. The conflicts considered under this section are contracts between the association and an entity in which the property manager has a financial interest and was required to disclose under Section 468.436(2)(b)(6) and contracts between the association and a director or entity in which the director is financially interested in and was required to disclose pursuant to Section 720.3033(2).

In addition to the foregoing, the new website requirements mandate that notices of any scheduled member and/or board meetings and the agenda for such meetings be posted in plain view on the homepage of the website or application, or on a separate subpage of the website or application labeled "Notices", conspicuously visible and linked from the homepage. For membership meetings, the Association is further required to post on its website or application any document (i.e. contract, amendment, etc.) to be considered on the meeting agenda for at least 7 days before the meeting at which such document or information within the document will be considered.

The association's website or application must be accessible through the internet and include a separate section that is only accessible by parcel owners and employees of the association. Upon written request by an owner, the association must provide the owner with a

username, password and access to the protected sections of the website or application. The Association must ensure that the records and information that is statutorily inaccessible to members or parcel owners are not posted on the website or application (i.e. sale/lease applications or other confidential information). If protected information is included in documents that are posted on the website, the association must ensure that such information is redacted before posting the documents. Notwithstanding, the association is not liable for disclosing protected or restricted information unless such a disclosure is made with a knowing or intentional disregard of the protected or restricted nature of such information.

Inspection and Copying of Records

Keeping with efforts to make the access to association information transparent, the legislature enacted a number of changes to Fla. Stat. §720.303(5), which governs inspections and copying of official records. As a point of clarification, official records requests are now limited to requests from parcel owners.

The new statute imposes significant penalties for the knowing, willful and repeated violation of a parcel owner's right to inspect and copy the official records of the Association. Specifically, member of the board, association, or manager who knowingly, willfully and repeatedly violates these rights with the intent of causing harm to the association or one or more of its members commits a misdemeanor of the second degree. The statue defines the term "repeatedly" to mean two or more violations within a 12-month period. Additionally, any person who knowingly and intentionally defaces or destroys accounting records during the period in which such accounting records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records, with an intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree. Lastly, 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.

Fla. Stat. §720.303(5)(i) has been added to address subpoenas received by an association. If an association receives a subpoena for records from a law enforcement agency, the association is required to comply with that subpoena within five (5) business days after receipt of the subpoena, unless otherwise specified by the law enforcement agency or subpoena. There is also an affirmative obligation on the part of the association to assist a law enforcement agency in its investigation, to the extent permitted by law.

Financial Reporting Requirements

Fla. Stat. §720.303(7), which sets forth the financial reporting requirements of associations based upon the association's total annual revenues, now requires that associations with at least 1,000 parcels prepare audited financial statements, regardless of the association's total annual revenues. Moreover, while the statute permits associations to provide a lower threshold of financial reporting upon a vote of the majority of the voting interests present at a properly called meeting of the association, this lower threshold of financial reporting may not be implemented for consecutive fiscal years.

Debit Cards

Pursuant to the newly enacted Fla. Stat. §720.303(13), an association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expenses. The use of credit cards is still permitted.

A person who uses a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association is deemed to have committed a theft. The term "lawful obligation" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

Requirement to Provide an Accounting

Pursuant to Fla. Stat. §720.303(14), where a parcel owner makes a written request to the board for a detailed accounting of any amounts owed to the association related to the parcel, the board is required to provide such information within fifteen (15) business days after receipt of a written request. After a parcel owner makes a written request for an accounting, he or she may not request another detailed accounting for at least 90 calendar days. Failure by the board to respond to a written request for a detailed accounting pursuant to the above provision constitutes a waiver of any outstanding fines of the owner who requested such accounting with respect to fines that are more than 30 days past due and for which the association has not given prior written notice of the imposition of such fines.

Criminal Punishment for "Kickbacks" and Removal of Directors or Officers.

Fla. Stat. §720.3033(3) has added reference to "kickbacks", providing that an officer, director, or manager may not solicit, offer to accept, or accept same. A "kickback" is defined as any thing or service of value for which consideration has not been provided for an officer's, director's, or a manager's 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, director, or manager who knowingly solicits, offers to accept, or accepts a kickback commits a third-degree felony and is subject to monetary damages. If the board finds that an officer or director has received a kickback, the board must immediately remove the officer or director from office and fill the vacancy according to law until the end of the officer or director's term of office.

Fla. Stat. §720.3033(4)(a) has been further clarified to provide that a director or officer **charged by information or indictment** for 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 the refusal to allow inspection of an official record of the association within the time periods set by law in furtherance of crime; obstruction of justice; or any criminal violation set forth in Chapter 720, **must be removed from office and a vacancy declared**.

Architectural Control Covenants.

Fla. Stat. §720.3035, governing architectural control covenants and parcel owner improvements has been significantly modified to require that associations reasonably and equitably apply and enforce on all parcel owners the architectural and construction improvement standards authorized by the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants. Where the board or any authorized architectural committee of the association denies the parcel owner's request or application for construction of a structure or other improvement on a parcel, the board or committee must provide written notice to the parcel owner stating with specificity the rule or covenant on which the association or committee relied when denying the request or application and the specific aspect or part of the proposed improvement that does not conform to such rule or covenant.

Significantly, board of directors or any architectural committee of an association may not enforce a covenant, rule or guideline that: (1) limits or places restrictions on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel, an adjacent common area, or a community golf course; (2) requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system, 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 association or a committee thereof.

Additionally, Fla. Stat. §720.3045, which describes the association's ability to restrict parcel owners from installing, displaying, or storing any items on the parcel which are not visible from the parcel's frontage or an adjacent parcel, has been clarified to also apply to items which are not visible from an adjacent common area, or a community golf course. These items include, but are not limited to, artificial turf, boats, flags, vegetable gardens, clotheslines, and recreational vehicles.

Procedures for Levying Fines and Suspensions.

Fla. Stat. §720.305(2)(b) has been amended to extensively modify the procedures and requirements in connection with the levying of fines and suspensions of use rights. Associations should closely review their policies and procedures to ensure compliance with the following requirements:

Required notification of a parcel owner's right to a hearing. A fine or suspension levied by the board may not be imposed unless the board first provides at least 14 days' written notice of the parcel owner's right to a hearing to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, to any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended. A parcel owner has the right to attend a hearing by telephone or other electronic means.

Required timeframe for committee hearing. Such committee hearing must be held within 90 days after issuance of the notice 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 committee may hold the hearing by telephone or other electronic means.

Notice requirements. The committee hearing notice must include a description of the alleged violation, the specific action required to cure such violation, if applicable, and the hearing date, location and access information if held by telephone or other electronic means of the hearing.

Post-Hearing Results. Within seven (7) days after the hearing, the committee shall provide written notice to the parcel owner 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, or fulfill a suspension, or the date by which a fine must be paid.

Cure and/or compliance. If a violation has been cured before the hearing or in the manner specified in the written notice setting forth the post-hearing results, a fine or suspension may not be imposed. If a violation is not cured and the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the committee must set a date by which the fine must be paid, which date must be at least 30 days after delivery of the written notice setting forth the post-hearing results.

Attorney fees and costs. Attorney fees and costs may not be awarded against the parcel owner based on actions taken by the board before the date set for the fine to be paid. If a violation and 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 as set forth in the written notice, reasonable attorney fees and costs may be awarded to the association in a subsequent legal action. However, attorney fees and costs may not begin to accrue until after the date noticed for payment and the time for an appeal has expired.

Lastly, Fla. Stat. §720.305(7) contains new prohibitions on the items for which an association can levy a fine or impose a suspension. So long as the association's governing documents does not provide otherwise, an association may not levy a fine or issue a suspension for:

- Leaving garbage receptacles at the curb or end of the driveway within 24 hours before or after the designated garbage collection date or time; or
- Leaving holiday lights or decorations on 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 violation to the owner.

Fraudulent Voting Activities.

Fla. Stat. §720.3065 now provides additional criminal classifications for fraudulent voting procedures. The following are now considered first-degree misdemeanors:

- 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 aid to the offender with the intent that the offender avoid or escape detection, arrest, trial, or punishment.

Prohibited Restrictions (Vehicles, Vendors).

Fla. Stat. §720.3075 has been amended to provide that associations may no longer prohibit an owner, tenant, guest, or invitee of the property owner from parking their personal vehicle, including pickup trucks, in the owner's driveway, or in any other area at which the owner, tenant, guest, or invitee has the right to park pursuant to pursuant to applicable state, county and municipal regulations. Additionally, the association's governing documents may not prohibit an owner, tenant, guest, or invitee from parking their work vehicle in the owner's driveway, regardless of whether the vehicle has an official insignia or visible designation, so long as the vehicle is not a commercial vehicle as defined by Fla. Stat. §320.01(25). Likewise, associations may not prohibit owners from operating a vehicle that is not a commercial vehicle in conformance with state traffic laws, on public roads or rights-of-way or the property owner's parcel. Moreover, Fla. Stat. §720.318 has been amended to provide that associations may not prohibit first responders from parking their assigned first responder vehicle in the area where the owner, tenant, guest, or invitee otherwise has a right to park, including on public roads or rights of way.

Associations may not prohibit owners from inviting, hiring, or allowing entry to contractors or workers onto the owner's property simply because the contractor or worker is not on the association's preferred vendor list. Associations are also prohibited from precluding owners from using contractors or workers on their property because the contractor or worker does not have a professional license. Furthermore, an association may not require a contractor or worker to provide a professional or occupational license as a precondition to entry onto an owner's property.

Interest on Assessments.

Fla. Stat. §720.3085, governing the payment of assessments, has been clarified to provide that if no rate is provided in the declaration or bylaws, simple interest accrues at the rate of 18 percent per year. Moreover, regardless of any provision in a governing document to the contrary, no compound interest may accrue on assessments and installments on assessments that are not paid timely.

Electronic Voting.

Fla. Stat. §720.317, which governs the electronic voting process, has been clarified to provide that owners may consent to online voting electronically or in writing.

House Bill 59 ("HB 59") was signed into law by the Governor on May 28, 2024, and takes effect on July 1, 2024. Fla. Stat. §720.303(13) now requires homeowners' associations to provide copies of the association's existing rules and covenants to every member of the association by October 1, 2024, via a physical or digital copy of same. Associations shall be further required to provide a physical or digital copy of the association's rules and covenants to every new member of the association. If the association's rules and covenants are amended, the association must provide every member of the association with a copy of the amended rules and covenants. Associations may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

The association may comply with these requirements by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website if such website is accessible to the members of the association and the association sends notice to each member of its intent to utilize the website for this purpose. This notice must be sent by electronic mail to any member of the association who has consented to receive notices by electronic transmission and by mail to all other members of the association at the address identified as the member's mailing address in the official records of the association.

House Bill 293 (Hurricane Protection Specifications)

EFFECTIVE MAY 28, 2024 – Chapter No. 2024-205

House Bill 293 ("HB 293") was signed by the Governor on May 28, 2024, and takes effect immediately. Fla. Stat. §720.3035(6) applies to all homeowners' associations in the state, regardless of when the community was created, and requires associations to adopt hurricane protection specifications for each structure or other improvement on property governed by the association. The specifications may include the color and style of protection products and any other factor deemed relevant by the board and must comply with the applicable Florida building code.

Further, the board, any architectural control committee or similar committee may not deny an owner's application for the installation, enhancement, or replacement of hurricane protection which conforms with the specifications adopted by the association. The board or such committee may, however, require a parcel owner to adhere to an existing building scheme regarding the external appearance of the hurricane protection product.

The amendment defines the term "hurricane protection" to include, but not be limited to, roof systems recognized by the Florida Building Code, which meet ASCE 7-22 48 standards, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, exterior fixed generators, fuel storage tanks, and other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the association.

House Bill 1645 (Energy Resources)

EFFECTIVE JULY 1, 2024 – Chapter No. 2024-186

House Bill 1645 ("HB 1645"), signed by the Governor on May 15, 2024, provides for the use of various types of energy sources and related appliances provided same comply with Florida

Law. Specifically, Fla. Stat. §720.3075(3) provides that an association's governing documents may not preclude types or fuel sources of energy production which may be used, delivered, converted, or supplied by the certain entities authorized to serve customers within the association. Likewise, an association's governing documents may not preclude the use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by such entities. The term "appliance" means a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

House Bill 621 (Property Rights)

EFFECTIVE JULY 1, 2024 – Chapter No. 2024-44

House Bill 621 ("HB 621") was signed into law by the Governor on March 27, 2024, in response to the increased prevalence of "squatters" unlawfully entering residential property and refusing to leave when asked. Fla. Stat. §82.036 provides a limited process for the removal of unauthorized persons from residential real property. Under this new process, a property owner or his or her authorized agent may file a verified complaint with the sheriff in the county in which the property is located for immediate removal of such unauthorized persons. Upon verification of the identity of the person filing the complaint and verification of the person's right to possess the real property, the sheriff must serve notice to the unlawful occupants to immediately vacate the property. The statute allows the sheriff to charge a fee for this service as well as a reasonable hourly rate if the property owner requests the sheriff's assistance in keeping the peace while changing the locks and removing the unlawful occupant's personal property from the residence.

The lawful property owner is immune from liability for any loss, destruction, or damage to personal property, unless the removal was wrongful. The bill creates a civil cause of action for wrongful removal and authorizes a wrongfully removed party to collect damages, court costs, and attorney fees, where appropriate.

The bill also creates the following crimes:

- Unlawfully detaining or trespassing upon a residential dwelling and intentionally causing at least $1,000 in damage to such dwelling is a second-degree felony.

- Using a false document purporting to be a valid lease or deed is a first-degree misdemeanor.

- Fraudulently listing for sale or renting or leasing residential property without possessing an ownership right to or leasehold interest in the property is a first-degree felony.

House Bill 623 (Builder's Warranty)

EFFECTIVE JULY 1, 2024 – Chapter No. 2024-95

On April 16, 2024, the Governor signed House Bill 623 ("HB 623"), which creates Fla. Stat. §553.837 pertaining to the warranties provided for newly constructed homes. Effective July 1, 2025, builders will be required to warrant homes for all construction defects of equipment, material, or workmanship furnished by the builder or any subcontractor or supplier that materially violated the Florida Building Code for one year after the original conveyance of title to the initial

owner or after the date of initial occupancy of the dwelling, whichever occurs first. The warranty does not apply to appliances or equipment that are covered under a manufacturer warranty, normal wear and tear, normal house settling, construction, modification, or repair work performed by the initial purchaser to the extent the work was not performed by the builder or its agent, employees, or contractors, damage caused by a purchaser, or damage caused by acts of God. Builders can fix any defects at their own expense or purchase a warranty from a home warranty association to cover warranty repair costs. This warranty will apply to subsequent owners so long as the one-year warranty period is still active.

Nonetheless, the express terms of a written warranty will satisfy this statutory warranty only if the scope, coverage, and duration of the express written warranty meets or exceed the requirements of this statute, the express written warranty automatically transfers to any new owner during at least the initial year of the warranty and include certain statutorily required disclosures if the written express warranty is longer than that required by the statute. The disclosures are that the builder is providing a warranty that is longer than that required by Section 553.837(2), the period of the warranty, and whether the warranty is transferable for a duration beyond the one year required by the statute. The failure of a builder to comply with this stature is limited to enforcement by way of a civil cause of action by the purchaser of the property.

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, where necessary. 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