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FLORIDA'S BUSINESS LAW FIRM

LEGISLATION AFFECTING FLORIDA HOA'S - HB 1203

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In addition to HB 59, HB 293, and HB 1645 which were previously signed by the governor, the most substantial HOA legislation in Florida this year is HB 1203, which bill was signed by the governor on May 31, 2024 and is effective July 1, 2024. In addition to adding requirements for community association managers, including requiring that a community association manager or management firm for an HOA attend at least one membership or board of director meeting annually "in person", HB 1203 imposes the following new requirements on homeowners associations:

(1) Director Standards: In addition to having a fiduciary duty to members, officers and directors are specifically subject to the standards for directors of non-profit corporations set forth in Section 617.0830, Florida Statutes which requires directors to discharge their duties in good faith, with the care of an ordinary prudent person in a like position, and in a manner reasonably believed to be in the best interests of the corporation.

(2) Association Records:

(a) Association official records must be maintained for 7 years unless the governing documents require a longer period of time.

(b) By January 1, 2025, an association that has 100 or more parcels must post the association's governing documents and other official records on its website or make the documents available through a mobile device application. This includes posting all notices of membership and board meetings, with agendas and any document to be considered and voted on during the meeting and any documents listed on the agenda "in plain view on the homepage of the website or application, or on a separate subpage of the website or application labeled 'Notices' which is conspicuously visible and linked from the homepage." Association records which are confidential and not accessible to owners as provided in Chapter 720, Florida Statutes, must be redacted or otherwise not included in the association's website or application.

(c) The association's website or application must include a section that is accessible only by username and password by owners and employees of the association, which username and password must be provided upon written request by an owner.

(d) Knowing, willful and repeated failures to comply with requests for association records is a second degree misdemeanor, knowing and intentional defacing or destroying of accounting records and knowing and intentional failure to create or maintain accounting records is a first degree misdemeanor, and willful and knowing refusal to release or otherwise produce association records is a third degree felony.

(e) If an association receives a subpoena for records from a law enforcement agency, the association must provide or make such records available to the law enforcement agency within 5 business days after receipt of the subpoena unless otherwise specified in the subpoena, and an association is required to assist law enforcement in its investigation.

(3) Financial Matters:

(a) Associations with 1000 or more members must prepare annual audited financial statements regardless of the total amount of association revenue. The level of annual financial statements (i.e. compiled, reviewed or audited) continues to be subject to reduction by a vote of members, however such reduction is not allowed in consecutive years, i.e. a reduction in the level of reporting is permitted every other year.

(b) 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 association expenses. Any 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 commits theft.

(c) An owner has the right, not more than once every 90 days, to request a detailed accounting of any amounts such owner owes to the association. Failure to respond within 15 business days after receipt of a written request for a detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested the accounting of the amounts owed are more than 30 days past due and the association did not give prior written notice of the imposition of the fines.

(4) Director Education. New directors no longer have the choice of attending an education class or signing a certificate that the director has read the association governing documents and will work to uphold them and faithfully discharge his or her fiduciary responsibility. Instead, the new directors must complete a department approved education class within 90 days after being elected or appointed and provide a certificate of satisfactory completion of such class. A certificate of completion is valid for 4 years and directors must complete the education class at least every 4 years. In addition to the department approved education class, a director of an association with less than 2500 parcels must complete at least 4 hours of continuing education annually, and a director of an association with 2500 or more parcels must complete at least 8 hours of continuing education annually.

(5) Architectural Review.

(a) Architectural control requirements may not (i) limit or place 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, or (ii) require the review and approval of plans and specifications for central air-conditioning, refrigeration, heating, or ventilating systems 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.

(b) A notice of denial by an association to an owner for the construction of a structure or other improvement on a parcel must specify the rule or covenant on which the association relied upon by the Association when denying a request and the specific aspect or part of the proposed improvement that does not conform to the rule or covenant.

(c) An association may not restrict owners from installing, displaying or storing any items on a parcel which are not visible from the parcel's frontage, an adjacent parcel, adjacent common areas or a community golf course including, but not limited to, vegetable gardens and clotheslines.

(6) Fines and Suspensions:

(a) The 14-day minimum notice to an owner of an intent to impose a fine or suspension of common area use rights must be in writing and must include a statement of the right to a hearing, and the hearing must be held within 90 days after issuance of the notice. The hearing may be held by telephone or other electronic means, and if by electronic means, the notice must include information for access to the hearing. Written findings relating to a violation must be provided within 7 days after the hearing, and such notice must state how the violation may be cured, how a suspension may be fulfilled, and when a fine must be paid (which can be no sooner than 30 days after of delivery of the notice). If an owner cures a violation before the hearing or after the notice of the hearing decision is

provided, a fine or suspension may not be imposed. Attorneys' fees and costs incurred prior to the deadline to cure or pay the fine indicated in the notice of the hearing decision may not be awarded, but those incurred after the deadline to cure or pay the fine indicated in the notice of the hearing decision may be awarded to the association.

(b) An association may not levy a fine or impose a suspension of the use of common areas for (i) leaving garbage receptacles at the curb or end of the driveway within 24 hours before or after the designated garbage collection day or time, or (2) leaving holiday decorations or lights on a structure or other improvement longer than allowed in by the governing documents unless such decorations or lights are left up for longer than one week after the association provides written notice of the violation.

(7) Criminal Penalties:

(a) In addition to the criminal penalties for acts involving association elections, the following relating to fraudulent voting activity are now first-degree misdemeanors: (i) knowingly aiding, abetting or advising someone in the commission of a fraudulent voting activity, (ii) agreeing or conspiring with another person to commit a fraudulent voting activity; and (iii) knowing of an fraudulent voting activity and aiding the offender fraud and trying to help the person who committed it to avoid or escape consequences.

(b) It is a second-degree misdemeanor for any director or member of the board or the association to knowingly, willfully and repeatedly violate (i.e. two or more violations within a 12 month period) any requirements relating to inspection and copying of official records of an association with the intent of causing harm to the association or one or more of its members.

(c) It is a first-degree misdemeanor for a person to knowingly and intentionally deface or destroy required accounting records, or to knowingly and intentionally failing to create or maintain required accounting records with the intent of causing harm to the association or one of its members.

(d) It is a felony of the third-degree for a person to willfully and knowingly refuse 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.

(d) Being charged with any criminal act under the statute requires removal from the board.

(8) Prohibited Restrictions: Governing documents of an association may not prohibit the following:

(a) The parking of an owner's, tenant's guest's or invitee's pickup truck in the owner's driveway or any other area where the owner, tenant, guest or invitee has a right to park per state, county or local regulations.

(b) The parking of an owner's, tenant's guest's or invitee's work vehicle that is not a commercial vehicle[1] in the owner's driveway regardless of any official insignia or visible designation on the vehicle.

(c) Operating a vehicle that is not a commercial vehicle in conformance with state traffic laws on public roads or rights-of-way or the owner's parcel.

(d) The parking by a first responder who is an owner, tenant, guest or invitee of the first responder's assigned vehicle in an area where the owner, tenant, guest or invitee otherwise has a right to park, including public roads and rights-of-way. A first responder includes law enforcement officers, firefighters, emergency medical technicians and paramedics.

(e) The use of a contractor or worker solely because the contractor or worker is not on the association's preferred vendor list and/or does not have a professional or occupational license.

(9) Compound Interest: Compound interest on delinquent assessments is prohibited.

(10) Electronic Voting: A member of an association may consent to electronic, i.e. online, voting electronically in addition to consenting in writing.

The full text of HB 1203 can be found HERE.

[1] A commercial vehicle is defined as (i) any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight, and (2) a vehicle that occasionally transports personal property to and from a closed-course motorsport facility if the use is not for profit and no corporate sponsorship is involved.

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