

# VARNUM

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## **2024 Legislation for Condominium Associations and Community Association Management Effective on July 1, 2024**

- HB 1029 My Safe Florida Condominium Pilot Program - creates §215.5587, F.S.
  - Creates a program that makes condominiums eligible to apply for grants to update buildings and make them less vulnerable to hurricane damage.
  - Defines "Service Area" as areas of the state within 15 miles of a coastline, as defined in 376.031, F.S.
  - To apply for inspection, a majority vote of the Board or total voting interest must agree to participate in the program. To apply for grant, a majority vote of the Board or total voting interest must agree to participate in the program **and** the unanimous vote of all unit owners within the structure or building that will participate in the mitigation inspection. §215.5587(2)
    - Vote must take place at the annual budget meeting or special meeting. Must provide clear disclosure through a form prepared by state that must be signed by president and treasurer. Signed form and meeting minutes are official records. Within 14 days of vote, Board must provide notice to the members of the decision to participate in the program. §215.5587(2). Only one application may be submitted for each property under penalty of perjury. §215.5587(4)(b). Association may apply for inspection without also applying for grant. §215.5587(4)(c)
  - Licensed inspectors will determine mitigation measures needed, the insurance premium discounts that may be available, and what improvements are needed to reduce hurricane vulnerability. §215.5587(3)(a) (for inspector qualifications see bill)
  - A report of the inspection must be created that identifies the recommended improvements, the cost thereof, and insurance premium discounts available based on improvements.
  - An application for grant must include a verified statement under penalty of perjury by president that only one application has been made; notarized statement from president for the following i) information for the contractor the association will use for the mitigation project; and ii) commitment the association will complete the mitigation project. §215.5587(5)(a)
  - An association awarded a grant must complete the mitigation project and agree to a final inspection upon completion to receive final draw. Within one year of grant, association must notify state of completion or request an extension. Failure to comply results in abandonment of project and all funds revert back to state. §215.5587(5)(c)

- All grants match based on \$1 provide by association for \$2 provided by the state. For roof projects, the grant is \$11 per square foot, not to exceed \$1,000 per unit and a maximum award of 50% of the cost of the project. For opening projects, \$750 per replacement window or door not to exceed \$1,500 per unit and a maximum grant of 50% of the project cost. Association may receive monies for both roofs and openings, but total grant may not exceed \$175,000.00 per association. §215.5587(5)(d)
- Funds may be used for the following improvement projects: i) opening protection (exterior doors, garage doors, windows and skylights); ii) reinforcing roof-to-wall connections; iii) improving strength of roof-deck attachments; and iv) secondary water resistance for roof. §215.5587(5)(e)
- Improvements made to existing structures must comply with all building codes in effect and provide more protection against hurricanes that previously installed improvements. Grant monies may not be used to install the same type of improvements already existing or pay a deductible for a pending insurance claim for damage. §215.5587(5)(g)
- HB 1021 Community Association Management
  - Sections 468.4334 & 468.4335
    - Creates §468.4334 - A CAM or management must return all association official records it possesses within 20 business days after termination or receipt of a written request for the return of official records, whichever occurs first. Notice of termination must be sent certified mail, return receipt requested or in the manner required by the contract. The CAM or management company may retain records for up to 20 business days that are necessary for ending financial statement/report. If association demands those records, CAM/firm has no further obligations to prepare financials. Failure to comply creates rebuttable presumption that CAM/firm willfully failed to comply. Failure to comply timely subjects the CAM/firm to suspension of license and a civil penalty of \$1,000 per day up to 10 business days beginning on the 21st business day. In the case of a timeshare plan, timing is different (see §721.14(4)(b).)
    - Creates §468.4335(1) - A CAM/firm and its directors, officer and persons with a financial interest in the firm or a relative of any of those must disclose to the board of an association any activity that may "reasonably be construed to be a conflict of interest". The following creates a rebuttable presumption of a conflict: i) enter into a contract for goods or services with the association; or ii) holds an interest in or receives compensation or anything of value from a business entity that conducts business with the association or proposes to enter a contract with the association. (*This should eliminate the secret kickbacks CAMs receive from vendors to send clients their way*).
    - Creates §468.4335(2) - Any bid received for goods/services other than CAM/firm services exceeding \$2,500 from the CAM/firm, including

persons with a financial interest in the firm, the association must solicit multiple bids from third-party vendors.

- Creates §468.4335(3) - Any activity proposed by CAM/firm that is a conflict of interest as described in (1) above must be listed, and all contracts and documents related to the activity must be attached to, the next board meeting agenda. The conflict of interest must be disclosed in the board meeting minutes. Approval of the contract, including a management contract between an association and a CAM/firm, must be by 2/3rds vote of all directors present. At the next members' meeting, the contract and conflict must be disclosed. Conflicts that carry over through to a new "term" of the CAM/firm's contract must be disclosed again just as before.
- Creates §468.4335(4) - Failure to disclose a conflict of interest give board the authority to cancel contract with CAM/firm. If canceled this way, association is only liable for services performed up to that time and is not subject to penalty of any kind.
- Creates §468.4335(5) - Failure to disclose a conflict of interest gives association the authority to cancel contract. The contract is voidable and terminated upon association filing a written notice of termination with its board of directors which "contains the consent of" at least 20% of the voting interests.
- Relative is someone within the third degree of consanguinity by blood or marriage. §468.4335(6)
- Section 468.436
  - Failing to disclose a conflict of interest has been added as a ground for disciplinary action by the DBPR. §468.436(7)
- HB 1021 - Condominiums
  - Milestone Inspections - §553.899(4) revised to also exempt 4-family dwellings with three or fewer habitable stories above ground.
  - Condominium Definitions - Section 718.103 Definitions
    - "Hurricane protection" is defined as shutters, impact glass, code-compliant windows/doors, and other code-compliant hurricane protection products use to protect and preserve the condominium and its property. §718.103(19)
    - "Kickbacks" are defined as any thing or service of value, for which consideration has not been provided, for an officer's, director's or manager's benefit or their immediate family, from any person provide or proposing to provide goods or services to the association. §718.103(20)
  - Condominium Creation - Section 718.104
    - A condominium that will exist within a portion of a building or within a multiple parcel building, the declaration must include the name by which the condominium is to be identified and be followed by "a condominium

within a portion of a building or within a multiple parcel building." §718.104(4)(b)

- For both residential and mixed-use condominiums, the declaration must provide a statement that specifies whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection. §718.104(4)(p)
- Kickbacks and Fidelity Bonds - §718.111
  - Kickbacks that are received constitute a third-degree felony, are subject to civil penalty, and must be removed from the board. §718.111(1)(a)
  - In regards to the association maintaining insurance of fidelity bond for all persons who control or disburse association funds, upon receipt of a complaint, the Division shall monitor the association for compliance with this requirement and may issue fines and penalties for failure to maintain insurance or bond. §718.111(1)(h)
- Official Records - §718.111(12)
  - Clarifies that email address and fax numbers should only be provided for owners who receive electronic notice from association and add the option for owners to expressly consent to providing their personal information with other unit owners. Association may only use emails for business operations and may not sell or share the information with third parties. If the documents must be provided to third parties, the association must redact the information. Only punishable if disclosure was made knowing or intentional disregard for the protected nature of the information. §718.111(12)(a)7.
  - Official records now also include:
    - all invoices, transaction receipts, or deposit slips that substantial any receipt or expenditure of funds. §718.111(12)(a)11.b
    - copy of building permits §718.111(12)(a)18
    - Copy of all satisfactory completed board member education certificates. §718.111(12)(a)19.
  - Official records must be maintained in an organized manner that facilitates inspection of the records by unit owners. If records are lost, destroyed, or otherwise unavailable, the association must make a good faith effort to obtain or recover the records as is "reasonably possible". §718.111(12)(b)
  - Official records that are requested and are maintained on the association's website or are available for download through an application may be made available to owners by directing them to the website or application. §718.111(12)(c)1.a.
  - In response to receiving an official records request, the association must provide the requestor a checklist of all records made available for inspection and copying. The checklist must identify any official records that were not made available. The checklist must be maintained as an official record for

7 years. The delivery of the checklist creates a rebuttable presumption the association has complied with these requirements. §718.111(12)(c)1.b.

- A director, officer or manager who knowingly, willfully and repeatedly violates §718.111(12)(c)1, commits a second-degree misdemeanor and must be removed from the board. "Repeatedly" means two or more times within a 12-month period. §718.111(12)(c)2.
  - Knowingly or intentionally defacing or destroying accounting records or the failure to create or maintain accounting records that are required to be maintained with the intention of causing harm to association or its members, commits a first-degree misdemeanor, is subject to civil penalties, and is removed from the board. §718.111(12)(c)3.
  - Refusal to release or provide official records with the intent to avoid or escape detection, arrest, trial or punishment for the commission of a crime or assist another person with the same, commits a third-degree felony and must be removed from office. §718.111(12)(c)4.
  - For any condominium that must maintain a website (over 150 units) the site must now include copies of all building permits issued for ongoing or planned construction. §718.111(12)(g)2.o.
  - **Effective January 1, 2026** Condominiums with 25 units or more must have a website and comply with all the requirements condominiums of 150 units currently must abide. §718.111(12)(g)1.
- Financial Reporting - §718.111(13)
    - End of year financials clarified that it can be delivered by means other than just mail (personal service and email) and now requires a copy of the most recent financial report and a notice that a copy of the most recent financial report will be mailed with 5 days of receipt of a written request for the financial report (previously was an "either or"). §718.111(13)
    - The ability of a condominium to reduce its end of year financial report requirements may not be exercised consecutive years. §718.111(13)d.
    - Debit cards in used for any expense that is not a lawful obligation of the association commits theft and must be removed from office. "Lawful obligation" means an obligation that has been property preapproved by the board and reflected in the meeting minutes or written budget. §718.111(15)(b)
  - Bylaws - §718.112
    - In a residential condominium of more than 10 units, the board must meet at least once a quarter and at least four times a year. The meeting agenda must include an opportunity for members to ask questions of the board. Specially states owners may ask questions regarding reports of status of construction or repair projects, the status of revenues and expenditures during the fiscal year and "other issues affecting the condominium". §718.112(2)(c)

- Notice of any meeting to levy regular or special assessments must specifically state that assessments will be considered and provide the estimated cost and description or purpose for the assessment. If the agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice and be made available for inspection/copying upon written request or made available on the website/application. §718.112(2)(c)3.
- Director Certification - A director must certify they have read the governing documents/agree to uphold them and submit to the Secretary of the association a certificate for attending a board certification class (**no longer either or**). The class must be 4 hours long and include instruction on milestone inspections, SIRS, elections, recordkeeping, financial literacy and transparency, levying fines, and notice/meeting requirements. Each new director must submit the certificate within 1 year before being elected/appointed or 90 days after election/appointment. A director who was elected or appointed prior to July 1, 2024 must comply by June 30, 2025. The certificate is good for 7 years from date of issuance. Developer appointments must comply as well. Every year thereafter the director must attend one hour annually of continuing education courses and file the certificate with the Secretary. §718.112(2)(d)4.b.
- Annual Budget - §718.112(2)(f)2.a.
  - If local building officials determine the building is uninhabitable due to a natural emergency, the board may pause contributions to reserves or reduce reserve funding until the building is determined to be habitable by local officials, upon a majority vote of the board. Any reserve funds may be used to make the building habitable. §718.112(2)(f)2.a.
- Structural Integrity Reserve Study
  - Within 45 days after receiving the SIRS the association must distribute a copy of the report or a notice that the report is available for inspection/copying upon written request to all the unit owners. §718.112(2)(g)9.
  - Within 45 days after receiving the SIRS the association must provide the Division with a statement the report was completed and a copy of the report or a notice that the report is available for inspection/copying upon written request to all the unit owners. §718.112(2)(g)10.
- Director/Officer Crimes - §718.112(2)(q) - If an officer or director is charged with the following list of crimes, he or she must be removed from office.
  - Forgery of a ballot envelope or voting certificate in a condominium election;
  - Theft or embezzlement of association funds or property;
  - Destruction of or refusal to allowing inspection/copying of official records, in furtherance of a crime (tampering with evidence);

- Obstruction of justice under Chapter 843; and
  - Any criminal violations under Chapter 718
  - If a director is charged, the association may deny them access to records unless the director gets a court order.
- Fraudulent Voting Activities - §718.112(2)(r)
- The following fraudulent voting activities constitute a first-degree misdemeanor §718.112(2)(r)1.:
    - Willfully and falsely swearing to or affirming, or willfully getting another to falsely swear or affirm an oath in connection with voting activities;
    - Perpetrating or attempting to perpetrate, or aiding in, fraud in connection with a vote cast, to be cast, or attempted to be cast;
    - Preventing a member from voting or from voting the way they want, or attempting to change the ballot, ballot envelope, vote, or voting certificate;
    - Menacing, threatening, or bribing, directly or indirectly, to influence, deceive or deter a member from voting;
    - Giving or promising to give, directly or indirectly, anything of value with the intent to buy a vote (does not apply to food of a nominal value served at a rally or meeting);
    - Threatening force, violence, or intimidation to induce or compel someone to vote or refrain from voting in an election of ballot measure.
  - The following acts constitute a first-degree misdemeanor §718.112(2)(r)2.:
    - Knowingly aiding, abetting or advising a person in the commission of a fraudulent voting activity in an association election;
    - Agreeing, conspiring, or confederating with at least one other person to commit a fraudulent voting activity; and
    - Having knowledge of a fraudulent voting activity and giving any aid to the offender with the intent to help the offender avoid or escape detection, arrest, trial, or punishment (carveout for attorneys giving legal advice to a client).
- Maintenance - §718.113 **Note, this provision applies to all condominiums, including mixed-use condominiums, regardless of when the condominium was created.**
- The installation, maintenance, repair, replacement and operation of hurricane protection is not considered a material alteration or substantial addition to the common elements or association property. §718.113(5)
  - With a majority vote of the membership in a residential or mixed-use condominium, install or require unit owners to install hurricane protection that complies or exceeds applicable building code standards. A vote of the unit owners to require the installation of hurricane protection must be set

forth in a certificate attesting to the vote and include the date the hurricane protection must be installed. The certificate must be recorded with the County and then delivered or mailed to the members. Failing to record or mail does not affect the validity or enforceability of the vote. No vote is required if the obligations to install, maintain, repair, replace hurricane protection or any exterior windows, doors, or other apertures protected by hurricane protection is the responsibility of the association as originally recorded or amended or if owners are required to install pursuant to documents. If hurricane protection that meets standards was previously installed, the board may not replace it or require the unit owners to replace it until it reaches the end of its useful life or is necessary to prevent damage to the common elements or unit(s). §718.113(5)(a)

- While the association cannot deny a request for the installation of hurricane protection, it can require it to conform to its adopted standards. §718.113(5)(c)
  - A unit owner is not liable for the cost of removal or reinstallation of any hurricane protection if the removal is required by the association to maintain the property under an association maintenance obligation. Board may determine who is responsible for the removal/reinstallation. If performed by association, it cannot be charged to the unit owner and must reimburse the unit owner if they perform the removal/reinstallation by giving the unit owner a credit toward future assessments. §718.113(5)(d)
  - If unit owner is responsible under the declaration for hurricane protection and association performs the work, they may charge the unit owner and it is enforceable as an assessment. §718.113(5)(e)
- Common Expenses - §718.115
- Except as provided for in §718.113(5)(d), if hurricane protection is the responsibility of unit owners pursuant to declaration or a vote of the unit owners under §718.113(5), the cost of the hurricane protection's installation by association is not a common expense and must be charged individually based on the cost of installation. The cost is enforceable as an assessment. §718.115(1)(e)1.
  - Regardless of whether the declaration states unit owners are responsible for installation, maintenance, repair, or replacement of hurricane protection, a unit owner that already has hurricane protection that complies with code is excused from any assessment or shall receive a credit towards assessments. A credit is appropriate when all other units are receiving hurricane protection and the cost of the project is funded by the association's budget, including reserve funds. The credit must be equal to the amount the unit owner would have been assessed to install the same hurricane protection. Expenses for common elements are a common expense. §718.115(1)(e)2.



- Limitations - §718.124
  - The statute of limitations and statute of repose will not begin to run until owners have elected a majority of the members of the board of administration. §718.124
  
- Prohibition against SLAPP suits - §718.1224
  - Condominiums are now added to the list of entities that may not file SLAPP suits against condominium unit owners. §718.1224(1)
  - It is unlawful for a condominium to fine, discriminatorily increase a unit owner's assessments, discriminatorily decrease services to a unit owner, or bring/threaten to bring an action for possession or other civil action, including defamation, libel, slander or tortious interference action, based on conduct described in this subsection. To raise the defense of retaliatory conduct, a unit owner must have acted in good faith and not for improper purposes, such as to harass or cause unnecessary delay, or frivolous purpose or needless increase in the cost of litigation. Examples of times where an association may not retaliate include, but are not limited to: §718.1224(3)
    - In good faith complained to governmental agency of a suspected violation;
    - Organized, encourage or participated in unit owners' organizations;
    - Submitted information or filed a complaint alleging criminal violations with the Division or another agency;
    - Exercised their rights under Chapter 718;
    - Complained to the association or its representatives for the failure to comply with Chapter 718 or 617; or
    - Made public statements critical of operation or management of the association.
  - A unit owner may raise and produce evidence of a retaliatory conduct claim in action for possession.
  - A condominium association may not expend association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim based on conduct described in §718.1224(3). §718.1224(7)
  
- Electronic Voting - §718.128(4)
  - If the board authorizes online voting, the board must honor a unit owner's request to vote electronically at all subsequent elections, unless the owner opts out of online voting.
  
- Sale or reservation of deposits prior to closing - §718.202 - Effective - October 1, 2024
  - Nonresidential condominium developers may deliver to an escrow agent a surety bond or irrevocable letter of credit in the amount equivalent to the aggregate of some or all payments, up to 10 percent of the sale price,

received by the developer from all buyers toward the sale price. In all cases, the aggregate of the initial 10% deposits being released must be secured by a surety bond or irrevocable letter of credit in an equivalent amount. §718.202(1)

- Conflicts of interest - §718.3027
  - Clarifies that when a director must leave a meeting for the vote on a conflict of interest matter that involves the director, his or her attendance counts toward quorum for the meeting and the vote in their absence on the proposed activity. §718.3027(4)
- Obligation of Owners and Occupants - §718.303
  - At least 90 days before an election, an association must notify a unit owner or member that their voting rights may be suspended due to a nonpayment of a fee or other monetary obligation. §718.303(5)
- Condominiums created within a portion of a building or within a multiple parcel building. - §718.407 - **Effective October 1, 2024**
  - A condominium may be created in accordance with this section within a portion of a building or within a multiple parcel building as defined in §193.0237(1). §718.407(1)
  - The common elements of a condominium are only those portions of the building submitted to the condominium form of ownership, excluding the units. §718.407(2)
  - The declaration that creates this style of condominium must specify all of the following:
    - The portions of the building that are included in the condominium and the portions that are excluded.
    - The party responsible for maintaining and operating the shared facilities, including, but not limited to, the roof, exterior of building, windows, balconies, elevators, lobby, corridors, recreational amenities and utilities.
    - The manner in which expenses for the maintenance and operation of the shared facilities will be apportioned. An owner of any portion of the building that is not submitted to the condominium must approve any increase to the apportionment of expenses. Apportionment may be based on the following criteria or a combination thereof: §718.407(3)(c)1.
      - The area or volume of each portion of the building in relation to the total area or volume of the entire building, exclusive of the shared facilities;
      - The initial estimated market value of each portion of the building compared to the total initial estimated market value of the entire building; and

- The extent to which unit owners are permitted to use various shared facilities.
  - Alternative apportionment of expenses is permitted so long as such apportionment is stated in the declaration of condominium or any recorded instrument that creates the multiple parcel building. §718.407(3)(c)2.
  - The party responsible for collecting shared expenses.
  - The rights and remedies that are available to enforce payment of shared expenses.
  - The association may inspect and copy books and records upon which the costs for maintaining and operating the shared facilities are based and receive an annual budget. §718.407(4)
  - Each contract for the sale of a unit in the condominium must make specific disclosures. *See statute for disclosure language.* §718.407(5)
  - The creation of a multiple parcel building is not a subdivision of the land upon which such building is situated provided the land itself is not subdivided. §718.407(6)
- Division of Florida Condominium, Timeshares and Mobile Homes Authority - §718.501
  - New authority added to Division to:
    - Investigate after turnover matters, but only procedural aspects and records relating to financial issues, including annual reports, assessments, fines, commingling of reserves, use of debit cards for unintended purposes, annual budget, allocation of reserve funds, and any other record necessary to determine revenues and expenses of the association. §718.501(1)(a)1.
    - Elections, voting requirements, recall of board members, electronic voting, and elections that occur during an emergency authority. §718.501(1)(a)2.
    - Procedural aspects of meetings, quorums, voting requirements, proxies, and meetings of all kinds. §718.501(1)(a)4.
    - Disclosure of conflicts of interest. §718.501(1)(a)5.
    - Removal of directors and officers. §718.501(1)(a)6.
    - Any written inquires by unit owners to the association. §718.501(1)(a)8.
  - In cases where the Division finds an association failed to provide official records, the Division may issue a subpoena for the records and require production of the records. Once the Division receives the records it must provide the records to the unit owner without charge. §718.501(1)(e)7.
  - The Division may issue citation and promulgate rules to provide for citation bases and citation procedures. §718.501(1)(e)9.

- The Division shall refer to local law enforcement any person whom the Division believes has engaged in fraud, theft, embezzlement, or other criminal activity. §718.501(1)(o)
  - The Division and its agents may attend any meeting that is open to the members for purposes of performing its duties. §718.501(1)(p)
  - If the Division receives a complaint regarding access to official records on the association's website/application, the Division may request access to the website/application. §718.501(1)(u)
  - The Division will create a certification form for condominiums to use and certify that each director has complied with the written certification and educational certificate requirements (does not apply to timeshare condominiums). §718.501(2)(c)
- Ombudsman - §718.5011
    - No longer required to be an attorney. §718.5011(2)
  - Nondeveloper Disclosure - §718.503
    - Seller of a unit must provide to a prospective purchaser certain documents, which now includes an annual financial statement and annual budget of the condominium association. §718.503(2)(a)
    - If a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building, the developer or nondeveloper unit owner must provide the disclosures required under s. 718.407(5). §718.503(3)(c)