

2024 HOA Legal Update

Legislation Passed in 2024 Affecting HOAs

Preface

The following is a summary of major Homeowners Association statutory changes. Please understand that this is only a summary and the specific wording of the statutes in

conjunction with the requirements and provisions in the Association's Governing Documents will be necessary to address any specific issues.

Florida Statute 720.303(1) Standards for Directors and their Fiduciary Duties

FS §617.0830 General Standards for Directors.

- (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
 - (a) In good faith;
 - (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (c) In a manner he or she reasonably believes it to be in the best interests of the corporation.
- (2) In discharging his or her duties, a director 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 corporation 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 of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.
- (3) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance unwarranted.
 - (4) A director is not liable for any action taken as a director, or any failure to take any action if he or she performed the duties of his or her office in compliance with the above standards for Directors.

Florida Statute 720.303 (4) New Requirements for Official Records

Florida Statute 720.303 now requires certain Official Records to be maintained for at least seven (7) years. (Note we recommend our HOA clients maintain all their Official Records for a minimum of 7 years anyway.) Additionally, by January 1, 2025, HOAs with 100 or more parcels must post on their websites many of the

official records or make them available through an application that can be downloaded on a mobile device.



Florida Statute 720.303(5) Assisting Law Enforcement

The Association must now assist Law Enforcement if subpoenaed, provide a copy of the requested records or make them available within five business days of receiving the

subpoena, as well as assist law enforcement in any investigation to the extent permissible by law.

Florida Statute 720.303(7)(a)4 Financial Reporting

HOAs with 1,000 or more parcels are now required to have audited financial statements, irrespective of total annual revenues.

HOAs are now prohibited from reducing the required type of financial statement (compiled, reviewed, or audited financial statement) for consecutive years.

Florida Statute 720.303(7)(13) Use of Debit Cards Prohibited



Debit cards in the name of the association may not be used or billed directly to the Association for the payment of association expenses. A person commits theft, if

they use a debit card issued in the name of the association, or one billed directly to the association for any expense that has not been properly preapproved by the board and reflected in the meeting minutes or the written budget.

Florida Statute 720.303(7)(14) Parcel Owner Accounting

HOAs are required to provide a detailed accounting of any amounts owed to the Association by a parcel owner who submits a written request. Such accounting is due within

fifteen (15) business days of such written request. Failure to provide the accounting can waive the Association's fines.

Florida Statute 720.303(13) Providing Governing Documents and Rules & Regulations to all Members



Before October 1, 2024, HOAs are required to provide a physical or digital copy of the association's rules and covenants to every member (i.e., Owner) and thereafter to every new member of the Association.

When covenants or rules are amended, the Association must provide every member with an updated copy thereof.

The Association may provide the rules, covenants, and amendments by posting a

complete copy of the association's rules and covenants, or a direct link thereto, on the home page of the association's website provided:

1. The website is accessible to the members of the HOA; and
2. The association sends notice to each member of its intent to utilize the website for this purpose.

However, the Notice must be sent by email to members that have properly consented to electronic transmission and by mail to all other members.

Florida Statute 720.303; 720.3033; 720.3065 Criminal Penalties for certain actions or inactions

The following criminal penalties now exist:

Florida Statute 720.303(5)

1. Third degree felony for any person who willfully and knowingly refuses to release or otherwise produce HOA 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.

2. First degree misdemeanor for anyone who knowingly and intentionally defaces or destroys accounting records during the period in which they are required to be maintained or

Florida Statute 720.303; 720.3033; 720.3065
Criminal Penalties for certain actions or inactions (cont'd)

knowingly or intentionally fails to create or maintain accounting records, with the intent of causing harm to the HOA or a member.

3. Second degree misdemeanor for

directors and managers who knowingly, willfully, and repeatedly violate record inspection requirements, with the intent of causing harm to the HOA or a member.

Florida Statute 720.3033(3)
(See also FS 720.3033 hereafter)

1. Third degree felony for an officer, director, or manager of an association

who knowingly solicits, offers to accept, or accepts kickback(s).

Florida Statute 720.3065(1)
(See also FS 720.3065 hereafter)

1. First degree misdemeanor for any person who engages in fraudulent

voting activities relating to association elections.

Florida Statute 720.3033(1)
Directors and Officer Education Requirements

Newly elected or appointed directors must complete and submit a DBPR approved education curriculum, within 90 days of being elected or appointed. This Certification will be valid for 4 years. Additionally, directors must complete continuing education class(es) each year. For HOAs with *fewer than 2,500 parcels*, the directors must complete at least *four (4)*

hours of continuing education annually. Whereas HOAs with *2,500 or more parcels*, the directors must complete at least *eight (8) hours* of continuing education annually.



Florida Statute 720.3033(4) Required Removal of Directors and Officers



Officers and directors charged by information or indictment of any of the following must be removed from office:

1. Forgery of a ballot envelope or voting certificate used in an HOA election.
2. Theft or embezzlement involving the HOA's funds or property.
3. Destruction of or the refusal to allow inspection or copying of an official record of the HOA in the furtherance of a crime.
4. Obstruction of justice.
5. Criminal violations under Chapter 720.

Florida Statute 720.3035(1) and (4) Architectural Control (ARC/ARB)

1. Architectural requirements must be reasonably and equitably applied and enforced.
2. If an architectural request is denied, the Association must provide written notice to the parcel owner reciting the rule or covenant relied upon and specify the specific part of the modification that does not conform to the rule or covenant.
1. The interior of a structure that is not visible from the Lots frontage of the home, an adjacent parcel, an adjacent common area, or community golf course.
2. HVAC, refrigeration, heating, or ventilating systems which are not visible from a Lot's frontage, an adjacent parcel, an adjacent common area, or community golf course provided substantially similar system(s) have been approved or recommended by the Association.

The Association cannot regulate:

Florida Statute 720.3035(6) Hurricane Protections

Florida Statute 720.3035 has been amended with respect to hurricane protections for homeowner associations. It requires HOAs to enact "hurricane protection specifications for structures and improvements", which specifications must comply with building codes but may address (e.g., restrict) the color and style of hurricane protection products. Such

"Hurricane Protection" includes but is not limited to roof systems, permanent storm shutters, roll down track storm shutters, impact resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, exterior fixed generators, and fuel storage tanks and other products.

Florida Statute 720.3035(6) Hurricane Protections

Provided the hurricane protection sought by an Owner conforms to specifications adopted by the Association, generally the Owner's application (e.g. request for such hurricane protection structure(s) and improvements) may not be denied.

Special Note: CM has video "Working with Acts of God" which is available online whenever you want to view it. To register for this class, use this [link](https://www.clayton-mcculloh.com/cm-demand-seminars). (https://www.clayton-mcculloh.com/cm-demand-seminars) and scroll down to the class)

Florida Statute 720.305(2) and (7) Fines and Suspensions

The following prerequisites, requirements, and provisions exist for fines and suspensions:

1. the 14-day notice of the right to a hearing must now expressly be in writing;
2. the hearing must be held within 90 days after issuance of the notice of hearing;
3. if the violation has been cured before the hearing, the fine or suspension cannot be imposed;
4. the hearing can now be by telephone or other electronic means;
5. the committee must provide to the violator written findings related to the violation within seven days of the hearing, including whether the fine or suspension has been approved or rejected, how the violation may be cured, and/or the date by which the fine must be paid;
6. the committee must set the date by which the fine must be paid which must be at least 30 days after delivery of the written

notice of the committee's approval or rejection of the fine; and

7. attorney fees and costs are not awardable for Association actions occurring prior to the specified date for payment.

Garbage and Holiday Decorations

1. The Association may not fine for garbage cans left out for less than 24 hours before or after the designated collection day or time.



2. The Association may not fine for holiday decorations and lights, unless more than one (1) week has passed after written notice of the violation.

Florida Statute 720.3075(3) Parking

HOA documents may not prohibit any of the following:

1. Personal vehicle(s), including pickup truck(s), from parking in an owner's or resident's driveway or other area where he or she has a right to park pursuant to government regulation;
2. Work vehicles, which are not "Commercial Motor Vehicles" [as defined in Florida Statute Section 320.01(25)], from parking on the owner's or resident's driveway. [Note - the definition of "Commercial Vehicle" is specific and unique];
3. An Owner from inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor is not a preferred vendor of the HOA or does not have a professional or occupational license; and
4. Operating a non "Commercial Vehicle" [see Florida Statute Section 320.01(25)] in conformance with state traffic laws on public roads or rights-of-way or the owner's parcel.

Florida Statute 720.3085(3) Interest on Assessments

Delinquent assessments may not be charged compound interest.

Florida Statute 720.318 First Responders Parking

Owners, tenants, and/or their guests and invitees (e.g., workers) from parking their first responder vehicle(s) on:

1. public roads; and
2. areas where their other vehicles could be parked.

Florida Statute 720.317(1) Electronic Voting

Owners can now electronically consent to electronic voting in elections.

Florida Statute 468 Laws affecting Community Association Managers and HOAs New Requirements for Community Association Managers



Community Association Managers must:

1. annually attend at least one member

meeting or board meeting of the association;

2. provide the Owners (i.e., the association members) with management information, the hours of availability, and a summary of management's duties. Additionally, the Association needs to post this information on its website; and
3. complete educational requirements.

Florida Statute 468.4334 Management Issues

1. Management shall return all association official records in its possession to the association within 20 business days after management's termination and/or upon receipt of a written request for the records. However, management may retain, for up to 20 business days, records necessary to
2. complete ending financial statements or reports.
3. Notice of management termination must be sent by certified mail, return receipt requested, or in the manner required in the management contract.



Note: CM features a special article "Should Associations Hire Professional Managers." View this article at <https://www.clayton-mcculloh.com/should-associations-hire-professional-managers>

Florida Statute 468.4335

This statute sets forth disclosure requirements including for individuals with an interest in a management firm, as well as with an interest in an entity doing business with the Association. CAMs, management firms, and individuals with a financial interest therein who have a conflict of interest, have specific disclosure requirements with respect to “proposed engagements” (e.g., contracts) with the Association and such disclosures must be listed on and/or attached to

the “engagements” (e.g., contracts), the meeting agenda and the meeting minutes. Approval of such contracts requires a two-thirds (2/3) vote of the Directors present at the meeting. The Association may cancel a management contract if the management firm or an individual with an interest therein violates the disclosure requirements.

About the Author, Neal McCulloh



Neal McCulloh is the founding and senior partner of Clayton & McCulloh, a firm specializing in representing community associations. He is board certified in Condominium and Planned Development law (including HOAs and Cooperatives).

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